



Appeal Decision

Site Visit made on 19 January 2021

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 March 2021

Appeal Ref: APP/P2365/W/20/3262570

Douglas Dale, 23 Bradshaw Lane, Parbold, WN8 7NQ

- 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 Andrew Clarke against the decision of West Lancashire Borough Council.
 - The application Ref 2020/0678/FUL, dated 6 August 2020, was refused by notice dated 8 October 2020.
 - The application sought planning permission for the demolition of an existing dwelling and adjacent coach house and construction of a single replacement dwelling without complying with a condition attached to planning permission Ref 2018/0923/FUL, dated 22 February 2019.
 - 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, alterations, porches, garden sheds, out buildings, greenhouses, swimming pools, hardstandings or means of enclosure 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 wish to exercise maximum control over future development in order to comply with the provisions of Policy GN1 and GN3 in the adopted West Lancashire Local Plan 2012-2027 Development Plan Document.*
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of an existing dwelling and adjacent coach house and construction of a single replacement dwelling at Douglas Dale, 23 Bradshaw Lane, Parbold, WN8 7NQ in accordance with the application Ref 2020/0678/FUL dated 6 August 2020, without compliance with condition number 4 previously imposed on planning permission Ref 2018/0923/FUL dated 22 February 2019 and subject to the following conditions:
 - 1) The development must be begun not later than the expiration of three years beginning with the date of this permission.
 - 2) The development hereby approved shall be carried out in accordance with details shown on the following plans:-

Plan reference

3651-18-09A received by the Local Planning Authority on 30.11.2018

3651-18-08D received by the Local Planning Authority on 30.11.2018

3651-18-06J received by the Local Planning Authority on 16.11.2018

- 3) No development above slab level shall take place until full details and samples of external elevations and roof materials have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 4) 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 enlargement by way of extension, other than that permitted under Class D (porches), shall be erected or undertaken to the replacement dwelling hereby approved without the express written permission of the Local Planning Authority.
- 5) The recommendations made within The Bat Survey (Envirotech) received by the local planning authority on 17th September 2018 shall be adhered to at all times during the construction phase and for the duration of the development hereby approved.
- 6) Prior to the occupation of the replacement dwelling hereby approved, the coach house as detailed on plan reference 3651-18-08D (proposed site plan) received by the Local Planning Authority on 27.11.2018 shall be demolished and fully removed from the site and the land returned to grass.
- 7) No development shall take place until a scheme for the separate foul and surface water drainage of the site, including any necessary attenuation measures, has been submitted to, and approved in writing by, the Local Planning Authority. The approved scheme shall be implemented in full prior to first occupation of the building/s and maintained as such at all times for the duration of the development.

Applications for costs

2. An application for costs was made by Mr Andrew Clarke against West Lancashire Borough Council. This application is the subject of a separate Decision.

Background and Main Issue

3. Planning permission has been granted to demolish the existing dwelling and coach house and to construct a replacement dwelling. As the appeal dwelling is located in the Green Belt the Council states that Condition 4 was required to ensure that the approved development was in accordance with policies relating to Green Belt protection.
4. The main issue therefore is whether the approved development would comply with the provisions of local and national planning policies in relation to the protection of the Green Belt if Condition 4 was deleted, and consequently whether the condition is reasonable and necessary.

Reasons

5. The National Planning Policy Framework (The Framework) states at paragraph 53 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) further states at paragraph 017 Reference ID: 21a-

017-20190723 that *conditions restricting the future use of permitted development rights or changes of use may not pass the test of reasonableness or necessity*. This paragraph also states that *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*.

6. In the context of the approved development, Policy GN1 of the West Lancashire Local Plan 2013 (LP) states that development proposals within the Green Belt will be assessed against national policy and any relevant Local Plan policies. The exception set out at paragraph 145d) of The Framework means that the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces, would not be inappropriate development in the Green Belt. The Council's Development in the Green Belt Supplementary Planning Document 2015 (SPD) states within Policy GB1 that the volume of the replacement dwelling should not be more than 20% greater than the dwelling it replaces.
7. The figures shown on the plan submitted by the appellant demonstrate that, with what is planned by way of the additional single storey extensions and a garage extension, the percentage increase of the resultant dwelling would exceed 20% of the volume of the existing dwelling, even on incorporation of the full volume of the coach house which is to be demolished into the equation. This would therefore conflict with the threshold set out in the SPD. Whilst it may be that there would be limited potential to extend the dwelling further beyond this, if permitted development rights are retained then there remains the possibility of additional extensions. This would further increase the percentage size of the replacement dwelling compared to the existing.
8. The removal of permitted development rights to extend the replacement dwelling is therefore well founded given the threshold set out in the SPD. Furthermore, the Framework states that replacement dwellings in the Green Belt which are materially larger than those which they replace are inappropriate development. Allowing further extensions to the replacement dwelling would have the potential to cause harm to the openness of the Green Belt by being materially larger than the dwelling it would replace.
9. For these reasons it is both necessary and reasonable to restrict permitted development rights for the enlargement of the replacement dwelling by way of extensions. It does not need however to extend to porches, as their size is substantially restricted under permitted development rights.
10. The Council's SPD allows extensions to existing dwellings of up to an additional 40% increase in volume. However, the appeal proposal is for a replacement dwelling, and not an extension. Extensions could be undertaken to the existing dwelling using permitted development rights. However, the appellant is unlikely to pursue this route given their clear intention to redevelop the appeal site. In any event, that is a pre-existing situation and does not give rise to the same planning policy conflicts as the matter which is before me. Planning permission was granted to extend the existing dwelling in 2013 but it has not been suggested that this remains extant and therefore it does not form a viable fallback position.
11. A previous appeal decision (APP/P2365/W/19/3228538) references the now superseded advice of the PPG and the previous requirement that permitted

development rights should only be removed in exceptional circumstances. A further appeal decision (APP/P2365/W/16/3151161) is also referred to, but this does not appear to be directly comparable to the circumstances of the appeal case. In any event, I have assessed this case on the basis of current policy and guidance and upon its own merits, and I have found clear justification for the restriction of permitted development rights for extensions.

12. The existing dwelling benefits from permitted development rights under the General Permitted Development Order 2015 (GDPO) for outbuildings (which would include detached garages, garden sheds and greenhouses), swimming pools, hardstandings and means of enclosure. The situation relating to these differs from that relating to extensions to the dwelling, in that there is no relevant local or national planning policy test. Such development would not be physically attached to the replacement dwelling and would therefore not affect its form, and its height would be restricted. Therefore, it would not have a comparable impact on the openness of the Green Belt and it is not necessary or reasonable to remove permitted development rights for these elements.
13. It is also not necessary or reasonable to prevent the appellant from carrying out alterations to the replacement dwelling that do not involve enlargement, as this would not have an impact upon openness.
14. For the reasons I have set out, the removal of permitted development rights for extensions to the replacement dwelling is necessary and reasonable to ensure compliance with local and national planning policies. Furthermore, the condition is also enforceable, relevant to planning, relevant to the development permitted and precise, meaning that it meets all of the tests set out in paragraph 55 of the National Planning Policy Framework.
15. However, the prevention of the erection of outbuildings, swimming pools, hardstandings, means of enclosure or alterations is not necessary or reasonable in the circumstances of the appeal case.

Other Considerations

16. Any benefits that would arise from a reduced construction period if the replacement dwelling and the proposed additional extensions were constructed at the same time would be minimal and does not justify the removal of the condition where it relates to enlargements.
17. Whilst approaches to this matter may vary within and between local planning authorities, I have had regard to national and local policy and guidance in reaching a reasoned conclusion in this case. Further, it is not the purpose of an individual planning appeal to review the wider approach to potential extensions undertaken by the Council.
18. The appellant's concerns regarding the Council's handling of his planning applications are not relevant to the determination of this appeal, which must be made on planning grounds.

Conclusion

19. The Framework establishes at Paragraphs 143 and 144 that substantial weight should be given to any harm to the Green Belt and that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

20. I find that the other considerations in this case do not clearly outweigh the potential for harm that I have identified if permitted development rights for extensions were to be reinstated. Consequently, the very special circumstances necessary to justify this do not exist.
21. For the reasons given above, I conclude that, where it relates to extensions, the proposal fails to accord with Policy GN1 of the LP, with the SPD and with The Framework, where they seek to protect the Green Belt. The Council also makes reference to Policy GN3 of the LP, which refers to the criteria for sustainable development, however it is the conflict with the policies which seek to protect the Green Belt against which the proposal must primarily be assessed.
22. Procedurally the appeal must be allowed, with the original condition substituted with one that removes permitted development rights for enlargements by way of extension only.

Conditions

23. The advice 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. As I have limited information before me about the status of each of the other conditions imposed on the original planning permission (2018/0923/FUL) I shall impose them. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.

Graham Wraight

INSPECTOR