
Appeal Decision

Site visit made on 16 December 2020

by C Coyne BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd March 2021

Appeal Ref: APP/P2365/W/20/3257201

Holdcrofts, Tunley Lane, Wrightington, Wigan WN6 9RJ

- 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 and Mrs Cairns against the decision of West Lancashire Borough Council.
 - The application Ref 2020/0072/FUL, dated 22 January 2020, was refused by notice dated 28 April 2020.
 - The application sought planning permission for Demolition of existing conservatory, utility and porch. Construction of new single storey extension to side and two storey extension above existing single storey porch without complying with a condition attached to planning permission Ref 2018/1111/FUL, dated 24 December 2018.
 - The condition in dispute is No 4 which states that: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) or any subsequent Orders or statutory provision re-enacting the provisions of these Orders no garages, extensions, porches, garden sheds, out buildings or greenhouses shall be erected or undertaken without the express written permission of the Local Planning Authority.
 - The reason given for the condition is: The character and location of the property are such that the Local Planning Authority wishes to exercise maximum control over future development to protect the openness of the Green Belt in order to comply with the provisions of Policy GN1(b) in the West Lancashire Local Plan 2012-2027 Development Plan Document and the NPPF.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. This appeal relates to a planning application that was refused by the Council. The appellant sought to remove the disputed condition which would enable the occupants of the dwelling to benefit from permitted development rights for the developments listed in the condition, which have been removed. The Council did so when they imposed a planning condition on the grant of planning permission for the demolition of existing conservatory, utility and porch and the construction of new single storey extension to side and two storey extension above existing single storey porch in 2018 (Ref 2018/1111/FUL) 'the 2018 planning permission'.

Main Issue

3. The main issue is whether the disputed condition is reasonable and necessary, having particular regard to the openness of the Green Belt.

Reasons

4. The Planning Practice Guidance (the Guidance)¹ advises that conditions restricting the future use of permitted development rights may not pass the test of reasonableness or necessity. The scope of such conditions needs to be precisely defined, 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.
5. Policy GN1 of the adopted West Lancashire Local Plan (WLLP) aims to prevent inappropriate development in the Green Belt with criterion b) stating that development proposals within the Green Belt will be assessed against national policy and any relevant Local Plan policies. The National Planning Policy Framework (the Framework) at paragraph 143 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The construction of new buildings is regarded as inappropriate in the Green Belt save for several specified exceptions under paragraph 145 of the Framework. One such exception is for proposals for 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. The Framework does not specify what a disproportionate addition is. The definition of an 'original building' is set out in Annex 2 of the Framework.
6. The Council's approach is outlined in the adopted Development in the Green Belt Supplementary Planning Document (SPD). SPD Policy GB4 explains that proposals for an extension to an existing building within the Green Belt should satisfy three criteria. Criterion (b) explains that the total volume of the proposal, together with any previous extensions, alterations, and non-original outbuildings, should not result in an increase of more than 40% above the volume of the original building. The SPD also highlights the potential for the removal of permitted development rights in the Green Belt for extensions, outbuildings, and other structures to prevent future cumulative additions that may adversely impact upon the openness of the Green Belt.
7. Based on the evidence before me, the appeal property had been extended prior to the 2018 planning permission, with planning permission being granted for a two-storey rear extension and front porch² and with two other unrecorded extensions for a conservatory and utility room. According to the Officer's report, in granting the 2018 planning permission, the Council recognised that this scheme was above the SPD threshold in terms of its volume. However, even so, they considered that, given that the proposed extensions would be small outward additions, and that the proposed removal of the existing conservatory and utility room would make the building more compact than the previously existing layout, it would not be a disproportionate addition or materially harm the openness of the Green Belt. As it is not my role to re-consider a scheme which has already been granted planning permission, I have determined the appeal on this basis.
8. As per the 2020 planning application Officer's report, the developed building would be approximately 80% larger in terms of its volume than the original building when the approved scheme is completed, something which the appellant does not dispute. The appellant also does not dispute the Council's view that this is well beyond the SPD's threshold.

¹ Planning Practice Guidance Paragraph: 017 Reference ID: 21a-017-20190723

² Ref 1997/0557

9. As mentioned above, the Framework, in relation to the Green Belt, sets out restrictions on the types of building, including the extension and alteration to buildings, to determine whether the works would not be inappropriate. Therefore, while I recognise the advice found in the Guidance, I find that the disputed condition satisfies the tests of being reasonable and necessary as further development could potentially add to the existing additions and negate the compactness of the dwelling gained by the removal of the conservatory and utility room under the 2018 planning permission thereby causing harm to the openness of the Green Belt to which great weight must be attached. Similarly, any non-original outbuildings or other structures erected within the curtilage of the dwelling under permitted development rights could also potentially cause cumulative harm to the openness of the Green Belt in this regard, perhaps even further exceeding the SPD threshold.
10. The disputed condition is precisely defined with reference to the relevant provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 and is clear which rights have been withdrawn given the specific list of developments within it. It is also not an 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. The disputed condition does also still allow the appellant or any future occupant to apply for planning permission for any such development, which the Council would need to consider on its own merits. As such, and as a matter of planning judgement, I find that the imposition of the disputed condition is justified by the potential impact of any future permitted development on the openness of the Green Belt in addition to the development already permitted. I also consider that the disputed condition is precise, enforceable, relevant to the development to be permitted and relevant to planning, having regard to the tests set out in paragraph 55 of the Framework.
11. Accordingly, I conclude that the disputed condition is reasonable and necessary, having particular regard to the openness of the Green Belt. The removal of this condition would therefore conflict with Policy GN1 b) of the WLLP. It would also conflict with paragraphs 133, 143 and 145 of the Framework, which seek to keep land permanently open in the Green Belt and not approve inappropriate development except in very special circumstances. Given the nature and scale of the proposal I consider Policy GN3 of the WLLP to be not entirely relevant to this case.

Other Matter

12. In support of the appeal proposal the Appellant has cited an appeal decision (Ref APP/P2365/W/19/3228538). However, I do not have all the details of this case before me or the circumstances which led to that decision being made. In addition, given that the scheme was for the conversion of a building rather than an extension to one, I consider that the circumstances applicable to that scheme are not exactly the same as those presented in this case, which I have determined on its own merits.

Conclusion

13. For the reasons set out above I conclude that the appeal should be dismissed.

C Coyne

INSPECTOR