



Appeal Decision

Site visit made on 17 November 2020

by G Ellis BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 February 2021

Appeal Ref: APP/C3620/W/20/3248118

The Chalet, Mill Lane, Newdigate, Dorking RH5 5AL

- 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 Ms C Young against the decision of Mole Valley District Council.
 - The application Ref MO/2019/1857/CC, dated 14 October 2019, was refused by notice dated 12 December 2019.
 - The application sought planning permission for demolition of existing dwelling and erection of replacement dwelling without complying with conditions attached to planning permission Ref MO/2019/1277/PLA, dated 30 August 2019.
 - The conditions in dispute are Nos 4 and 5 which state that:
 - 4) *Notwithstanding the provisions of the Town and Country (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no extensions within Schedule 2, Part 1, Classes A, B, or C to any dwelling hereby permitted shall be erected.*
 - 5) *Notwithstanding the provisions of the Town and Country (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no building or enclosure, swimming or other pool, within Schedule 2, Part 1 Class E, shall be carried out on the land the subject of this planning permission.*
- The reasons given for the conditions are:
- 4) *To control any subsequent enlargements in the interests of the visual and residential amenities of the locality, in accordance with Mole Valley Local Plan policy ENV22 and policy CS14 of the Mole Valley Core Strategy [and to restrict the enlargement of dwellings in this rural area in accordance with Mole Valley Local Plan policy RUD7].*
 - 5) *To protect the character and amenities of this rural area, in accordance with the advice contained in the National Planning Policy Framework [Mole Valley Local Plan policy [ENV3] [RUD19] and policy CS14 of the Mole Valley Core Strategy.*
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Decision

1. The appeal is allowed and the planning permission granted for the demolition of existing dwelling and erection of replacement dwelling at The Chalet, Mill Lane, Newdigate, Dorking RH5 5AL in accordance with MO/2019/1857/CC, dated 14 October 2019 without compliance with condition numbers 4 & 5 previously imposed on planning permission MO/2019/1277/PLA, dated 30 August 2019 and subject to the following conditions previously imposed: -
 - 1) The development hereby permitted shall be begun before 19 July 2022.

- 2) The development hereby permitted shall be carried out in accordance with the submitted documents and plan numbers 1905-05-PL05, 1904-05-OL02.
- 3) Before any above ground works commence, details of the hard surfacing to be used within the site shall be submitted to and approved in writing by the Local Planning Authority. The details shall indicate either porous materials or the provision of a direct run-off from the hard surface to a permeable or porous area. All hard surfacing shall be carried out in accordance with the approved details, completed prior to the first occupation of the development hereby permitted and thereafter, permanently retained as such.
- 4) Prior to any above ground works commencing, details to reduce the carbon emissions of the predicted energy use of the development hereby permitted by at least 10% through the on-site installation and implementation of decentralised and renewable or low-carbon energy sources shall be submitted and approved by the Local Planning Authority and be implemented prior to the first occupation of the development.

Background and Main Issues

2. The existing residential property on the appeal site is a small detached single storey building located close to the boundary with the neighbouring property, Pheasants Barn. The residential property was established through a Lawful Development Certificate granted in 2012 which related to the use of the building only.¹
3. Planning permission was subsequently granted for a replacement dwelling under application MO/2019/1277PLA. The replacement property is to be of a similar size to the existing but relocated away from the northern boundary behind the existing parking area. The application redline, as shown on the location plan, extends to the full extent of the appeal site.
4. There is disagreement between the parties as to whether the existing property benefits from permitted development rights and the extent of the curtilage. The appellant has referenced a statutory declaration dated 2016, however this was to support a Lawful Development Certificate in relation to the curtilage for Pheasants Barn, and I do not have full details of that application before me. Moreover, this appeal relates to the removal of conditions and not the establishment of the lawful use of the site. Additionally, as the conditions imposed relate to a replacement dwelling, sited elsewhere, the existing situation does not necessarily assist.
5. The main issues are whether or not the disputed conditions are reasonable and necessary in the interests of the character, appearance and amenities of the area.

Reasons

6. As set out in paragraph 55 of the National Planning Policy Framework (the Framework) planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

¹ Council reference MO/2012/0886

7. 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 permitted development rights that would be removed by the conditions in dispute are Class A (extensions), Classes B and C (roof alterations) and E (buildings within the curtilage) of Part 1 Schedule 2 of the General Permitted Development Order (GPDO).
8. In allowing the replacement dwelling within the Green Belt the Council considered that the scheme accords with the Local Plan². There is nothing in the policy or its supporting text which indicates that permitted development rights will be removed for replacement dwellings.
9. The replacement dwelling is not materially larger than the existing, in line with the requirements of policy RUD8. Accordingly, the prospect of harm to the Green Belt is not materially greater than would have been the case with the existing dwelling.
10. As part of the planning balance, as set out in the officer's report, further moderate weight in favour of the scheme was given to the removal of permitted development rights in terms of protecting the long-term openness of the site. However, there was no indication that without these conditions the proposal would be unacceptable, nor did the Council identified any specific harm arising if permitted development rights were to be executed. Rather it was an opportunity to control future development.
11. While permitted development rights have the potential to increase the size of the property these are national provisions and apply to properties within the countryside and Green Belt. Furthermore, Planning Practice Guidance (PPG) indicates that conditions restricting the future use of permitted development may not pass the tests of reasonableness or necessity.
12. I accept that the utilisation of permitted development rights would result in visual changes to the property/site. Nevertheless, any provisions pursuant to these rights would have to accord with the conditions of the specific GPDO classes which place limits on size, location of development and materials. Therefore, as they are restricted to the residential curtilage, the provisions, in my view, are unlikely to have a significant adverse impact on the character and appearance of the area such that there would be conflict with Local Plan policy ENV22 and Core Strategy³ policy CS14 which seek that development respects the character and appearance of the area. Additionally, the replacement dwelling would be sited further away from the boundary with the neighbouring property than the existing dwelling providing greater separation. Therefore, it would seem likely that any permitted development would have no greater impact on residential amenity than would currently be the case.
13. I note that the Council has relied on Local Plan policy RUD7 in the reason for refusal, however, this policy relates to extensions and therefore is not directly relevant to the proposal for a replacement dwelling. There is also reference in the reasons for the conditions to Local Plan policies ENV3 – *'Development in the countryside beyond the Green Belt'* and RUD19 – *'Re-use and adaptation of rural buildings'* which again do not relate to the proposed development.

² Mole Valley Local Plan (Local Plan)

³ Mole Valley Local Development Framework Core Strategy DPD

14. Having regard to the matters set out above in my view there is no clear justification for removing permitted development rights in relation to the replacement dwelling. Accordingly, I conclude that the conditions are not necessary or reasonable.
15. As this is an application under section 73 it is necessary to repeat the conditions of the original planning permission. However, section 73 cannot extend the time of an application and therefore condition 1 is revised so that development must commence within 3 years of the date of the original permission. I have also amended the wording of condition 2 to just refer to the approved plans for compliance as a planning condition cannot require a development to be completed, and therefore I have removed that wording.

Conclusion

16. For the reasons given above and taking into account all other considerations, I conclude that the appeal should be allowed, and a new planning permission granted without conditions 4 and 5 previously imposed.

G Ellis

INSPECTOR