



Appeal Decision

Site Visit made on 15 March 2021

by Robin Buchanan BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 April 2021

Appeal Ref: APP/R3650/D/20/3263395

Rushmoor Cottage, Tilford Road, Rushmoor, Farnham, GU10 2EP

- 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 Chris Ellerker against the decision of Waverley Borough Council.
- The application Ref WA/2020/0976, dated 29 May 2020, was refused by notice dated 7 September 2020.
- The application sought planning permission for the erection of extensions and alterations together with demolition of outbuilding without complying with a condition attached to planning permission Ref WA/2019/1742, dated 24 December 2019.
- The condition in dispute is No 3 which states that: *'Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (or any other order revoking or re-enacting that Order with or without modification), no enlargement to the dwellinghouse as defined within Part 1 of Schedule 2, Class A and Class B or outbuildings as defined within Part 1 of Schedule 2, Class E shall be constructed without the written permission of the Local Planning Authority'.*
- The reason given for the condition is: *'To ensure the openness of the Green Belt is retained, in accordance with Policy RE2 of the Local Plan 2018, retained Policy RD2 of the Local Plan 2002 and the NPPF'.*

Decision

1. The appeal is dismissed.

Preliminary Matter

2. After the appeal was lodged the appellants submitted a recent appeal decision.¹ The Council has had an opportunity to comment on this decision and the appellants have provided their final comments. I have taken this appeal decision, and both main parties comments, into account in determining the current appeal.

Background and Main Issue

3. The Council has granted planning permission WA/2019/1742 for extensions and alterations to Rushmoor Cottage, which is in the Green Belt. I will refer to that as 'the authorised scheme'. At the time of my site visit the authorised scheme had not yet been commenced. Disputed condition No 3, as described in the banner heading above, is attached to planning permission WA/2019/1742 and there is no indication before me that permitted development rights are otherwise anything but intact.

¹ APP/R3650/W/20/3256687

4. Condition No 3 restricts the exercise of Class A, B and E permitted development (PD) rights² at the appeal site. The justification given by the Council for this condition is 'to ensure the openness of the Green Belt is retained, in accordance with policy RE2 of the Local Plan 2018, retained policy RD2 of the Local Plan 2002 and the NPPF'. The appellants consider that the inclusion of Class A, which in summary relates to the enlargement, improvement or other alteration of a dwellinghouse, is not necessary or reasonable.
5. The appellants therefore seek to have this condition varied to remove reference to Class A and so restore Class A PD rights (no other elements of condition No 3 are in dispute). In the appellants' appeal statement, there is an indication of what the appellants may be capable of bringing forward under Class A;³ however, that is illustrative and does not necessarily reflect the entire extent of possible development under Class A. I also note that there is no robust information as to what could be undertaken in the eventuality that Class A PD rights were used to their fullest, for example a certificate of lawful development, proceeding implementing permission WA/2019/1742. I will refer to the authorised scheme plus effecting Class A PD rights as 'the development proposed'.
6. Taking this background into account, the main issue is whether the inclusion of Class A in condition No 3 is necessary and reasonable, having regard to the location of the appeal site in the Green Belt. Given the Council's justification for this condition, that necessitates an assessment of the potential effect of altering the condition in terms of what could come forward at Rushmoor Cottage, i.e. the development proposed.

Reasons

7. The appeal site comprises a detached two-storey dwelling in a reasonably large, mature landscaped garden which includes some domestic outbuildings. It is in a row of mainly houses along this part of Tilford Road, opposite a woodland, and within a scattered pattern of houses and landscaped gardens arranged along a rectilinear layout of roads. The mostly undeveloped, spacious, and verdant appearance of these gardens and the relatively sparse, segregated extent of built form is locally distinctive. It contributes to the semi-rural character of this part of the countryside, which is also in the Surrey Hills Area of Outstanding Natural Beauty ('the AONB'), and to the openness of the Green Belt.
8. The National Planning Policy Framework ('the Framework') states that planning conditions should not be used to restrict national PD rights unless there is a clear justification to do so.⁴ Planning Practice Guidance (PPG) advises that conditions restricting the future exercise of PD rights, and blanket removal of freedoms to carry out small scale domestic alterations that would otherwise not require an application for planning permission, are unlikely to meet the tests of reasonableness and necessity.⁵ I also acknowledge that Class A PD rights are normally available to householders in the Green Belt, and that there are no limitations or conditions to the exercise of Class A at Rushmore Cottage.

² Part 1, Schedule 2 Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO)

³ Paragraph 4.13 and Appendix F, drawing number 1458/A-01

⁴ Framework paragraph 53

⁵ PPG paragraph 21a-017-20190723

Inappropriate development

9. Policy RE2 of the Waverly Borough Local Plan Part 1, February 2018 (LPP1) and retained Policy RD2 of the Waverley Borough Local Plan, April 2002 (LP) were adopted before the publication of the Framework. However, the first policy applies national policy on development in the Green Belt and the second policy includes reference to the extension of dwellings in the Green Belt. Insofar as is relevant to the circumstances here, both policies are consistent⁶ with the approach in the Framework, including to ensure that extensions and alterations to dwellings do not result in disproportionate additions or inappropriate development in the Green Belt.
10. The Framework confirms that new buildings are inappropriate in the Green Belt unless they fall within a list of exceptions.⁷ One exception, in Framework paragraph 145(c), is 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' (defined for these purposes as 'a building'⁸).
11. The appellants do not dispute the Council's calculation that the authorised scheme would create a dwelling (the 'resulting dwelling') with a 44.9% uplift in floorspace compared to the original dwelling, which in this case is the existing dwelling. Having regard to LP Policy RD2 this would materially exceed its 40% floorspace increase guideline.⁹ Albeit that it is a reasonable yardstick, and is not challenged by the appellants, there is no parallel stipulation in the Framework — the concept of disproportionate additions in my view having both a numeric and a visual dimension. With that in mind, the Council also considered that application WA/2019/1742 would 'add significantly more bulk and mass to the dwelling when compared to the existing [dwelling]'.¹⁰
12. I note that it was for both reasons (ie floorspace and bulk and mass) that the Council concluded that the authorised scheme would be disproportionate additions to the original dwelling and inappropriate development in the Green Belt. On the evidence before me, including as it would alter the size of the original dwelling, I agree with the Council in these regards; though to be clear, in approving application WA/2019/1742 the Council nevertheless considered that 'very special circumstances' existed to justify approving inappropriate development, to which I will return below.
13. Accordingly, if the authorised scheme was carried out, the development proposed to further enlarge, improve or alter the resulting dwelling would add even more floorspace and bulk and mass to the size of the original dwelling. Consequently, and cumulatively, the development proposed would itself therefore be disproportionate additions to the original dwelling and inappropriate development in the Green Belt. Furthermore, it would unduly compound the disproportionality of already disproportionate additions to the original dwelling. This would be at odds with what the Council's development plan seeks to achieve in these respects and the Framework confirms that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.¹¹

⁶ Framework paragraph 213

⁷ Framework paragraph 145

⁸ Framework glossary

⁹ LP paragraphs 11.28(ii), (iv) and (v)

¹⁰ Officer report WA/2019/1742 – paragraph 8

¹¹ Framework paragraph 143

Openness

14. I saw at my site visit that the development proposed would likely be reasonably well screened in public views by buildings, boundary features or landscaping. However, limited, or no, visual appreciation of development in the Green Belt does not mean the absence of spatial harm to the openness of the Green Belt. The development proposed would increase the size of the resulting dwelling and consequently cause a further reduction in the openness of the Green Belt, albeit to a very small extent. The Framework states that the fundamental aim of the Green Belt is to keep land permanently open.¹² The development proposed would not therefore preserve the openness of the Green Belt or reflect the objectives of the Council's development plan in this regard.

Any other harm

15. The Framework states that 'great weight should be given to conserving and enhancing landscape and scenic beauty' in an AONB.¹³ I note that Natural England and the Council did not object to the authorised scheme due to its effect on the AONB. I saw at my site visit that the authorised scheme would be screened by intervening buildings, boundary features or landscaping such that it, or the development proposed, would have no meaningful context with the wider countryside of the AONB. Consequently, it would not cause harm to the landscape or scenic beauty of the AONB.
16. The Council's officer report for WA/2019/1742 refers to the Wealden Heaths Special Area of Conservation (SAC) and Special Protection Area (SPA). On the very limited information before me in this appeal, I am unable to determine whether there would be an adverse effect on the integrity of the SAC or the SPA. However, as I am dismissing this appeal on other substantive issues, it is not necessary for me to consider these matters any further.

Other considerations

17. The main parties agree that after the demolition of an outbuilding at the appeal site the authorised scheme would lead to an approximately 30% overall net change (uplift) in the floorspace of buildings on the appeal site. I have no reason to reach a different view in this regard. I also note that the Council considered that this floorspace 'off-set', ie deducting the floorspace of the outbuilding, would 'open the Green Belt to an extent that the net increase in built form would not materially harm the Green Belt'.¹⁴ On that basis the Council considered that very special circumstances existed to grant planning permission WA/2019/1742.
18. However, and nonetheless, this does not alter the fact that the wording of LP Policy RD2 (and the 40% floorspace guideline) and Framework paragraph 145(c) refer to the original dwelling or building, not to overall floorspace change at the appeal site. Consequently, notwithstanding the off-set and the overall net change to floorspace in buildings on the appeal site, if carried out, the authorised scheme would nonetheless be disproportionate additions to the original dwelling and inappropriate development in the Green Belt.

¹² Framework paragraph 133

¹³ Framework paragraph 172

¹⁴ Officer report WA/2019/1742 - paragraph 13

19. There is therefore no unused 'level' or 'maximum allowed' balance of floorspace under LP Policy RD2 for a further increase to the size of the resulting dwelling between approximately 30% and up to 40%, as the appellants suggest (including for example the extension shown in the appellants' illustrative plan), even if such development would itself be 'modest' or 'limited' or the authorised scheme 'reduces the spread of built form on the appeal site with only a 20% increase in footprint'. It has furthermore not been demonstrated clearly how the authorised scheme would overlap with what might have been achievable under Class A PD. In any event, as I refer to above, footprint and floorspace were not the only matters considered by the Council, nor by me.
20. I acknowledge that Class A PD rights at the appeal site would ordinarily be subject to the relevant limitations and conditions that apply to properties in an AONB. However, to restore Class A PD rights in the circumstances explained above would otherwise adversely conflate the Green Belt objectives of the Council's development plan and the Framework, which are engaged for development that requires planning permission, with the separate operation of the GPDO for development where an express grant of planning permission is not required.
21. I appreciate that, on the evidence before me, there is no Article 4 Direction that removes Class A PD rights on the appeal site or at other dwellings in the immediate vicinity. However, an indiscriminate area wide Article 4 Direction could unreasonably restrict Class A PD for householders who do not already have the benefit of planning permission for extensions and alterations that are disproportionate additions and inappropriate development in the Green Belt. In addition, I am mindful that condition No 3 as currently worded would not prevent the appellants (or a future owner) from applying for planning permission for further enlargement, improvement or other alteration of the resulting house. This would allow the Council to consider a proposal on its planning merits, including with regard to any relevant planning history.
22. The appellants have referred me to two Council officer reports and decisions for other sites in the Green Belt. I do not have full details of either application before me. In the first¹⁵ the Council did not remove Class A PD rights. However, I note that the size of the original dwelling, the size of the proposed extensions and alterations and the size of the resulting dwelling were significantly smaller in floorspace than at Rushmoor Cottage. In addition, the Council did not have any evident concerns with regard to the form, bulk or height of the development in comparison to the original dwelling in that case. In the second,¹⁶ whilst the Council reinstated some PD rights at a property, I note that this case related to Class E outbuildings and the planning permission originally granted was for the erection of a detached garage.
23. The appellants have also referred to three Green Belt appeal decisions. I do not have full details of these cases before me. However, I note that one¹⁷ relates to a Council elsewhere and therefore to a different development plan whose policies are not before me. That decision does not anyway explain the significance of the proposed 30% increase in floorspace compared to a Council guideline figure, if any, and the appellants have not substantiated their view

¹⁵ WA/2019/0402

¹⁶ WA/2020/2089

¹⁷ APP/Y3615/D/19/3232290

that 'the site...had been extended up to near the maximum Guildford's policies allow'.

24. The two other appeal decisions relate to the same Council area and development plan as in the current appeal. In one,¹⁸ the Inspector found in paragraph 10 that it was 'unlikely that any future proposals put forward through permitted development would be significantly in conflict with the Green Belt objectives' of LP Policy RD2. However, in paragraph 8 the Inspector considered the possibility that 'further extensions' (ie using PD rights) to those already granted planning permission 'could take the building over the cumulative increase that the Council might wish to allow'. On the evidence before me, the extensions and alterations to the dwelling already granted planning permission were therefore less than the Council's 40% floorspace increase guideline. Consequently, these were not disproportionate additions to the original dwelling by this measure, in contrast to the circumstances in the current appeal. The other¹⁹ relates to a new house and the appeal site was not in the Green Belt. Disproportionate additions and inappropriate development in the Green Belt were not therefore material considerations with regard to PD rights in that case.
25. The appellants have also referred me to an application in another Council area²⁰, a subsequent appeal decision²¹ and a High Court decision.²² The details of this application and of these decisions are not before me. However, I note that this case also relates to a different development plan and policies that are not before me. Moreover, it was concerned with what constituted a 'building' in the context of the size of a replacement dwelling for the purposes of the 'materially larger' test of what is now Framework paragraph 145(d), not the 'disproportionate additions' test of Framework paragraph 145(c).
26. All of these decisions can therefore be distinguished from the present case. Accordingly, they do not provide precedents, as the appellants otherwise suggest. I have, in any event, determined the current appeal on its planning merits.

Green Belt balance

27. The authorised scheme is inappropriate development in the Green Belt. The effect of varying condition No 3 to remove reference to Class A PD (and otherwise restore these PD rights at the appeal site to be available after the development proposed) would be to facilitate further inappropriate development in the Green Belt to an as yet established degree. This would lead to a very small loss of openness to the Green Belt and the Framework indicates that substantial weight should be given to any harm to the Green Belt.²³ I find that the other considerations in this case in favour of a decision to vary condition No 3 as sought by the appellants do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the development proposed do not exist.

¹⁸ APP/R3650/W/20/3256687

¹⁹ APP/R3650/W/17/3183466

²⁰ TA/2014/1321

²¹ APP/M3645/A/14/2226829

²² *Tandridge District Council v Secretary of State for Communities and Local Government* [2015], EWHC 2503

²³ Framework paragraph 144

Planning Balance and Conclusion

28. As explained in my decision above, the erection of extensions and alterations without condition No 3 as currently worded attached to planning permission WA/2019/1742 would not accord with LPP1 Policy RE2 or with LP Policy RD2. It would also conflict with Framework paragraphs 133, 143, 144 and 145(c). There are no material considerations that indicate that my decision should not be taken otherwise in accordance with the development plan.
29. Having regard to the relevant tests of Framework paragraph 55 and related PPG,²⁴ I conclude that the part of condition No 3 in dispute (that restricts the exercise of Class A PD rights at the appeal site) is necessary and reasonable to make the development permitted under application WA/2019/1742 acceptable.²⁵ As such, condition No 3 as currently worded serves a useful planning purpose. I also consider that this condition is relevant to planning and to the development permitted, enforceable and precise. Accordingly, there is a clear justification for condition No 3 as currently worded.
30. For the reasons given the appeal does not succeed.

Robin Buchanan

INSPECTOR

²⁴ PPG paragraph 21a-003-20190723

²⁵ Framework paragraph 54