



Appeal Decision

Site visit made on 23 September 2020

by Diane Cragg DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 November 2020

Appeal Ref: APP/N1025/D/20/3256045

The Old Post Office, Derby Road, Risley, Derbyshire DE72 3SS

- 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 Andrew Counsell against the decision of Erewash Borough Council.
 - The application Ref ERE/0320/0070, dated 23 March 2020, was refused by notice dated 17 June 2020.
 - The application sought planning permission for a single storey extension without complying with a condition attached to planning permission Ref ERE/0819/0010, dated 24 October 2019.
 - The condition in dispute is No 6 which states that: Notwithstanding the provisions of Class E, Parts 1 and 2 of Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking and re-enacting that Order) no incidental building, structure or enclosure shall be erected without the prior grant of planning permission .
 - The reason given for the condition is: to enable the local planning authority to retain control over future extensions, alterations and the erection of outbuildings to protect the openness of the Green Belt and the character of the Conservation Area.
-

Decision

1. The appeal is allowed and planning permission is granted for a single storey extension at The Old Post Office, Derby Road, Risley, Derbyshire DE72 3SS in accordance with the application ERE/0320/0070 dated 23th March 2020 without complying with condition No 6 previously imposed on the planning permission ref ERE/0819/0010 dated 24 October 2019 but otherwise subject to the following conditions:
 1. The development shall be begun before the expiration of three years from the 24 October 2019.
 2. The development hereby permitted shall be carried out in accordance with the following approved plans/details: Site location Plan; Block Plan TC/1911/BP and Plans and elevations: TC/1911/2.
 3. The development hereby approved shall be carried out using the materials specified in the approved plans and details.
 4. The method of foundation construction for the proposed extension shall be undertaken in accordance with the agent's email date 1 October 2019.

5. Prior to the extension hereby approved being brought into use the existing outbuilding/garage shall be demolished in its entirety.

Application for costs

2. An application for costs was made by Mr Andrew Counsell against Erewash Borough Council. This application is the subject of a separate Decision.

Background and Main Issue

3. The Old Post Office is a detached house in a semi-rural location within Risley Conservation Area. The appeal site is accessed via an unmade road which incorporates a public footpath and is adjacent to listed buildings. It is within the Green Belt.
4. The planning permission granted for a single storey extension to the property included condition 6 removing permitted development rights under Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). The condition and the reason for its imposition are as set out in the banner heading. The reason refers to the protection of the openness of the Green Belt and the character of the Conservation Area.
5. The Council does not refer specifically to the Conservation Area in its reason for refusal. However, there are third-party comments in this respect. Further, the duty under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires that I pay special attention to the desirability of preserving or enhancing the character or appearance of the area.
6. Therefore, having regard to the above and the submitted evidence, the main issue is whether the removal of Class E permitted development rights is reasonable and necessary to protect the openness of the Green Belt and the character and appearance of the Risley Conservation Area.

Reasons

Green Belt

7. The Planning Practice Guidance (PPG) and the National Planning Policy Framework (the Framework) advise that conditions restricting future permitted development rights should only be used when there is a clear justification for doing so. Although such conditions are not precluded, their scope needs to be precisely defined. However, what may be 'a clear justification' is not explained and therefore it is necessarily a matter of planning judgement.
8. Policy GB4 of the Erewash Borough Local Plan Saved Policies 2005 (amended 2014) (Local Plan) permits extensions and alterations to dwellings in the Green Belt provided that the proposal does not result in disproportionate additions over and above the size of the original dwelling. This is consistent with the approach in Paragraph 145 of the Framework which regards the construction of new buildings as inappropriate in the Green Belt, subject to a number of listed exceptions including Paragraph 145 c) 'the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building'.
9. The Council considered that the approved single storey extension, when taken cumulatively with previous extensions and with the removal of the existing

outbuilding, would result in a volume increase to the house of 49% over the size of the original building. The Council concluded that as the extension would be below a 50% volume increase, when taking into account the removal of the outbuilding, the development would not be a disproportionate extension and therefore 'not inappropriate' development within the Green Belt. Condition 5 secures the removal of the existing outbuilding. Development in compliance with Policy GB4 of the Local Plan and paragraph 145 c) is not subject to the consideration of the effect of the development on openness.

10. The construction of future buildings under Class E permitted development would need to satisfy the criteria within the GPDO. Class E limits the total area of ground around a house that can be covered by development permitted under Class E to 50% of the total area of the curtilage, excluding the original house. The calculation of the 50% limit covers all buildings, including any existing or proposed new extensions to the original house under Class A of the GPDO or that have been granted planning permission, as well as existing and proposed outbuildings, whether part of the original building or not.
11. The GPDO does not treat the Green Belt as one of the defined areas where permitted development rights should be limited. Accordingly, there is no basis in national policy for an assumption that the exercise of the permitted development rights under Class E would, in principle, be harmful to the Green Belt.
12. Although the Council considers that it would be perverse to grant permission that requires the demolition of an outbuilding to then allow further such buildings to be constructed; the Council has not identified any specific harm to openness. As neither development under Part 6 of the GPDO or development that is 'not inappropriate' are individually subject to the consideration of the effects on openness, and I have no evidence to suggest that harm to openness would occur when taking the size of the approved extension cumulatively with rights under Class E, no clear justification has been made for the removal of permitted development rights on the basis of the impact on the openness of the Green Belt.
13. Further, the Council concluded that the proposed extension would replace an existing outbuilding which is both large and bland and although the new extension would be more visible it would be set back in the plot and screened by a proposed wall. Removing the existing building and replacing it with a modern designed extension, the Council considered, would enhance the Conservation Area. Following my site visit I see no reason to disagree with this conclusion even when considering the duty under the Act.
14. There is no evidence that the approved extension in combination with development that is permitted under Class E of the GPDO would detract from the character or appearance of the Conservation Area. Thus, the location of the development within the Conservation Area does not justify the removal of Permitted Development rights under Class E of the GPDO.
15. Therefore, overall, I conclude that removal of Class E permitted development rights is not reasonable and necessary to protect the openness of the Green Belt or the character and appearance of the Risley Conservation Area. I find no conflict with Policy GB4 of the Local Plan or the Framework.

Other Matters

16. I note that there are concerns that it is the appellant's intention to construct another dwelling within the curtilage of the property. I also note the Parish Council's concerns about the extent of the garden. However, these are not matters for me to consider here.

Conditions

17. The PPG makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged.
18. In accordance with Section 73(5) of the Act, I have amended the standard commencement condition to ensure it does not have the effect of extending the time within which a development must be started.
19. An approved plans condition is necessary in the interests of clarity and certainty and to be certain that the agreed materials are used. The method of the construction of the foundation is required to protect adjacent listed buildings. A condition requiring the existing outbuilding to be removed is required to ensure the development complies with the approach to the erection of extensions in the Green Belt accords with the Framework and development plan policies.

Conclusion

20. For the reasons given above I conclude that condition 6 should be removed and the appeal should be allowed.

Diane Cragg

INSPECTOR