
Appeal Decision

Site visit made on 30 September 2020

by G Powys Jones MSc FRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 16 October 2020

Appeal Ref: APP/T0355/W/20/3248054

Land opposite Lenore Cottage, Rolls Lane, Maidenhead, SL6 2JQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against the Council's decision to grant planning permission for the development of land subject to conditions, one of which is disputed by the appellant.
- The appeal is made by Mrs Lucy Pickering against the decision of the Council of the Royal Borough of Windsor and Maidenhead.
- The application Ref 19/01783, dated 25 July 2019, was permitted by notice dated 30 August 2019.
- The application sought planning permission for the construction of 2no. dwellings (part retrospective).
- The condition in dispute is **Condition No 11** imposed on the permission.
- **Condition 11** states that: *Irrespective of the provisions of Classes A and B of part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification) no enlargement, improvement or any other alteration of or to any dwellinghouse the subject of this permission shall be carried out without planning permission having first been obtained from the Local Planning Authority.*
- The reason given for **Condition 11** is: *The site is in the Green Belt and whilst the development subject to this permission complies with the Green Belt policy further development would be unlikely to do so. Relevant Policies - Local Plan GB1, GB2, GB4.*

Decision

1. The appeal is dismissed.

Preliminary and procedural matters

2. In the interests of clarity, I have utilised the description of the development appearing in the Council's decision notice.
3. Planning permission, subject to conditions, was originally granted for two dwellings following an appeal¹. As part of the appeal process, the Council suggested the impositions of conditions, and the Inspector imposed all of them, bar one.
4. The one exception was a condition designed to remove permitted development rights. The Inspector said:

¹ Ref APP/T0355/W/17/3180699, dated 29 March 2018

The condition which concerns me is No.4. Permitted development rights are rights conferred by Statutory Instrument. Even though the site lies in the Green Belt and the effect on openness is pertinent, I am not satisfied that this factor is sufficient to warrant removing these rights.

5. Since then, the two dwellings have been completed, together with lengthy single storey rear extensions, which were first subject to the prior approval process. A non-material amendment application was also approved. The two dwellings were complete and occupied when I visited.
6. I am given to understand that the application that led to this appeal arose from unauthorised variations from the approved drawings when the dwellings were built. For the reasons set out in the comprehensive officer report, permission was granted subject to conditions. However, the Council imposed the condition in dispute, for the reason stated in its decision.

Main issue

7. The main issue is whether the Council was clearly justified in imposing the condition in dispute.

Reasons

8. In her original grounds of appeal the appellant claimed that:
'...a porch or chimney could be added under the original application, which was granted by the Inspector and implemented. But the same development would be in breach of the condition on the retrospective application where the local Council added a condition to restrict further development on the site that the Inspector had clearly envisaged.'
9. However, the condition in dispute is restrictive only as it applies to development proposals falling within the terms of Classes A and B of part 1 of Schedule 2 of the *Town and Country Planning (General Permitted Development) (England) Order 2015*. Thus, subject to the limitations and conditions set out in the Order, the condition in dispute does not prevent the erection of chimneys or porches on either of the dwellings.
10. The Council sought to limit the ability to further alter and enlarge the houses or to construct additions to their roofs, without first obtaining planning permission. They imposed the condition so as to enable such development proposals, if they arose, to be assessed under the terms of Green Belt policy.
11. The appellant considers such a condition to be unreasonable and unenforceable. It is considered unreasonable since it *'limits the original lawful planning permission'* granted by the Inspector, and its imposition is therefore contrary to his view of the matter².
12. It is considered unenforceable because, it is claimed, a side extension³ could still be built under the terms of the original permission, since the permission is not subject to a similar condition.
13. It seems to me however that there have been material changes in circumstances since the original appeal decision. The most significant is that

² Paragraph 4 above refers

³ And presumably other additions or extensions, subject to the limitations and conditions set out in the Order

both houses, as originally approved, have been substantially extended. Moreover, there have been departures from the approved plans, which raises a question in my mind as to whether the original planning permission was lawfully implemented⁴.

14. But the houses as they currently stand are not the same houses as those subject of the Inspector's decision in 2018 – they are materially larger. Given the change in circumstances, I consider it reasonable for the Council to have imposed the condition in dispute bearing in mind the Green Belt designation, a matter upon which I shall comment further below.
15. On the issue of enforceability, the most appropriate way of testing the appellant's contention is by way of an application for a certificate of lawfulness in respect of the 2018 appeal permission. No such application has been made to my knowledge for any development proposal. In the absence of a certificate, I remain unconvinced by the appellant's argument taking into account the changes made⁵ to the original dwellings permitted following the 2018 appeal. I have seen no plausible argument that raises doubts in my mind as to the enforceability of the condition in dispute.
16. The Framework⁶ provides that conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
17. I consider the condition in dispute to be enforceable and reasonable for the reasons already provided. To my mind, the condition is relevant to planning and is precise in its terms. As to necessity, the condition is designed to assess some possible forms of future development proposals, over and above that which has already taken place, against aspects of green belt policy, particularly the effect on openness. This is a relevant matter since though the appeal site stand at the end of a cul-de-sac the houses are seen clearly within an otherwise predominantly rural environment from public vantage points in the cul-de-sac itself, in nearby Sturt Green and from the public footpath just to the south of the site.
18. The Government attaches great importance to Green Belts, and the Framework provides that their essential characteristics are their openness and permanence. It appears to me that, in this context, and given that the site is open to close view from a variety of angles, the underlying objective of the condition in dispute renders it necessary.
19. All other matters raised in the representations have been considered, including the other references to the Framework and the appellant's reference to the Planning Practice Guidance that conditions restricting permitted development rights '*should only be used in exceptional circumstances*'. However, that phrase does not appear in the latest, updated version of the Guidance. No other matter raised is of such strength or significance as to outweigh the considerations that led me to my conclusions.

⁴ But I do not express an opinion on this aspect in the absence of further evidence

⁵ Authorized and unauthorised

⁶ National Planning Policy Framework 2019

Conclusion

20. The Framework also provides that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. This forms the basis of the main issue identified at the outset. For the reasons set out above, the imposition of the condition in dispute is, in my view, clearly justified.

21. Accordingly, the appeal is dismissed.

G Powys Jones

INSPECTOR