
Appeal Decision

Site visit made on 22 January 2020

by **S J Lee BA(Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 14th February 2020

Appeal Ref: APP/J1915/W/19/3238399

Molewood Hall, High Molewood, Hertford SG14 2PL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Michael Edwards against the decision of East Hertfordshire District Council.
 - The application Ref 3/19/1066/VAR is dated 21 May 2019.
 - The application sought planning permission for demolition of existing dwelling and erection of replacement dwelling of identical location, size and appearance to that approved by 3/06/1607/FP without complying with a condition attached to planning permission Ref 3/07/1458/FP, dated 19 September 2007.
 - The condition in dispute is No 5 which states that: *Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development Order), 1995 the provision within the curtilage of any building, enclosure or swimming pool as described in Schedule 2, Part 1, Class E of the Order shall not be undertaken without the prior written permission of the Local Planning Authority.*
 - The reason given for the condition is: *To ensure the Local Planning Authority retains control over any future development as specified in the condition in the interests of amenity and in accordance with policy ENV9 of the East Herts Local Plan Second Review April 2007.*
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. The disputed condition removes certain permitted development rights under Schedule 2, Part 1, Class E of the General Permitted Development Order (GPDO). The Council maintain that the 'amenity' referred to in the reason for the condition relates to the protection of the largely open nature of the site, its woodland setting and its location within the Green Belt. The appellant argues that there is no longer policy support for the condition, that the reason given does not relate to Green Belt matters and is unnecessary to protect the amenity of the area, including issues relating to visual impact or the living conditions of nearby residents. They also consider that the condition is not relevant to the development and is imprecise. This leads to their overall view that the condition is unreasonable.

3. As a result of the above, I consider the main issue in this case is whether the condition is reasonable and necessary in the interests of safeguarding the openness of the Green Belt and/or the character and appearance of the site.

Reasons

4. The appeal relates to a large detached dwelling set in generous grounds. The permission in question allowed for a replacement dwelling. I do not have the full details of the original permission. However, the Council's evidence suggests that the current dwelling is around 46% larger in terms of volume and is of a greater height than what it replaced. Ostensibly, it appears the Council were of the view that this would normally constitute inappropriate development in the Green Belt, but that there was a legitimate fallback position that carried significant weight in the planning balance. This has not been disputed by the appellant.
5. Since the original decision was made, the East Herts District Plan (EHDP)(2018) has been adopted and supersedes the East Herts Local Plan Second Review (LP)(2007). LP Policy ENV9, which is referred to in the reasons for the condition, no longer has any effect. I have however had regard to the relevant policies of the EHDP in my decision.
6. The reason given for the condition makes no specific reference to safeguarding the Green Belt. The appellant has drawn my attention to the fact that Policy ENV9 also made no reference to Green Belt. However, although there were references in that policy to the conversion of garages to living space, it did not limit itself to this issue. Importantly, criterion 2 was not specific about where the removal of permitted development rights would be considered. In addition, paragraph 8.11.1 made a general comment about the Council imposing such conditions where, in the interests of amenity or appearance, control would be retained over changes permitted under a Development Order. I acknowledge that Paragraph 8.11.4 referred specifically to the conversion of garages to living accommodation. Nevertheless, the following paragraph also stated that there may be other types of development where the Council may wish to retain control over the appearance of a site. In my view, the examples given in the supporting text are not exhaustive and do not rule out the protection of Green Belt openness.
7. I do not consider therefore that the only situation in which the policy could have been applied is in relation to garages and parking. Reference to this policy does not mean that it could not have been used to address Green Belt concerns. Whatever may have been assumed by the appellant, there is also no clear evidence before me which suggests the condition was imposed owing to concerns over parking, garages, their conversion to habitable space or the potential effects of this on the living conditions of nearby residents.
8. In any event, while relevant to the context in which the condition was imposed, this policy is no longer extant. This does not render the condition moot. Furthermore, the fact that Policy ENV9 was not carried forward in exactly the same form to the EHDP does not render the condition unreasonable or unnecessary in principle. As the site is within the Green Belt, there are other local and national policies that remain relevant to development in these locations. In determining the appeal, I must consider the current policy position and the Council's arguments for maintaining the condition.

9. Planning Practice Guidance (PPG) states that conditions restricting the future use of permitted development rights may not pass the test of reasonableness or necessity. There is also no automatic removal of permitted development rights on land within Green Belt. Nevertheless, paragraph 133 of the National Planning Policy Framework (the Framework) states that the fundamental aim of Green Belt Policy is to prevent urban sprawl by keeping land permanently open and that the essential characteristics of Green Belts are their openness and their permanence. EHDP Policy GBR1 states planning applications within the Green Belt will be considered in line with the Framework. In line with these policies, maintaining openness is a legitimate issue to be considered for any development within the Green Belt.
10. There are limitations on the location and scale of buildings that could be constructed under Class E. However, development could be carried out up to 50% of the total area of the curtilage, subject to other restrictions. The curtilage of the dwelling is significant in scale and thus without any form of restriction a large amount of development could take place. Such development, in comparative terms, could diminish the openness of the Green Belt. It would be reasonable to assume that the fact the replacement dwelling had a larger volume and height than the original would give rise to legitimate concerns over additional impacts on the openness of the Green Belt. This is also evidenced by the Council's restriction of permitted development rights under Schedule 2, Part 1, Class A of the GPDO.
11. Openness has both a spatial and visual dimension. The site as a whole is heavily wooded. Nevertheless, I could still see dwellings around the periphery of the site through the trees. There would therefore be similar views into the site from those locations. Depending on the siting of any outbuildings, there could be some effect on the visual openness of the Green Belt. Notwithstanding the Green Belt, the site sits within an attractive area of woodland just beyond a denser form of settlement to the east. In this context, I do not accept the appellant's contention that development allowed under Class E would not be capable of causing harm to the character of the site. It is not unreasonable in my view for the Council to consider there to be particular sensitivities that may justify the removal of permitted development rights in this location.
12. I acknowledge that the reference to 'amenity' can be open to a degree of interpretation. Nevertheless, the context within which the permission was granted, including the difference in volume and height of the replacement dwelling, the overall size of the curtilage and the nature of the site, are such that I am satisfied the condition is necessary to safeguard the openness of the Green Belt in particular and provide the Council with the opportunity to assess the impact of specific proposals. For the same reasons, I find that the condition properly relates to the development of the replacement dwelling.
13. The appellant has questioned the precision of the condition. I have had regard to the comments and concerns on the reason given for the condition. Nevertheless, the condition itself is perfectly clear in what permitted development rights have been removed and there is little scope for confusion over what is and is not allowed. As such, I do not consider the condition is imprecise.

14. In conclusion, and having had regard to all relevant matters, I therefore find the removal of the Class E rights to be necessary, relevant to planning and the development and reasonable in all other respects.

Other Matters

15. The appellant has suggested that the Council led him to believe that the condition related to car parking and garaging. I have no direct evidence of this. Nevertheless, based on the evidence before me and my own observations, I am satisfied that the condition meets the relevant tests of the Framework.

Conclusion

16. For the reasons given above I conclude that the appeal should be dismissed.

S J Lee

INSPECTOR