



Appeal Decision

Site visit made on 26 January 2021

by Graham Wyatt BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th March 2021

Appeal Ref: APP/P1805/W/20/3256333

The Croft, Alcester Road, Portway, Birmingham B48 7HZ

- 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 D Kelly against the decision of Bromsgrove District Council.
 - The application Ref 20/00121/FUL, dated 24 October 2019 was refused by notice dated 23 March 2020.
 - The application sought planning permission for Replacement dwelling: Resubmission of B/2004/0626 without complying with a condition attached to planning permission Ref B/2004/1100, dated 21 October 2004.
 - The condition in dispute is No 3 which states that: Notwithstanding the provision of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that order with or without modification), no development permitted under Article 3 and described with Classes A, B, C, D and E Part 1 and Class A of Part 2 of Schedule 2 shall take place without the prior written consent of the local planning authority.
 - The reason given for the condition is: To protect the visual amenity of the area in accordance with policy DS13 of the Bromsgrove District Local Plan January 2004 and policy CTC.1 of the Worcestershire County Structure Plan 2001.
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Decision

1. The appeal is allowed and planning permission is granted for a replacement dwelling: Resubmission of B/2004/0626 at The Croft, Alcester Road, Portway, Birmingham B48 7HZ in accordance with application Ref 20/00121/FUL dated 24 October 2019, without compliance with condition number 3, insofar as it relates to Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (the GPDO), previously imposed on planning permission Ref B/2004/1100 dated 21 October 2004, and subject to other conditions on the attached schedule, that are still subsisting and capable of taking effect.

Planning Matters and Main Issue

2. Planning permission has been granted for the erection of a replacement dwelling within the appeal site. Conditions were attached to this permission, one of which removed permitted development rights within Schedule 2, Part 1, Class A, B, C, D and E and Schedule 2, Part 2, Class A of the GPDO for certain developments to, and within the curtilage of, a dwelling house.
3. The appellant seeks to vary the disputed condition which places restrictions under Schedule 2, Part 1, Class E of the GPDO that would enable occupiers of the dwelling to benefit from permitted development rights to provide, within its

curtilage, buildings and enclosures required for a purpose incidental to the enjoyment of the dwelling house.

4. I note the main parties' submissions in relation to the site's Green Belt location and that the Council's original decision notice does not refer to the Green Belt in its reasoning for condition 3. Nonetheless, it is clear that the Council and the appellant have considered the impact on the Green Belt within their submissions.
5. In light of the above analysis and its stated reason, the main issue is whether or not the condition is reasonable or necessary to protect the visual amenity and to prevent inappropriate development in, and harm to, the Green Belt.

Reasons

6. The appeal site is located within the Green Belt. The appellant seeks to vary condition 3 which removes those permitted development rights that cover buildings within the curtilage of the dwelling house. My sole consideration in this appeal is to consider whether the disputed condition is necessary, reasonable, and fully justified. Paragraphs 53 and 55 of the National Planning Policy Framework (the Framework) state that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. In addition, conditions should be kept to a minimum and only imposed where, amongst other matters, they are necessary and reasonable. More guidance is given in the Planning Practice Guidance (PPG), which states that Section 70(1) of the Town and Country Planning Act 1990 enables the local planning authority to impose '*such conditions as they think fit*¹'. However, this power must be interpreted in the light of material considerations such as the Framework, the PPG, and relevant case law.
7. The PPG sets out the 6 tests² for conditions and states that they must be necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise, and reasonable in all other respects. The PPG also states that 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 and necessity³.
8. Although the Framework is silent on such matters, development that is permitted through the GPDO 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 conservation areas.
9. I accept that potentially, permitted development on the site could give rise to a number of additional buildings within the curtilage of the dwelling. However, I have not been provided with any evidence to demonstrate that permitted development rights are likely to be used to their maximum. Furthermore, although the Council has not set out what the potential for further development of the appeal site within the specified class of the GPDO could amount to, the appellant has set out that the aim would be to erect a pool building on the eastern flank boundary if I were to allow the appeal. I have also taken into account the fact that the appeal site is

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

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

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

relatively well-contained and the majority of views from the A435 are likely to be fleeting given the speeds of traffic passing the site.

10. 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 permanence. However, in this instance and on the evidence that is before me and from my own observations, I am not persuaded that the Council has demonstrated exceptional circumstances to justify the imposition of condition 3 that removed permitted development rights under Class E on the original application. Therefore, in this instance, I consider that a condition removing domestic permitted development rights under Schedule 2, Part 1, Class E of the GPDO, is not reasonable and necessary to protect the character and appearance of the site and the openness of the Green Belt.
11. Therefore, for the reasons given above and in 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 under Schedule 2, Part 1, Class E at the appeal site. Accordingly, I find no conflict with Policy BDP4 of the Bromsgrove District Plan 2017, the PPG, and the requirements of the Framework.

Conditions

12. The guidance in the PPG makes it 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 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 to remain relevant and the original condition, varied to remove reference to Class E. In the event that some of these conditions have in fact been discharged, that is a matter which can be addressed by the parties.
13. 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. The approved plans should be specified to provide certainty. It is reasonable and necessary in the interest of the visual amenity to impose a condition restricting additional surfacing on the site and the submission of details relating to landscaping and proposed boundary treatments. In the interest of drainage at the site, matters relating to the discharge of foul water and surface water are to be agreed with the Council.

Conclusion

14. For the reasons given above I conclude that the appeal should be allowed. I have granted a new permission with the disputed condition varied to remove reference to Schedule 2, Part 1, Class E of the GPDO.

Graham Wyatt

INSPECTOR

Schedule of Conditions

1. Notwithstanding the provision of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that order with or without modification), no development permitted under Article 3 and described with Classes A, B, C and D, Part 1 and Class A of Part 2 of Schedule 2 shall take place without the prior written consent of the local planning authority.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: OS Location Plan 010.
3. No surface water will be allowed to discharge to the foul water drainage system. Before this permission is implemented, the disposal of storm water shall be by a means approved by the local planning authority.
4. Before this permission is implemented, the disposal of foul water shall be by a means approved by the local planning authority.
5. There shall be no discharge of foul or contaminated water from the site into either groundwater or any surface waters, whether direct or via soakaways.
6. Before this permission is implemented, details of all new surfacing shall be submitted to and approved in writing by the local planning authority. 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), no new surfacing other than that approved by the Local planning authority shall be provided on the application site.
7. Before this permission is implemented, details of the boundary treatments for the site shall be submitted to and approved in writing by the local planning authority. 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), no new surfacing other than that approved by the Local planning authority shall be provided on the application site.
8. Before this permission is implemented, a scheme of landscaping shall be submitted to and approved in writing by the local planning authority. The scheme shall include:
 - a) Full details of all existing physical and landscape features on the site including the position, species and spread of all trees and major shrubs clearly and distinguishably between those features to be retained and those to be removed.
 - b) Full details of all proposed fencing, screen walls, hedges, floorscape, earth moulding, tree and shrub planting where appropriate.

The approved scheme shall be implemented not later than the first planting season following approval from the local planning authority. Any trees/hedges/shrubs removed, dying, being severely damaged or becoming seriously diseased within 5 years of the date of the original planting shall be replaced with plants of similar size and species to those originally planted.

9. The existing trees on the site shall not be felled, lopped, or topped or otherwise removed without the previous written consent of the local planning authority.

Any trees/hedges/shrubs removed without such consent or dying or being severely damaged or becoming seriously diseased shall be replaced with trees/hedges/shrubs of such as size and species as may be agreed with the local planning authority.

End of Schedule