



Appeal Decision

Site visit made on 5 January 2021

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 January 2021

Appeal Ref: APP/M0655/W/20/3260646

1 and 2 Townley Brow, Dam Lane, Rixton, Warrington WA3 6LE

- 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 Chris Chisnall against the decision of Warrington Borough Council.
- The application Ref 2019/35456, dated 5 July 2019, was refused by notice dated 6 April 2020.
- The application sought planning permission for: 'Full Planning - Conversion of agricultural building to residential use to form two dwellings, infill extension, detached garage, part change of use of existing agricultural building for parking, demolition of existing agricultural buildings and associated landscaping' without complying with a condition attached to planning permission Ref 2013/21899 (the original application), dated 22 August 2013.
- The condition in dispute is No 3 which states that: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order with or without modification) (the 1995 GPDO): (i) no external alterations shall be carried out to the dwelling(s) (ii) no extensions shall be carried out to the dwelling(s) (iii) no garages or outbuildings shall be erected within the curtilage of the dwelling(s) (iv) no vehicle standing space or hard standing shall be provided within the curtilage of the dwelling(s) (v) no gates, walls, fences or other structures shall be erected along any boundary to the curtilage of the dwelling(s) (vi) no means of vehicular access shall be constructed to the curtilage of the dwelling(s) (vii) no windows or dormer windows shall be added to the dwelling(s) other than those expressly authorised by this permission, unless planning permission for such development has been granted by the Local Planning Authority.
- The reason given for the condition is: In the interests of visual amenity and in order to protect the amenities of the occupiers of neighbouring properties and to comply with Policy QE6 of the Warrington Core Strategy, saved policy HOU8 of the Warrington UDP and the Warrington SPD: House Extensions Guidelines (2009).

Decision

1. The appeal is allowed, and planning permission is granted to allow conversion of agricultural building to residential use to form two dwellings, infill extension, detached garage, part change of use of existing agricultural building for parking, demolition of existing agricultural buildings and associated landscaping at No's 1 and 2 Townley Brow, Dam Lane, Rixton, Warrington WA3 6LE in accordance with application Ref 2019/35456 without compliance with condition no. 3 previously imposed on planning permission Ref 2013/21899, dated 22 August 2013, subject to the conditions set out in the attached schedule.

Procedural Matter

2. For clarity and precision, I have taken the address in the banner heading above from the Council's decision notice, appeal form and other appeal documents.

Background and Main Issue

3. The approved scheme under the original application was for the conversion of an agricultural barn, which included condition 3 removing permitted development rights under the previous GPDO. Since the approval of the original application the 1995 GPDO has since been replaced by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO). The condition and the reason for its imposition are as set out in the banner heading.
4. The Council's decision notice and wider evidence indicates that condition 3 is required in order to prevent harm to the openness of the Green Belt and to the character and appearance of the appeal site. It is acknowledged by both main parties that there was no reference to the Green Belt on the reason for condition 3 on the decision notice of the original application. The appellant contends that the condition is not reasonable or necessary as the Council concluded for the original permission that the development would not be inappropriate in the Green Belt. Additionally, the appellant asserts that the residential development brought about improvements to the openness of the site. It is also argued that no justification has been provided for the removal of the permitted development rights.
5. Therefore, having regard to the above and the submitted evidence, the main issue of this appeal is whether the removal of the permitted development rights listed is reasonable and necessary to protect the openness of the Green Belt and character and appearance of the appeal site.

Reasons

6. The appeal site is located in a rural location within the Green Belt. The appellant seeks the removal of condition 3 of which removes permitted development rights that cover external alterations, extensions, garages/outbuildings, hard standing, access, insertion of windows and dormers. Although the full details of the original application are not before me, it is common ground that the original scheme was permitted as not being inappropriate development and is not a matter which I need to take a view on.
7. My sole consideration in this appeal is to consider whether the disputed condition is necessary, reasonable, and fully justified. In this regard paragraph 55 of the National Planning Policy Framework (the Framework) requires planning conditions to be kept to a minimum and only be imposed where, amongst other matters, they are necessary and reasonable. More guidance is given in the Planning Practice Guidance (PPG). Paragraph 002¹ states that Section 70(1) of the Act enables the local planning authority to impose 'such conditions as they think fit'. This power must be interpreted in the light of material factors such as the Framework, the PPG, and relevant case law.

¹ Paragraph: 002 Reference ID: 21a-002-20190723

8. PPG paragraph 003² sets out the 6 tests for conditions. They must be necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise, and reasonable in all other respects. PPG Paragraph 017³ says conditions restricting the future use of permitted development rights will rarely pass the test of necessity and should only be used in exceptional circumstances. 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 meet the tests of reasonableness.
9. Whilst the Framework is silent on such matters, permitted development is development for which the principle has already been granted by secondary legislation, and there are no restrictions within the GPDO for domestic extensions or development within the curtilage of a dwelling located within the Green Belt, whereas such restrictions do exist (for example) on dwellings within National Parks and conservation areas.
10. I accept that potentially, permitted development on the site could give rise to quite substantial additions over and above the size of the existing dwellings, but I have not been provided with any evidence to demonstrate that permitted development rights are likely to be used to their maximum. Furthermore, the Council has not set out what the potential for further development of the appeal site within the specified classes of the GPDO could amount to and the appellant has not set out what his intentions would be if I were to allow the appeal. Thus, any harm caused in terms of loss of openness is largely speculative at this stage. I have also taken into account the fact that the appeal site is well-contained and the physical restrictions due to the orientation of the dwellings within the site and their semi-detached form.
11. I am mindful of the great importance given to the Green Belt by the Government and the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, where the essential characteristics of Green Belts are their openness and their permanence⁴. In this instance, on the evidence before me and my own observations, I am not satisfied that exceptional circumstances have been demonstrated to justify the imposition of condition 3 on the original application, or to the amended condition, proposed by the Council in its submission. Therefore, in this instance, I consider that a condition removing domestic permitted development rights to No's 1 and 2, is not reasonable and necessary to protect the character and appearance of the properties/site, and the openness of the Green Belt.
12. Therefore, for the reasons given above and in the light of national policy and guidance regarding imposition of conditions restricting the future use of permitted development rights, I conclude there are no exceptional circumstances to justify the removal of permitted development rights at the appeal site. Accordingly, I find no conflict with Policy CS5, QE6, QE7 of the Council's Local Plan Core Strategy 2014 (CS), the Design and Construction Supplementary Planning Document 2010, the PPG and the requirements of the Framework.

² Paragraph: 003 Reference ID: 21a-003-20190723

³ Paragraph: 017 Reference ID: 21a-017-20190723

⁴ Paragraph 133 of the Framework

13. The Council has referred to CS Policy CS2 in its reason for refusal, but I do not consider this policy to be relevant to this appeal as it relates to the quantity and distribution of development.

Other Matters

14. Although the Council list 'amenities of occupiers of neighbouring properties' as part of the reason for Condition 3 on the original application, and to living conditions and highway safety in the Officer Report as reasons for imposing Condition 3 on the original permission, these were not cited on the Council's decision notice. Additionally, these matters do not form part of the Council's submission. Consequently, I have not needed to consider these matters further.

Conditions

15. 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.
16. The variation of this condition under section 73 of the Town and Country Planning Act 1990 would result in a new planning permission being created. I have not been informed of any issues surrounding the conditions imposed on the original application. As I have not received such confirmation from either party about the status of the conditions imposed on the original application, I have therefore re-imposed all those that I consider remain relevant. In the event that some are no longer necessary or relevant, this is a matter which could be addressed by the main parties.
17. In light of advice contained in the PPG, for clarity, and to ensure compliance with the guidance, I have amended some of the Council's wording on the original conditions that I have included on this decision. It is evident that the development as approved in the original application has been constructed, thus, a time limit of commencement of 3 years is not required in this instance. A condition is required for approved plans for certainty. It is reasonable and necessary to impose a condition regarding boundary fencing and construction materials. It is also reasonable and necessary to define the use of the detached garage and its association with the main building and the materials in the vicinity of the protected tree.

Conclusion

18. For the reasons given above I conclude that the appeal should be allowed. I have granted a new permission with the disputed condition removed.

W Johnson

INSPECTOR

Schedule of Conditions

1) The development shall be carried out in accordance with the following documents:

(a) The planning application forms, design and access statement and additional information received by Warrington Borough Council on 10th June 2013

(b) Submitted drawing No's Proposed Site Plan 1304-04 rev D Elevations 1304-06 rev C

2) The fencing separating the residential curtilages from the adjacent wildflower meadow shall be retained at all times, unless alternative boundary treatment is first agreed in writing with the Local Planning Authority. No part of the adjacent wildflower meadow shall be used for any purpose incidental to the enjoyment of the residential dwellings.

3) The materials to be used in the construction of the detached garage, the infill extension, and external surfaces of the building, shall be of the same colour, texture and appearance as those of the existing building.

4) The detached garage shall be used for the parking of cars only. Its use shall at all times remain ancillary to the main building.

5) The driveway surfacing within the crown spread of the protected copper beech tree (ref. TPO476) adjacent the site access, shall be of a porous material up to the carriageway edge.

End of Schedule