



Appeal Decision

Site Visit made on 9 August 2021

by **S M Holden BSc (Hons) MSc CEng MICE CTPP FCIHT MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12 August 2021

Appeal Ref: APP/M3645/W/20/3264112

Chellows Barn, Chellows Lane, Crowhurst, Lingfield RH7 6LU

- 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 & Mrs Mark & Lisa Willoughby against the decision of Tandridge District Council.
- The application Ref TA/2020/1578, dated 4 September 2020, was refused by notice dated 30 October 2020.
- The application sought planning permission for demolition of existing outbuildings and erection of detached dwelling without complying with conditions attached to planning permission Ref TA/2016/207, dated 12 May 2016.
- The conditions in dispute are:
 - No 9 which states: *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 form of enlargement of the dwelling hereby permitted shall be carried out without the express permission of the District Planning Authority.*
 - No 10 which states: *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 garages, sheds, greenhouses or other ancillary domestic outbuildings shall be erected without the express permission of the District Planning Authority.*
 - No 11 which states: *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 fences, gates, walls or other means of enclosure shall be erected within or enclosing the curtilage of the dwellinghouse hereby permitted, other than the details approved by the District Planning Authority in respect of condition 4 of this permission.*
- The reasons given for the conditions are:
 - No 9: *To retain control over the habitable accommodation at this property and ensure that the dwelling is not enlarged contrary to the District Planning Authority's restrictive policy for new dwellings in the Metropolitan Green Belt and to control further development of the site in the interests of the character of the area, in accordance with Policy CSP18 of the Tandridge District Core Strategy 2008 and Policies DP1 and DP13 of the Tandridge Local Plan: Part 2 – Detailed Policies 2014.*
 - No 10: *To preserve the openness of the Green Belt/to control further development of the site in the interests of the character of the area in accordance with Policy CSP18 of the Tandridge District Core Strategy 2008 and Policies DP7, DP10 and DP13 of the Tandridge Local Plan: Part 2.*
 - No 11: *To control further development of the site in the interests of the character of the area and to preserve the openness of the Green Belt in accordance with Policy CSP18 of the Tandridge District Core Strategy 2008 and Policies DP7, DP9, DP10 and DP13 of the Tandridge Local Plan: Part 2 – Detailed Policies 2014.*

Decision

1. The appeal is allowed and planning permission is granted for demolition of existing outbuildings and erection of detached dwelling at Chellows Barn, Chellows Lane, Crowhurst, Lingfield RH7 6LU in accordance with the application Ref: TA/2020/1578, dated 4 September 2020, without complying with conditions Nos 9 and 10 previously imposed on planning permission Ref TA/2016/207, dated 12 May 2016, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. In July 2021 a revised National Planning Policy Framework was published. I am satisfied that there were no revisions to government policy that have any bearing on my determination of this appeal. However, the paragraph numbers have changed, so I have referred to the amended ones in this decision.

Main Issue

3. The main issue is whether the conditions are necessary and reasonable having regard to local and national policy concerning development in the Green Belt.

Reasons

4. The appeal property relates to a dwelling which replaced a series of buildings associated with equestrian activities. The Council considered this to be an acceptable form of development within the Green Belt as the site was deemed to be previously developed land (PDL). The scheme therefore complied with Policy DP13 of the Tandridge Local Plan Part 2: Detailed Policies 2014 (Local Plan) and satisfied the test set out in paragraph 149 g) of the revised Framework. The Local Plan policy is consistent with the Framework which permits complete redevelopment of PDL provided that it would not have a greater impact on the openness of the Green Belt than the existing development.
5. In granting permission for the replacement dwelling the officer's report stated that the proposal would improve openness by tightening the built form and improving space around the building. The appellant states that the overall footprint of the buildings has been reduced from 3,949sq.ft. to 2,996sq.ft. This has not been contested by the Council and no information about the volume of the buildings previously on the site or the approved dwelling have been provided. Nevertheless, there can be little doubt that the approved scheme went beyond the Local Plan and Framework's requirements not to have a greater impact on openness than the existing development.
6. The Government attaches great importance to Green Belts. I therefore recognise the Council's desire to control future development on this site. However, the General Permitted Development Order (GPDO) makes it clear that certain forms of development are already deemed to have planning permission, subject to certain conditions. The GPDO does not explicitly exclude development in the Green Belt from these rights, whereas they are excluded in some other locations, such as within National Parks and conservation areas.
7. Nevertheless, the Council wished to ensure that the improvement to openness and consolidation of built form on the site were not lost over time. It therefore imposed 3 conditions removing a broad range of permitted development rights

including those relating to enlargements of the dwelling, erection of outbuildings and the extent and nature of boundary treatments. It is these restrictions which the appellant is now seeking to have removed.

8. Paragraph 56 of the revised Framework states that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Paragraph 54 of the revised Framework states that conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. The Planning Practice Guidance (PPG) advises that 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. Even though neither the Framework nor the PPG require exceptional circumstances to exist, they still require removal of permitted development rights to be supported by a clear justification. In the light of these provisions, I will address each of the conditions imposed in turn.

a) Extension and enlargement of the dwelling

9. The condition seeks to remove rights to any kind of enlargement of the dwelling. It does so without any reference to the particular sections of the GPDO. The scale of extensions and alterations that are permitted under Parts A, B, C and D of Schedule 2 are modest in scale and subject to detailed restrictions relating to height, size and relationship with the property's boundaries. Extensions permitted under Part AA are subject to a process of prior approval. This ensures that some control over future alteration of the building would remain with the Council and would give opportunities for representations from third parties to be considered as part of the decision making process.
10. In view of the size and scale of the replacement dwelling, it seems unlikely that any alteration constructed as permitted development would result in a disproportionate extension. Neither does it seem likely that the exercise of permitted development rights would result in the overall footprint of the building exceeding that which previously existed on the site. As such, condition 9 is not reasonable and there is insufficient justification for imposing it.

b) Garages and other ancillary domestic outbuildings

11. At the time the replacement dwelling was approved the Council considered the consolidation of the built form on the appeal site through the removal of previously existing buildings would represent an improvement of the site's openness. This appears to have been a determining factor in permitting the scheme to proceed.
12. From the limited information provided on the submitted plans and photographs it appears that 4 buildings, including stables and an open-sided barn have been replaced by a single dwelling which occupies an approximately U-shaped footprint. The new house, which appears to have been completed, occupies a generously proportioned plot with a good-sized rear garden. However, no ancillary buildings are shown on the submitted plan. Part E of the GPDO permits the erection of buildings incidental to the enjoyment of a dwelling house. It does not restrict the numbers of such buildings, but their location and size are restricted by the conditions set out in section E.1 of the GPDO.

13. I appreciate that the Council would not wish to see a proliferation of such buildings, resulting in them occupying more than 50% of the curtilage. However, the condition imposed by the Council has removed all the rights for erecting any building that is incidental to the enjoyment of the house. It is therefore insufficiently precise and has failed to have regard to the number or size of the buildings that previously occupied the site. In these circumstances it is unreasonable and fails to meet the statutory tests.

c) Fences, gates, walls or other means of enclosure

14. The site is along a rural lane with scattered dwellings in an area characterised open countryside, fields and agricultural buildings. Boundary treatments are therefore visible from the street and the surrounding countryside. The condition requiring approval of a landscaping scheme should ensure the implementation of appropriate boundary treatments. However, even if agreed and implemented accordingly, these may not be retained in perpetuity.
15. Given the rural nature of the area, it is particularly important that boundary treatments are sensitive and respect both the surrounding countryside of open fields and the street scene. Frontage boundaries in Chellows Lane include hedges, field gates and open accesses. The removal of permitted development rights is therefore needed to protect the rural character and appearance of the area. It will also ensure compliance with Policies CSP18 and CSP21 of the Tandridge District Core Strategy 2008 and Policies DP7 and DP9 of the Tandridge Local Plan: Part 2 – Detailed Policies 2014, which require development, including boundary treatments to respect the character and appearance of the area. The removal of permitted development rights is therefore justified, irrespective of the site's location within the Green Belt.

d) Findings

16. I have found that Condition 11 is reasonable and necessary to protect the rural character and appearance of the area. However, conditions 9 and 10 are neither necessary, reasonable nor sufficiently precise to meet the statutory tests. Their removal would not be harmful to the Green Belt. As such there is no conflict with Policies DP10 and DP13 of the Local Plan.

Conditions

17. 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 have imposed all those that remain relevant. If some have in fact been discharged, that is a matter that can be addressed by the parties. However, I have not imposed the standard time limit as the development has commenced.

Conclusion

18. I therefore conclude that the appeal should succeed, and a new planning permission granted.

Sheila Holden

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be carried out in accordance with the following approved drawings: pl 15-250-01 Rev.A/the red edged site plan, pl-15-250-02 Rev.A, pl 15-250-03 Rev.A, pl-15-250-04 Rev.A, pl 15-250-07 Rev.A, pl 15-250-08 Rev.A, pl 15-250-09 Rev.A, pl 15-250-11 Rev.A, pl 15-250-13 Rev.A, pl 15-250-14 Rev.A, pl 15-250-15 Rev.A, pl 15-250-16 Rev.A, and pl 15-250-17 Rev.A received on 15 February 2016, drawing number pl 15-250-10 Rev.B, received on 19th February 2016 and drawings numbered pl 15-250-05 Rev.B and pl 15-250-06 Rev.B received on 26 April 2016.
2. No development shall start until the existing buildings and sand school have been demolished. The land shall then be restored in accordance with details to be approved as part of the landscaping scheme submitted pursuant to condition 3. Thereafter there shall be only one dwelling within the area edged red on the site plan attached to the application.
3. No development shall start until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include:
 - Proposed finished levels or contours
 - Means of enclosure including fencing and gates
 - Restoration of land to the rear of the approved residential curtilage
 - Extent of hard surfaced areas
 - Hard surfacing materials
 - Refuse/cycle storage

Details of soft landscape works shall include all proposed and retained trees, hedges and shrubs, ground preparation, planting specifications and ongoing maintenance, together with details of areas to grass seeded or turfed. Planting schedules shall include details of species, plant sizes and proposed numbers/densities.

All new planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the completion or occupation of any part of the development (whichever is the sooner) or otherwise in accordance with a programme to be agreed. Any trees or plants (including those retained as part of the development) which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written consent to any variation. The hard landscape works shall be carried out prior to the occupation of the development.

4. No development shall start until full details of the materials to be used in the construction of the external surfaces of the dwelling hereby approved have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with these approved details.
5. Before the development hereby approved is occupied the solar photovoltaic panels as specified in the application details shall be installed and this system shall thereafter be retained in accordance with the approved details.

6. The development hereby permitted shall be carried out in accordance with the recommendations and mitigation measures set out in Section 6 of the Preliminary Ecological Appraisal and Bat Building Assessment report by Arbeco dated 15th January 2016. The precautionary working method statement should be submitted to the local planning authority and agreed prior to commencing any works on site to ensure that reptiles and great crested newts are protected.
7. Details of any external lighting shall be submitted to and approved by the local planning authority prior to any such provision on the site.
8. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any other order revoking and re-enacting that Order with or without modification) no fences, gates, walls or other means of enclosure shall be erected within or enclosing the curtilage of the dwellinghouse hereby permitted, other than the details approved by the local planning authority in respect of condition 3 of this permission.
9. No development shall start until details of sewage disposal have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with these approved details and completed before the dwelling is first occupied.
10. Before the development hereby approved is occupied the drainage works shall be completed in accordance with the approved plans and particulars.

End of schedule of Conditions