



Appeal Decision

Site visit made on 20 April 2021

by C Coyne BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd June 2021

Appeal Ref: APP/Z4718/W/21/3268030

Springfield Barn, Fieldhead Lane, Holme, Holmfirth HD9 2QJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for 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 Caroline Heppenstall against Kirklees Metropolitan Borough Council.
 - The application Ref 2020/93738 is dated 4 November 2020.
 - The application sought the removal of condition no. 5 (permitted development) on previous permission Ref 97/62/92281/W3 for re-use, extension and adaptation of redundant barn to form dwelling, dated 8 December 1997.
 - The condition in dispute is No. 5 which states that: *Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 no buildings or extensions shall be erected in the area edged red on the approved plan without the prior written approval of the Local Planning Authority.*
 - The reason given for the condition is: *The site lies within the Green Belt in which development is not normally permitted for purposes other than those appropriate to the Green Belt.*
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Decision

1. The appeal is allowed and planning permission is granted for re-use, extension and adaptation of redundant barn to form dwelling at Springfield Barn, Fieldhead Lane, Holme, Holmfirth HD9 2QJ in accordance with the application Ref 2020/93738 dated 4 November 2020, without compliance with condition numbers 1, 4, 5, 6, 9, 10, 11, 12 and 13 previously imposed on planning permission Ref 97/62/92281/W3 dated 8 December 1997 and subject to the conditions set out in the schedule to this decision.

Preliminary Matters and Main Issue

2. The appeal site is situated within an open agricultural landscape and is adjacent to the Peak District National Park. The site contains a semi-detached natural stone dwelling set between agricultural fields and Fieldhead Lane. There are also mature and semi-mature trees on the boundary of the site and these fields. The shape of the site is also irregular with it being tapered at the end furthest from the dwelling. As a result, its layout is somewhat constrained. This end of the site is also currently used for car parking associated with the dwelling. The site is also located within the Green Belt.
3. The appellant has indicated that the restrictive condition which removes permitted development rights for the appeal property is unnecessary and

unreasonable, and has sought the removal of the condition and, as a consequence, the reinstatement of the rights for extensions and buildings within the curtilage.

4. In light of the above, the main issue is whether the condition is reasonable or necessary to make the development acceptable in the context of the site's location within the Green Belt.

Reasons

Background

5. The National Planning Practice Guidance (the Guidance) explains how conditions attached to a planning permission should be used and discharged effectively. The Guidance highlights the importance of adherence of conditions to the six tests set out at paragraph 55 of the National Planning Policy Framework (the Framework), and provides guidance on the whether it is appropriate to use conditions to restrict the future use of permitted development rights.
6. 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 PPG advises that the scope of such conditions needs to be precisely defined, by reference to the relevant provisions in the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO), 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.
7. Schedule 2, Part 1 of the GPDO sets out the permitted development rights for development within the curtilage of a dwellinghouse, with the rights either qualified or removed for development within Classes A, B, E, G and H on land classified as covered by article 2(3). The definition of article 2(3) land is set out at Schedule 1, Part 1 of the GPDO and includes inter alia land within a conservation area, an area of outstanding natural beauty, a National Park, and a World Heritage Site.

Assessment

8. With the definition of article 2(3) land making no reference to the inclusion of land within the Green Belt, this omission can only be concluded as being deliberate by the Government in publishing the GPDO. It is reasonable therefore to contend that permitted development rights for dwellings in the Green Belt are intentionally no different to those available outside of the Green Belt, and that if greater control was desired then the GPDO would reflect this.
9. I find the justification for this conclusion to be further strengthened by the clear requirement of paragraph 53 of the Framework and the NPPG, that exceptional circumstances must apply for the removal of permitted development rights. In this respect, if a location within the Green Belt alone was held to be an exceptional circumstance, then it would be conceivable that the definition of Article 2(3) of the GPDO would have been altered to reflect this. Therefore, the assumption must be that the permitted development rights should persist, unless there is a clear justification for the restriction, which

must be both precisely defined, and site-specific to a particular circumstance rather than applicable on an area-wide or blanket basis.

10. The fact that the appeal site is located within the Green Belt and there may be a potential for further extensions and outbuildings, is a situation that would be equally applicable to a significant proportion of other dwellings and residential curtilages across the Green Belt and would not on this basis represent an exceptional circumstance. Similarly, the fact that the property has been extended previously would not be unusual or unexpected.
11. Moreover, in their statement the Council conclude that they are not opposed to the removal of condition no. 5 on the previous planning permission ref. 97/92281 and based the evidence before me I see no reason to disagree.
12. Consequently, for the reasons set out, and with reference to paragraphs 53 and 55 of the Framework and being mindful of Circular 11/95¹ and the Guidance, I find the condition to be neither reasonable nor necessary to make the development acceptable in the context of the site's location within the Green Belt.

Other Matter

13. An interested party has objected to the proposed removal of condition no. 5 and the restoration of permitted development rights to Springfield Barn. However, this matter does not alter or outweigh my conclusion on the main issue above.

Conditions

14. In addition to the removal of condition no. 5, I have not re-imposed conditions nos. 1, 4, 6, 9, 10, 11, 12 and 13 of the original permission as these relate to the alteration/construction of the original barn as converted and therefore are no longer necessary.
15. I note the appellants final comments that the remaining conditions of the original permission are not necessary. However, given the location of the appeal property and the sensitivity of the landscape around it, I have re-imposed necessary conditions nos. 2, 3, 7 and 8 as suggested by the local planning authority with a minor change to condition no. 7 to reflect that the curtilage of the dwelling on the approved plan is now edged in red, not green. I have done this in the interests of clarity, the character and appearance of the area, and the openness and purposes of the Green Belt. These conditions have also been re-numbered as suggested by the local planning authority to avoid any potential confusion.

Conclusion

16. For the reasons set out above I conclude that the appeal should be allowed.

C Coyne

INSPECTOR

¹ The use of conditions in planning permissions.

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in complete accordance with the approved plans and specifications except as may be required by other conditions unless otherwise agreed in writing by the Local Planning Authority.
- 2) Trees within or on the boundary of the site shall be neither felled, topped or lopped except with the prior written approval of the Local Planning Authority nor shall they be damaged or killed by the application of toxic or injurious substances.
- 3) The curtilage of the dwelling shall be restricted to the area edged red on the approved plan.
- 4) Notwithstanding the submitted plans, this approval shall not relate to the conservatory/garden room (coloured green on the approved plans) which should be deleted.