



Appeal Decision

Site visit made on 9 September 2020

by Peter Mark Sturgess BSc (Hons), MBA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: Tuesday, 03 November 2020

Appeal Ref: APP/P0240/W/20/3247471

Erin House, 171 Dunstable Road Caddington, LU1 4AN

- 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 R Gill against the decision of Central Bedfordshire Council.
 - The application Ref CB/19/03493/VOC, dated 15 October 2019 was refused by notice dated 18 December 2019
 - The application sought planning permission for erection of one detached dwelling without complying with condition No 12 attached to planning permission Ref SB/TP/04/1051, dated 1 October 2004.
 - The condition in dispute is No 12, which states that: *'Notwithstanding the provisions of Part 1 Class E of Schedule 2 to the Town and Country (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modifications), no buildings or other structures shall be erected or constructed within the curtilage of the property without the grant of further specific permission from the District Planning Authority.'*
 - The reason given for the condition is: *'To control the development in the interests of the amenities of the area.'*
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr R Gill against Central Bedfordshire Council. This application is the subject of a separate Decision.

Background and Main Issues

3. Planning permission granted for a new dwelling to be constructed on the appeal site included condition No 12 which removed permitted development rights to construct buildings or other structures within its curtilage. The reason given for the condition was *'to control the development in the interests of the amenities of the area'*.
4. The appellant applied to the Council to vary the original permission so that condition No 12 was removed and permitted development rights to construct new buildings or other structures within its curtilage was restored. The Council refused that application on the grounds that it *'would lead to the potential for inappropriate forms of development being constructed within the Green Belt'*.

5. The appellant objects to the condition on the grounds that it does not meet the tests for conditions set out in the National Planning Policy Framework (the Framework), in particular that it is neither necessary nor reasonable. Furthermore, the appellant points out that Government has not sought to generally restrict permitted development rights in Green Belts as it has in other areas or with regard to assets of particular importance, and that Green Belt is therefore not considered to be an '*exceptional circumstance*' which would justify the removal of permitted development rights in this instance.
6. Taking the background into account the main issue is whether the condition is reasonable or necessary, having regard to the site's location in the Green Belt

Reasons

7. The dwelling which is the subject of this appeal lies in a large garden in open countryside outside the village of Caddington. It has a low wall, tall railings and large gates separating it from the Dunstable Road. There are views into the site, including of the front, side and rear gardens, from various places along the Dunstable Road.
8. The dwelling itself is modern, with car parking and gardens to its front and sides and a large garden to its rear. Garden buildings and other structures are visible within its curtilage.
9. The site is clearly separate from Caddington, with sporadic houses and buildings along this part of the Dunstable Road. The area of Dunstable Road where the appeal site is located is open and views can be obtained from various points along the road into the open countryside.
10. The Framework states at paragraph 55 that conditions should only be imposed where they are necessary, relevant to planning and to the development being permitted, enforceable, precise and reasonable in all other respects. Moreover, the Planning Practice Guidance (PPG) states that it is important conditions are tailored to tackle specific problems, rather than standardised or used to impose broad unnecessary controls. Furthermore, it also states that area-wide or blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to pass the test of reasonableness or necessity.
11. In terms of the requirements of the PPG, I have no evidence before me to show that it is the practice of the Council to use a blanket or area-wide approach to the removal of permitted developments from new developments in the Green Belt. Furthermore, whilst the PPG discourages the use of area-wide or blanket removal of these freedoms it does not expressly preclude them, stating only that it is unlikely that they meet the tests of reasonableness and necessity.
12. The appellant has provided an appeal decision APP/P0240/D/19/3224126, dated 13 June 2019. In that decision the Inspector acknowledged '*that the removal of permitted development rights should only be imposed in exceptional circumstances as outlined in the Planning Practice Guidance*' and that Green Belt is not considered to be an '*exceptional circumstance*'.
13. Whilst I note that Green Belt is not an '*exceptional circumstance*' where the removal of permitted development rights should happen as a matter of course,

- it is open to the decision taker to assess whether it is appropriate to remove permitted development rights depending upon the merits of a particular case.
14. The appellant has also pointed out that in order to protect other areas or assets of particular importance the Government has restricted permitted development rights through legislation. The Government has not done this with Green Belts. Whilst I acknowledge this argument, it is still open to the Council to remove permitted development rights for developments in the Green Belt or other areas not covered by a specific designation, should the circumstances of the particular case warrant it.
 15. In deciding whether it is reasonable or necessary I have had careful regard to the particular circumstances of the development and its location as I am required to do.
 16. The site lies within the Green Belt. 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 permanence. The Framework states at paragraph 143 that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Furthermore, it states that the construction of new buildings should be regarded as inappropriate development in the Green Belt.
 17. In view of the circumstances of Erin House, lying in extensive grounds, with substantial areas of open space both to its sides and front and with views into its grounds from the Dunstable Road, there is potential for structures or buildings in its grounds to have a significant visual effect on the openness of the Green Belt in this location.
 18. Furthermore, additional built development around Erin House would have the effect of closing the gap in spatial and visual terms between it and neighbouring development along Dunstable Road. In spatial terms substantial areas of the garden could be covered by built development, thereby closing off the openness of the Green Belt in this location. Therefore, I consider that the construction or erection of garden buildings using permitted development rights could harm both the openness of the Green Belt in this location and its purpose of preventing urban sprawl.
 19. The Council accepts that the development plan Green Belt policy is out of date. In these circumstances the Framework at paragraph 11 d) expects planning permission to be granted unless one of two criteria apply. One of these criteria is where the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development. This includes land designated as Green Belt.
 20. Therefore, whilst the policies of the development plan which are most important for the determination of this appeal are out of date, the proposal is still in conflict with the policies of the Framework which seek to protect the Green Belt from inappropriate development and protect its openness.
 21. Consequently, given the position of Erin House, its overall visibility from Dunstable Road and the potential for extensive garden buildings to be constructed within its curtilage, should permitted development rights exist, I find that condition No 12 of planning permission SB/TP/04/1051 is reasonable

and necessary in these circumstances, in order to protect the Green Belt from inappropriate development and to protect its openness.

Conclusion

22. For the reasons given above I conclude that planning permission SB/TP/04/1051 should not be varied, and the appeal is dismissed.

Peter Mark Sturgess

INSPECTOR