



Appeal Decision

Site visit made on 16 June 2021

by C Osgathorp BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 July 2021

Appeal Ref: APP/G2245/W/21/3269799

Land West of The Round House, Spode Lane, Cowden, Kent TN8 7HG

- 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 Piers Clifford against the decision of Sevenoaks District Council.
 - The application Ref 19/03066/CONVAR, dated 29 October 2019, was refused by notice dated 4 December 2020.
 - The application sought planning permission for continued use of the site as an independent unit of residential accommodation comprising a swimming pool and ancillary buildings without complying with conditions attached to planning permission Ref T/APP/C/90/G2245/000021/22/P6, dated 14 August 1991.
 - The conditions in dispute are Nos 1 and 2 which state that:
 1. *"the use hereby permitted shall only be carried on by Mr or Mrs P Clifford and shall be for the limited period during which Mr or Mrs P Clifford own and occupy the appeal site. When the ownership and occupation of the appeal site by Mr or Mrs P Clifford ceases the use hereby permitted shall also cease"*.
 2. *"the use hereby permitted shall not be undertaken between 30 September in any one year and 30 April in the following year"*.
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Decision

1. The appeal is allowed and planning permission is granted for continued use of the site as an independent unit of residential accommodation comprising a swimming pool and ancillary buildings at Land West of The Round House, Spode Lane, Cowden, Kent TN8 7HG, without compliance with condition numbers 1 and 2 previously imposed on planning permission Ref T/APP/C/90/G2245/000021/22/P6, dated 14 August 1991.

Background and Main Issues

2. The original planning permission was granted on appeal in August 1991 (the 1991 planning permission) and related to the continued use of the site as an independent unit of residential accommodation comprising a swimming pool and ancillary buildings. The current appeal scheme seeks the removal of Conditions Nos 1 and 2 attached to the 1991 planning permission.
3. The previous Inspector described the ancillary buildings as a brick-plinthed wooden clad structure providing living accommodation, and a brick-built structure containing a sink, refrigerator, water heater, domestic equipment, and W.C. A third building housing filtration plant for the swimming pool was

also referred to. For clarity, I have referred to these buildings as the 'ancillary buildings' in this decision.

4. In accordance with advice in the Planning Practice Guidance¹, I shall only consider the disputed conditions that are subject of the application. I have considered the appeal solely on the basis of the residential use of the ancillary buildings referred to in the 1991 planning permission.
5. I am aware that alterations have been carried out on the appeal site since the granting of the 1991 planning permission. I note that a wooden framed structure with a yellow tarpaulin roof has been erected above the ancillary buildings, and timber clad walls removed above the brick-plinth to create an open-side covered space containing seating and a woodworking space. The brick-built structure providing a sink and cooking facilities has been retained. The building housing the filtration plant for the swimming pool has been removed.
6. I observed that there is a separate timber clad building adjacent to the eastern boundary, which currently contains cooking and sleeping facilities. Furthermore, a small shed is located to the rear of the ancillary buildings and contains a mattress on the floor and a bunk bed. A small caravan is also stationed on the site. Given the changes carried out to the ancillary buildings, this may make the current appeal an academic exercise. Nevertheless, any alleged breach in planning control would be a matter outside this appeal and it would be for the Council to consider whether the 1991 planning permission has been overtaken by events. I make no judgement in this regard.
7. Condition No 1 of the 1991 planning permission states: "the use hereby permitted shall only be carried on by Mr or Mrs P Clifford and shall be for the limited period during which Mr or Mrs P Clifford own and occupy the appeal site. When the ownership and occupation of the appeal site by Mr or Mrs P Clifford ceases the use hereby permitted shall also cease".
8. Condition No 2 states: "the use hereby permitted shall not be undertaken between 30 September in any one year and 30 April in the following year".
9. The main issues in this appeal are the effect of the proposed removal of Condition Nos 1 and 2 on:
 - the openness of the Green Belt; and,
 - the landscape character of the High Weald Area of Outstanding Natural Beauty.

Reasons

Green Belt

10. The appeal site is located in the countryside within the Green Belt. The previous Inspector noted that the appeal did not involve the erection of a new dwelling, and he stated that "*no interests of acknowledged importance would be harmed if the present quasi-recreational/residential use was allowed to continue until such time as you relinquish your interests in the land and for a limited period each year*". Furthermore, the Inspector stated "*the development at the appeal site has existed for some years and although the local planning*

¹ Planning Practice Guidance ID: 21a-031-20180615

authority suggest that the use would be detrimental to the character of the Green Belt this view has not been developed with specific argument neither do they suggest that the development is per se unsightly or harmful to the appearance of the countryside and the Area of Great Landscape Value”.

11. Whilst I note that the appeal decision refers to “*compassionate grounds for allowing the use to continue*” it does not explain the precise reasons for the imposition of the conditions, i.e. the harm that would arise should the conditions not be attached. Nevertheless, the previous decision was made nearly 30 years ago, and I have considered the appeal on the basis of the current national and local planning policies.
12. The National Planning Policy Framework (the Framework) states that the Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The essential characteristics of Green Belts are their openness and permanence. Openness is the absence of development and can have both spatial and visual aspects. Paragraph 144 of the Framework states that substantial weight should be given to any harm to the Green Belt. Policy LO8 of the Sevenoaks District Council Local Development Framework Core Strategy (2011) (the Core Strategy) states that the extent of the Green Belt will be maintained.
13. Condition No 1 does not specify what shall happen to the ancillary buildings on the cessation of the use by Mr or Mrs P Clifford. It does not require the buildings to be removed. Consequently, the ancillary buildings subject of the 1991 planning permission could remain on the site in perpetuity, and so the proposed removal of the conditions would not result in any spatial loss of Green Belt openness.
14. Regarding visual openness, as noted above, the conditions do not require the removal of the buildings on cessation of the use, and so the deletion of the conditions would not result in additional built form being visible in the Green Belt. The comings and goings associated with the year-round occupation of the ancillary buildings for residential accommodation would be minimal given its small-scale nature. Furthermore, whilst I acknowledge that they would not be in leaf year-round, the mature trees surrounding the site provide a high degree of screening and visual containment, which would restrict visibility of associated parking and domestic paraphernalia. Taken together, these factors lead me to conclude that the removal of Condition Nos 1 and 2 would not cause visual loss of openness in the Green Belt.
15. For the above reasons, I conclude that the proposal would preserve the openness of the Green Belt. It would therefore accord with Policy LO8 of the Core Strategy and Chapter 13 of the Framework, which seek to protect the openness of the Green Belt.

High Weald Area of Outstanding Natural Beauty

16. As discussed above, the conditions attached to the 1991 planning permission do not require the ancillary buildings to be removed on cessation of the use and so they could remain on the appeal site in perpetuity. The appeal site is visually contained due to the screening provided by the mature trees surrounding the site, and this ensures that the use of the ancillary buildings for

residential accommodation on a permanent basis would not cause harm to the landscape and scenic beauty of the AONB.

17. I therefore conclude that the proposal would not cause harm to the landscape character of the AONB. It would therefore accord with Policies EN1 and EN5 of the Sevenoaks Allocations and Development Management Plan 2015 and Policy LO8 of the Core Strategy, which, amongst other things, seek to conserve the landscape character of the AONB. The proposal would also accord with paragraph 172 of the Framework which states that great weight should be given to conserving and enhancing landscape and scenic beauty in AONB.

Other Matters

18. I have had regard to the letters of objection from local residents. The Council states that the issues arising from the alleged commercial operations and operational development are not relevant considerations for this application to remove conditions, and these matters would be considered by any future planning enforcement investigation or for the appropriate planning application to be submitted. I agree. I have determined the appeal solely on the basis of the removal of the conditions associated with the 1991 planning permission and not in relation to any alleged operational development or commercial activities.
19. Regarding noise, the continued use of the site for residential accommodation is compatible with the nearby residential uses. The Environmental Protection Act 1990 provides legislative controls outside the planning system to protect neighbouring occupiers from statutory nuisance, including noise and odour. Matters including fire risk, electricity supply and removal of trees are not within my jurisdiction for this appeal.
20. The continued use of the site for residential accommodation would have no adverse effect on highway safety given the low number of vehicular movements that would be generated. Issues relating to the use of the driveway are a civil matter.
21. I am not aware of any listed buildings close to the appeal site, and none have been referred to by the Council.

Conclusion

22. In context of the current national and local planning policies, I find that Condition Nos 1 and 2 of planning permission Ref T/APP/C/90/G2245/000021/22/P6, dated 14 August 1991, are not necessary or reasonable and so they do not accord with paragraph 55 of the Framework. I therefore conclude that the appeal should be allowed.

C Osgathorp

INSPECTOR