



Appeal Decision

Site visit made on 29 September 2020

by J Davis BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 November 2020

Appeal Ref: APP/A3655/W/20/3250617

Wentworth House, Rough Road, Brookwood, Woking, GU22 0RB

- 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 Alan Birch against Woking Borough Council.
 - The application Ref PLAN/2019/1211 is dated 9 December 2019.
 - The application sought planning permission for Erection of a replacement dwelling without complying with a condition attached to planning permission Ref PLAN/2002/0698, dated 1 October 2002.
 - The condition in dispute is No 5 which states that: Notwithstanding the provisions of Article 3 and Schedule 2, Part 1 and Classes A to E of The Town and Country Planning (General Permitted Development) Order 1995 (or any order amending or re-enacting that Order with or without modification, no further extensions or additions to the dwelling, or the provision of any additional building within its curtilage, shall be constructed without the prior written permission of the Local Planning Authority.
 - The reason given for the condition is: To ensure that a satisfactory form of development takes place and to protect the amenities of occupiers of adjoining properties.
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Decision

1. The appeal is allowed and planning permission is granted for erection of a replacement dwelling at Wentworth House, Rough Road, Brookwood, Woking, GU22 0RB in accordance with the application Ref PLAN/2019/1211 dated 9 December 2019, without compliance with condition number 5 previously imposed on planning permission Ref PLAN/2002/0698 dated 1 October 2002 and subject to the conditions set out in the attached schedule.

Procedural Matters

2. An application for costs was made by Mr Alan Birch against Woking Borough Council. This application is the subject of a separate Decision.
3. The Council's original decision notice refers to the appeal site by its previous name Maryland Wood Cottage, Rough Road, Brookwood, Woking, Surrey. The address provided on the appeal and application forms refers to Wentworth House. For the purposes of this appeal I have used the updated property name.

Background and Main Issue

4. The appeal site is a two-storey detached dwelling set in a large plot off Rough Road, Brookwood. The property is centrally located within its plot, the

boundaries of which are defined by mature hedging and trees. There is also a swimming pool within the garden of the property. The surrounding area is characterised by dwellings that are also located in generally large, spacious plots. The site lies within the Green Belt.

5. Planning permission ref. PLAN/2002/0698 was granted in 2002 for a replacement dwelling on the site subject to conditions. The permission has been implemented and the original dwelling removed from the site. Condition 5 of the permission removed permitted development rights in relation to enlargements, improvements or other alteration to the dwellinghouse, including alterations to its roof, porches and incidental outbuildings within its curtilage which fall under Classes A to E of Schedule 2, Part 1, of the Town and Country Planning (General Permitted Development) Order 1995¹ (as amended) (GPDO).
6. The reason for imposing the condition was *'to ensure a satisfactory form of development takes place and to protect the amenities of occupiers of adjoining properties'*.
7. The Council failed to give notice within the prescribed period of a decision to remove the condition. However, a subsequent delegation report confirms that the Council would have refused the application had the appeal not been lodged on the basis that the site lies within the Green Belt where strict control is required over any additional development that may be proposed.
8. The appellant contends that the imposition of the condition fails to meet the relevant tests for conditions set out in the National Planning Framework (the Framework).
9. Taking into account the above, I consider the main issue is whether the condition is necessary and reasonable in the interests of the living conditions of the occupiers of adjoining properties and in maintaining the openness of the Green Belt.

Reasons

10. 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) states that restricting the future use of permitted development rights may not pass the test of reasonableness or necessity.

Living conditions

11. The original reason for imposing the condition was to ensure a satisfactory form of development takes place and to protect the amenities of occupiers of adjoining properties. The dwelling is centrally located within a large plot and is set a generous distance in from the boundaries of the site which are well screened by hedging and trees. The neighbouring properties are similarly located within large, spacious plots and I therefore find in this case no justification for the removal of permitted development rights for development otherwise permitted under Classes A-E of the GPDO, in terms of the protecting the living conditions of the occupiers of adjoining properties. The condition is therefore unreasonable and unnecessary in this regard.

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

Green Belt

12. 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 permanence (paragraph 133 of the Framework). 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 such 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.
13. The Council state that the approved house, with an increase of 62% over the original building on the site, is at the upper end of what was permissible at the time as a proportionate addition. It is not clear whether the figure of 62% relates to floor space or volume. In any event, it appears from the above comment that the replacement dwelling was considered policy compliant at the time.
14. I note that the Council state that such an increase may not now be granted under current Policy CS6 of the Woking Core Strategy (2012) and Policy DM13 of the Development Management Policies Development Plan Document (2016). I also note that the Council have subsequently granted planning permission for further extensions and alterations to the dwelling.
15. I acknowledge the Council's desire to seek to control future development on what is a relatively large site in the Green Belt in a manner that reflects the Green Belt's importance. It is however, also 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 in its terms to subject any proposed development to the tests of inappropriateness or openness. In the absence of any case specific evidence to suggest that the 2002 replacement dwelling 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.
16. I therefore 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.

Conditions

17. The guidance in the PPG makes it clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. As I have no information before me about the status of the other conditions imposed on the original planning permission, 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

18. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

J Davis

INSPECTOR

Schedule of Conditions

1. The materials to be used in the external elevations of the development hereby approved shall be as follows:
 - i) Roofing – plain tiles
 - ii) Cladding – render and colour washedDevelopment shall be carried out in accordance with the approved details.
2. No development shall take place until details and/or samples of all surfacing materials, including those to all access driveways / forecourts etc. have been submitted to and approved in writing by the Local Planning Authority.
3. The garage shall only be used for the parking of vehicles ancillary and incidental to the residential use of the dwelling house and shall be retained thereafter solely for that purpose and made available to the occupiers of the property at all times for parking purposes unless the Local Planning Authority otherwise first agrees in writing.
4. Prior to the commencement of any development hereby approved and before any equipment, machinery or materials are brought onto the site for the purposes of the development hereby approved, details of the specification and position of the fencing for the protection of any retained tree shall be submitted to and approved in writing by the Local Planning Authority. The works carried out as approved and the fencing shall be maintained until the development has been completed and all equipment, machinery and surplus materials have been removed from the site.
5. There shall be nothing stored or placed within any protective fencing during the construction period erected around each tree or group of trees to be retained.
6. There shall be no alteration in ground level within any protective fencing erected around each tree or group of trees to be retained nor shall any excavation be made without the written consent of the Local Planning Authority.
7. There shall be no burning within 6 metres of the canopy of any tree or group of trees to be retained.

8. No development shall take place until full details of the “soft” landscape works have been submitted to and approved by the Local Planning Authority. These details shall include planting plans, written specifications, schedules of plants and trees, noting species, plant sizes and proposed numbers and densities of planting. The works shall be carried out as approved and completed during the first planting season following the substantial completion of the development hereby approved.
9. The existing tree/hedge screen situated on the site boundaries of the site surrounding the development hereby permitted shall be retained at all times and should any part die or be damaged during the course of development, replacement planting shall be undertaken before the end of the current or next planting season in accordance with the details to be submitted to and agreed in writing by the Local Planning Authority.
10. Notwithstanding any indication on the drawings hereby approved, prior to the commencement of development, details of any proposed gates at the access(es) to the site shall be submitted to the Local Planning Authority for approval in writing. Such details as may be agreed shall be implemented prior to the first occupation of the development and retained in perpetuity unless the written permission of the Local Planning Authority is first sought.
11. Notwithstanding any indication on the drawings hereby approved, the swimming pool structure and ancillary building shall be demolished prior to the first occupation of the replacement dwelling hereby granted permission.
12. Prior to the commencement of the development hereby approved, all existing buildings at the site shall be demolished.