



Appeal Decision

Site visit made on 24 November 2020

by M Seaton DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 February 2021

Appeal Ref: APP/Z4718/W/20/3255705

7 Westfield Lane, Emley, Huddersfield, HD8 9SZ

- 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 Martyn Woodhead against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2020/70/90536/E, dated 18 February 2020, was refused by notice dated 5 June 2020.
 - The application sought planning permission for a change of use from holiday cottage to dwelling without complying with a condition attached to planning permission Ref 2008/62/91169/E3, dated 29 May 2008.
 - The condition in dispute is No 7 which states that:
Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking or re-enacting that Order with or without modification) no buildings or extensions shall be erected in the area outlined in red on the approved drawing no 001 without the prior written approval of the Local Planning Authority.
 - The reason given for the condition is:
To safeguard the openness, character and amenity of the Green Belt and to accord with Policy PPG2 of the Unitary Development Plan.
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Decision

1. The appeal is allowed and planning permission is granted for a change of use from holiday cottage to dwelling at 7 Westfield Lane, Emley, Huddersfield, HD8 9SZ in accordance with the application Ref 2020/70/90536/E, dated 18 February 2020, without compliance with condition number 7 previously imposed on planning permission Ref 2008/62/91169/E3, dated 29 May 2008, but subject to the remaining conditions imposed therein, so far as the same are still subsisting and capable of taking effect, and as set out in the Annex.

Background and Main Issue

2. The appeal site is occupied by a single storey detached dwelling and attached curtilage set back to the south from Westfield Lane behind a neighbouring dwelling and garden. The site occupies an upland position in close proximity to Emley Moor Tower, with the generally open character of the wider area punctuated by small and sporadic pockets of development, including the nearby Thorncliffe Farm Shop to the south east. The site is located within the Green Belt.

3. Further to the implementation of the change of use from a holiday cottage to a dwelling (*LPA Ref: 2008/62/91169/E3*), the appeal property is highlighted as having subsequently been extended through several modest extensions, but with the most recent application in 2015 for the erection of a garage and wood pellet store having been refused. However, the appellant has indicated that the restrictive condition which removes permitted development rights for the appeal property is unnecessary and unreasonable, and has sought the removal of the condition and, as a consequence, the reinstatement of the rights for extensions and buildings within the curtilage.
4. The main issue is whether the condition is reasonable or necessary to make the development acceptable in the context of the site's location within the Green Belt.

Reasons

Background

5. The National Planning Practice Guidance (NPPG) explains how conditions attached to a planning permission should be used and discharged effectively. The PPG highlights the importance of adherence of conditions to the six tests set out at paragraph 55 of the National Planning Policy Framework (the Framework), and provides guidance on the whether it is appropriate to use conditions to restrict the future use of permitted development rights.
6. 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 PPG advises that *the scope of such conditions needs to be precisely defined, by reference to the relevant provisions in the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO), so that it is clear exactly which rights have been limited or withdrawn. 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 and necessity.*
7. Schedule 2, Part 1 of the GPDO sets out the permitted development rights for development within the curtilage of a dwellinghouse, with the rights either qualified or removed for development within Classes A, B, E, G and H on land classified as covered by article 2(3). The definition of article 2(3) land is set out at Schedule 1, Part 1 of the GPDO and includes *inter alia* land within a conservation area, an area of outstanding natural beauty, a National Park, and a World Heritage Site.

Assessment

8. With the definition of article 2(3) land making no reference to the inclusion of land within the Green Belt, this omission can only be concluded as being deliberate by the Government in publishing the GPDO. It is reasonable therefore to contend that permitted development rights for dwellings in the Green Belt are intentionally no different to those available outside of the Green Belt, and that if greater control was desired then the GPDO would reflect this.
9. I find the justification for this conclusion to be further strengthened by the clear requirement of paragraph 53 of the Framework and the NPPG, that exceptional circumstances must apply for the removal of permitted

development rights. In this respect, if a location within the Green Belt alone was held to be an exceptional circumstance, then it would be conceivable that the definition of Article 2(3) of the GPDO would have been altered to reflect this. Therefore, the assumption must be that the permitted development rights should persist, unless there is a clear justification for the restriction, which must be both precisely defined, and site-specific to a particular circumstance rather than applicable on an area-wide or blanket basis.

10. The Council contends that the removal of the condition would present significant harm to the openness of the Green Belt from potential future built form. The crux of the Council's position is that the condition is required to ensure no future disproportionate additions to the dwelling, and as assessed cumulatively with those already undertaken, would be necessary to avoid there being inappropriate development and therefore harm to the aims of Green Belt policy. It is contended by the Council that this complies with the test of exceptionality as highlighted by the NPPG.
11. I have carefully considered the Council's submission, but I am not persuaded that the circumstances which have been advanced to justify the continued restriction of permitted development rights could be regarded as exceptional. The fact that the appeal site is located within the Green Belt and there may be a potential for further extensions and outbuildings, is a situation that would be equally applicable to a significant proportion of other dwellings and residential curtilages across the Green Belt and would not on this basis represent an exceptional circumstance. Likewise, that there have been previous extensions to the appeal property would neither in itself be unexpected nor an unusual situation.
12. I have had regard to the argument that a retention of control would be necessary in order to continue to protect the character of the development on the appeal site given the origins of the dwelling as a stable block. Furthermore, I have noted the contention that the removal of permitted development rights accorded at the time with *Circular 11/95: The use of conditions in planning permissions*, and was applied consistently in approving the original 2005 planning permission (*LPA Ref: 2005/90157*) for the extension and conversion of the stable to a holiday cottage, and then the 2008 change of use to a permanent dwelling.
13. However, I do not find the justification related to the character of the development to be credible given the form and extent of works which have been previously allowed in order to facilitate the original change of use, and as observed, subsequently extend and alter the dwelling. Based on the submissions, the Council has not highlighted any other site-specific features, constraints or context that would warrant an enhanced level of restriction or control on an exceptional basis. With regards to accordance with Circular 11/95, it is not for me to adjudicate whether the condition was imposed in accordance with the Circular at the time, but to assess its continued necessity and reasonableness against the current legislative background, a task which I have undertaken.
14. I sympathise with the position the Council finds itself with the responsibility to protect the Green Belt juxtaposed with the permitted development allowances for development that would prevail through the GPDO. However, whilst I appreciate the concerns over additional extensions resulting in disproportionate

additions over and above the original dwelling, I am mindful that the permitted development rights for extensions in particular do still provide an overall level of restriction to prevent unfettered development beyond the extent of the original dwelling.

15. I do not find the question as to whether there is a probability of further works being undertaken to be a reasonable determinant in this appeal. In this respect, I have had regard to the Council's assertion that the refusal of planning permission for a garage and wood pellet store in 2015 acted as a 'tipping point' for the assessment of development on site as being inappropriate for Green Belt purposes. However, it is apparent that this proposal would not have accorded with the definition of permitted development in any event, and therefore could not be constructed were the permitted development rights to be in place. Nevertheless, in light of my conclusions the submissions on this matter and regarding this proposal have not had any significant bearing of relevance on my decision.
16. The second issue which the appellant has raised with the condition relates to whether it is sufficiently precise. In this regard I note that the wording of the condition does not identify the specific classes as would have been set out within the GPDO at the time. However, the description of the removal of permitted development rights quite clearly details what it is pertaining to in extensions and buildings within the area outlined in red on the approved drawing. Whilst it might reasonably be anticipated that the imposition of such a condition would now specify the various sections of Schedule 2, Part 1 of the GPDO, on a fair reading of the condition it is quite clear which elements of the GPDO it is seeking to apply control over. I do not therefore find the wording to conflict with the test of preciseness.
17. I recognise the importance of the continued protection and maintenance of the Green Belt as addressed by Policy LP57 of the Kirklees Local Plan Strategy and Policies (2019) related to the extension, alteration or replacement of existing buildings, and Chapter 13 (Protecting Green Belt Land) of the Framework. However, I am not persuaded by the Council's submissions that a case has been properly made to support the continued imposition of a condition removing permitted development rights on the appeal site as an exceptional circumstance. For the reasons set out, and with reference to paragraphs 53 and 55 of the Framework and the guidance within the NPPG, I do not find the condition to be reasonable or necessary to make the development acceptable in the context of the site's location within the Green Belt.

Other Matters

18. The appellant has referred to the ability of the Local Planning Authority to exert powers under article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 to enable them to withdraw permitted development rights across a defined area where justified, as well as a suite of appeal decisions.
19. However, whilst I have had regard to these submissions, my decision has been premised on the circumstances and evidence specific to the appeal proposal and its context rather than reliant on the contention of precedent from elsewhere.

Conclusion

20. The guidance in the Planning Practice Guidance makes 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.
21. It would appear that the 2008 planning permission has been implemented, but 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.
22. Therefore, for the reasons given above, I conclude that the appeal should be allowed.

M Seaton

INSPECTOR

Annex

Conditions

1. The development hereby permitted shall be carried out in accordance with the plans approved for the planning permission for a change of use from holiday cottage to dwelling (*Ref: 2008/62/91169/E3*), dated 29 May 2008.
2. The works undertaken to increase the width of the access so as to accommodate an emergency vehicle, with the details agreed in writing by the Local Planning Authority, shall be thereafter retained to allow continued use.
3. The turning facility within the site to accommodate a private car with the details as agreed in writing by the Local Planning Authority, shall thereafter be retained for use.
4. The parking spaces for 2 vehicles within the site with the details as agreed in writing by the Local Planning Authority, shall thereafter be retained free of obstruction to such use.
5. A visibility splay free of obstructions above 1m in height within a strip of land 2m back from the carriageway edge of Westfield Lane for the length of the frontage within the area edged blue on the approved plans, shall thereafter be retained.