



Appeal Decision

Site visit made on 25 February 2020

by Robert Hitchcock BSc DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 March 2020

Appeal Ref: APP/T0355/W/19/3241132

Martini Lodge, Titness Park, London Road, Sunninghill, Ascot SL5 0PS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant 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 & Mrs P Vogel against the decision of Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 19/00661, dated 6 March 2019, was refused by notice dated 15 May 2019.
 - The application sought planning permission for the demolition of existing bungalow and erection of 4-bed house incorporating an attached double garage and front wall without complying with a condition attached to planning permission Ref 00/80333/FULL, dated 13 June 2001.
 - The condition in dispute is No 9 which states that: Notwithstanding anything contained in Classes A, B and E of Schedule 2, Part 1, of the Town and Country Planning General Permitted Development Order 1995 as amended (or any order revoking and re-enacting that order with or without modifications), no enlargement, improvement or other alteration (including the erection of a garage, stable, loosebox or coach house within the curtilage) of or to any dwellinghouse the subject of this permission, shall be carried out within the previous express permission in writing of the Local Planning Authority, nor shall any building or enclosure required for a purpose incidental to the enjoyment of any said dwellinghouse as such be constructed or placed on any part of the land covered by this permission without such permission as aforesaid.
 - The reason given for the condition is: Because the site lies within the Green Belt where strict control is required over any additional development that may be proposed.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing bungalow and erection of 4-bed house incorporating an attached double garage and front wall at Martini Lodge, Titness Park, London Road, Sunninghill, Ascot SL5 0PS in accordance with the application reference 19/00661, dated 6 March 2019 and the location plan 1:2500 for Martini Lodge, Titness Park, London Road, Sunninghill, Berks, without complying with Condition 9 previously imposed on planning permission ref. 00/80333/FULL dated 13 June 2001 and subject to the conditions set out in the attached schedule.

Preliminary Matter

2. The Council's decision notice refers to the appeal site by its original name as White Bungalow, Titness Park, London Road, Sunninghill, Ascot SL5 0PS. The address provided on the appeal and application forms refers to Martini Lodge, being the name of the replacement dwelling, and the appellant advises that

this has been the case for some time. For the purposes of this appeal I have used the updated property name.

Background and Main Issue

3. The appeal site is a detached dwelling with attached garage set in a large plot within a parkland estate off London Road, Sunninghill. A double carport lies forward of the dwelling and a detached outbuilding and tennis court some distance to the rear. The property lies within a spacious setting with isolated pockets of development separated by open fields and woodland belts. The site lies within the Green Belt and a Special Protection Area for migrating birds.
4. Planning permission ref. 00/80333/FULL was granted in 2001 for a replacement dwelling with attached garage on the site subject to planning conditions. The permission has been implemented and the original dwelling removed from the site. Condition 9 of the permission removed permitted development rights in relation to enlargements, improvements or other alterations to the dwellinghouse, means of enclosure and incidental outbuildings within the curtilage of the dwellinghouse which fall under classes A, B and E of Schedule 2, Part 1, of the Town and Country Planning (General Permitted Development) Order 1995¹ (as amended).
5. The Council subsequently refused to remove the condition on the basis that the site lies within the Green Belt where strict control is required over any additional development that may be proposed.
6. The appellant contends that, as a policy compliant form of development that did not require removal of buildings other than the original dwelling, the imposition of the condition does not pass the tests of necessity or reasonableness as referred to in Paragraph 55 of the National Planning Policy Framework (the Framework).
7. Taking the above into account, I consider the main issue is whether the condition is necessary and reasonable in the interests of maintaining the openness of the Green Belt.

Reasons

8. The Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence². Paragraph 145 of the Framework subsequently sets out that the construction of new buildings within the Green Belt is inappropriate development with a number of exceptions listed. One exception is the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces.
9. In its report of application reference 19/00661, the Council described the replacement dwelling as having significant increase in volume in comparison to the bungalow formerly on the site. Despite this, the appellant's evidence indicates that, at the time of its consideration of the proposal for a replacement dwelling, the Council concluded that the replacement dwelling 'is appropriate

¹ This has been superseded by the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) (GPDO).

² Para. 133 of the Framework.

development within the Green Belt as it will not be materially larger than the existing dwelling or result in a material increase in the scale of development on this site’.

10. The case of Lee Valley Regional Park Authority, R (on the application of) v Epping Forest District Council & Anor (Rev 1) [2016] EWCA Civ 404 has since clarified that the effects of development that is not inappropriate should not be regarded as harmful either to the openness of the Green Belt or to the purposes of including land within it. Consequently, the effect of the permitted development rights as they would apply to the replacement dwelling would be the same as they might have applied to the previous dwelling.
11. Furthermore, Paragraph 53 of the Framework states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. The Planning Practice Guidance (PPG)³ states that restricting the future use of permitted development rights may not pass the test of reasonableness or necessity.
12. It is important to note that the deemed grant of planning permission under the terms of the GPDO does not explicitly exclude development within the Green Belt. Furthermore, there is no requirement within its terms to subject any proposed development to the tests of inappropriateness or openness.
13. I acknowledge the Council’s desire to seek to control future development on what is a large site in the Green Belt in a manner that reflects the Green Belt’s importance. However, in the absence of case specific evidence to suggest that the 2001 development would not have been supported without removal of some of the GPDO rights, the necessary justification required to remove those rights, did not and does not exist to make it acceptable in planning terms. Such an approach fails to comply with the current policy as set out in paragraph 53 of the Framework.
14. Within that context, and notwithstanding that the specifically referenced aspects of permitted development rights removed under Condition 9 were types of development with most potential to affect the openness of the Green Belt, I conclude that the required justification for the removal of the permitted development rights does not exist and therefore the condition is unreasonable and unnecessary. It therefore fails the tests as set out in Paragraph 55 of the Framework.

Other Matters

15. I note that the Council has confirmed that the site lies within a Special Protection Area (SPA) aimed at safeguarding the habitats of migratory birds. Whilst permitted development rights generally persist in SPAs, under the terms of the GPDO development which is likely to have a significant effect on it and is not directly connected with or necessary to the management of the site, cannot be begun until the developer has received written notification of the approval of the local planning authority. As no new development is proposed under the terms of this appeal, other than that in the original description of development, this does not influence my decision in relation to Condition 9.

³ PPG Paragraph 21a-016-20140306

Conditions

16. The guidance in the PPG makes clear that decision notices for the grant of planning permission under s73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. Whilst I am aware that the development has been commenced there is no confirmation of its completion, additionally, I have no information before me about the other conditions imposed on the original planning permission. Consequently I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties. I have not, however, imposed the standard time limit as the development has been commenced. I have renumbered the conditions accordingly.

Conclusion

17. For the above reasons, I conclude that the appeal should be allowed

R Hitchcock

INSPECTOR

Schedule of Conditions

1. Samples and a schedule of materials to be used on the external surfaces of the development hereby permitted shall be submitted to and approved by the Local Planning Authority in writing before any building work commences and this condition shall apply notwithstanding any indications as to these matters which have been given in the current application.
2. No development shall take place until there has been submitted to and approved by the Local Planning Authority in writing a scheme of landscaping which shall include indications of all existing trees, shrubs and hedgerows on the site and details, including crown spreads, of those to be retained. None of the trees, shrubs or hedgerows shown for retention shall be removed or felled, lopped or topped, without prior written permission of the Local Planning Authority.
3. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the occupation of the development hereby permitted or the substantial completion of the development, whichever is the sooner. Any trees, hedgerows or shrubs forming part of the approved landscaping scheme which within a period of five years from the occupation or substantial completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless the Local Planning Authority gives written consent to variation.
4. Before any work commences on site and for the duration of the construction of the development hereby permitted, all trees, shrubs and hedgerows identified for retention shall be protected by stout fencing 1.5 metres in

height, erected to enclose the perimeter of the branch spread of each shrub or tree to be retained, or in the case of fastigate trees (viz: of upright or narrow type growth) to a distance of two-thirds the height of the said trees, and a minimum of 1 metre from hedgerows. The fencing shall be retained and maintained until all building, engineering or other operations have been completed. No work shall be carried out within the fenced area without prior consultation with the Local Planning Authority.

5. Before any work commences, or any equipment, machinery, or materials are brought onto the site, a scale plan shall be submitted to, and approved in writing by the Local Planning Authority, showing (a) the layout of the protective fencing required by Condition 6, and (b) any drainage runs, utility trenches, material storage areas, site huts and temporary parking areas.
6. With the exception of those trees shown to be removed on drawing number P9/A received on the 18th May 2001 the existing trees on the site shall not be felled, topped, lopped or disturbed in anyway without the prior consent of the Local Planning Authority in writing. Similarly, no damage shall be caused to the roots of the trees
7. Development of the site shall not commence until the access (accesses) has/have been constructed in accordance with the details to be submitted to and approved by the Local Planning Authority, and in compliance with the grounds of the Highway Authority for work carried out within the public highway.
8. No dwelling/building shall be occupied until space for vehicle parking and turning has been provided in accordance with the approved drawing. This area shall thereafter be kept available parking and turning at all times.
9. This permission shall relate only to the drawings number listed below:

Drawing No.	Date received by the Local Planning Authority
P1	27 December 2000
P2A	18 May 2001
P9A	18 May 2001
P10A	18 May 2001
P11	27 December 2000
P12	27 December 2000
P13	27 December 2000
P14	27 December 2000
P15A	18 May 2001
P16A	18 May 2001
P17	27 December 2000
P18	27 December 2000

End of Schedule