



Appeal Decision

Site Visit made on 15 July 2021

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 September 2021

Appeal Ref: APP/W4223/W/21/3271910

Edge End Farm, White Brook Lane, Greenfield OL3 7PH

- 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 Mr A Rigby against Oldham Metropolitan Borough Council.
 - The application Ref MMA/346092/21 is dated 11 January 2021.
 - The application sought planning permission for 'change of use of agricultural building to dwellinghouse including rebuilding of part of building which has collapsed (resubmission of PA/338670/16)' without complying with a condition attached to planning permission Ref PA/339551/17, dated 20 April 2017.
 - The condition in dispute is No 6 which states that: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting that Order with or without modification) no development in Classes A, B, C, D, E, F, G or H of Part 1, or Class A of Part 2, of Schedule 2 to that Order shall be carried out on the site without the prior written consent of the Local Planning Authority.
 - The reason given for the condition is: The Local Planning Authority considers it expedient, having regard to the density, type and appearance of the development, to regulate any future alterations/extensions to ensure that the character and appearance of the area are not detrimentally affected.
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Decision

1. The appeal is allowed and planning permission is granted for 'change of use of agricultural building to dwellinghouse including rebuilding of part of building which has collapsed (resubmission of PA/338670/16)' at Edge End Farm, White Brook Lane, Greenfield OL3 7PH, in accordance with the application Ref MMA/346092/21, dated 11 January 2021, without compliance with Condition No 6 previously imposed on planning permission Ref PA/339551/17, dated 20 April 2017, but subject to the remaining conditions imposed therein, so far as the same are still subsisting and capable of taking effect, as set out in the attached Schedule.

Preliminary Matters

2. The appeal is made against the Council's failure to give notice of its decision within the prescribed period. The Council's case and its putative reason for refusal are set out in its appeal statement. I consider the appeal on this basis.
3. The revised National Planning Policy Framework (the Framework) was published on 20 July 2021. The main parties have been provided with an opportunity to comment on the relevance of this revision to the Framework to their respective cases.

Background and Main Issue

4. The appeal site is located in an isolated position on sparse, upland slopes outside the settlement of Greenfield. Accessed by a long lane, it is described as a former farmhouse/weaver's cottage that fell into disrepair. There are no other dwellings or structures in the immediate vicinity of the site, but there are public footpaths on the hillside to the north, and views are possible from the dwelling to the settlement in the valley below. The site lies within the Green Belt.
5. Planning permission was granted in 2017 for conversion of the surviving structure to a dwellinghouse, including rebuilding where the structure had suffered historic collapse. On site, I saw that the building has been restored and is occupied as a dwellinghouse.
6. In granting permission, the Council imposed Condition No 6 which removed permitted development (PD) rights for development under several classes of Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO), including extensions (Class A), roof extensions and alterations (Classes B and C), porches (Class D), outbuildings (Class E), hard surfaces (Class F), chimneys and flues (Class G) and antennas and satellite dishes (Class H). PD rights have also been removed in respect of the erection, maintenance or alteration of a gate, fence, wall or other means of enclosure (Part 2, Class A).
7. The appellant seeks the removal of the condition on the grounds that there was no justification for its imposition on the basis that the site was located in the Green Belt. Having regard to this, and the reason given by the Council for imposing the condition, the **main issue** in this case is whether the disputed condition is necessary and reasonable to make the development acceptable in planning terms, having regard to the site's location in the Green Belt and the effect on the character and appearance of the area.

Reasons

Policy and Legislative Framework

8. Paragraph 56 of the Framework states that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. The Planning Practice Guidance (PPG) provides further advice in this respect, confirming that these six tests must all be satisfied each time a decision to grant planning permission subject to conditions is made.¹
9. Paragraph 54 of the Framework further states that planning conditions should not be used to restrict national PD rights unless there is clear justification to do so. The PPG adds that conditions restricting the future use of PD rights or changes of use may not pass the test of reasonableness or necessity. The scope of such conditions needs to be precisely defined, by reference to the relevant provisions in 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

¹ Paragraph: 003 Reference ID: 21a-003-20190723

require an application for planning permission are unlikely to meet the tests of reasonableness and necessity.²

10. Schedule 2, Part 1 of the GPDO sets out the permitted development rights for development within the curtilage of a dwellinghouse. These rights apply generally to all dwellinghouses, with specific exceptions for some classes. Rights under Classes A, B, E, G and H under Schedule 1, Part 1, for example, do not apply on Article 2(3) land. This is defined in the GPDO as, *inter alia*, land within a conservation area, an area of outstanding natural beauty, a National Park, and a World Heritage Site, but does not include land falling within the Green Belt.

Whether disputed condition is necessary

11. Given the specific areas of land included under Article 2(3), it can be surmised that the omission of land within the Green Belt from the list was intentional on the Government's part, and as a result, land within the Green Belt is regarded as no different in terms of the application of PD rights as land outside of it. Furthermore, the requirement of the Framework is that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. Therefore, the starting point is that PD rights should remain in place, even in the Green Belt, unless clear justification is advanced which is precisely defined and specific to the site.
12. The Council sets out that the condition was imposed because the permitted scheme involved a significant extension of the building by some 64%, which was demonstrated to have been historically present and was accepted as demonstrating very special circumstances so as to justify what would otherwise have been disproportionate additions over and above the size of the original building, and therefore inappropriate development in the Green Belt. The Council states that this increase was the 'maximum allowed in terms of not resulting in a disproportionate addition to the Green Belt'. In essence, therefore, the Council's concern is that extensions under PD would result in further disproportionate additions to the dwellinghouse and consequent adverse effect on the openness of the Green Belt and its purposes.
13. The basis for the Council's position that development has reached a maximum is unclear. I am provided with no policy or guidance which stipulates a maximum permissible size of extension within the Green Belt. I recognise that disproportionate additions are a form of inappropriate development. However, the majority of existing dwellings across the Green Belt retain and may exercise PD rights without reference to the effect on the openness of the Green Belt, even where extensions are proposed which, under a planning application, may be regarded as disproportionate. Many will also have been subject to previous extensions, as is the case with this dwellinghouse. The circumstances described by the Council are not therefore unique to the appeal site.
14. Moreover, as pointed out by my colleague Inspector in the appeal decision³ referred to me by the appellant, the fact that PD rights have not been removed for land in the Green Belt means that the Government's fundamental Green Belt aims of preventing urban sprawl by keeping land permanently open do not extend to preventing permitted development within a domestic curtilage. Given

² Paragraph: 017 Reference ID: 21a-017-20190723

³ APP/W4223/W/15/3100603

this position, and bearing in mind the limitations of the GPDO in terms of size and position of development permitted, I am not persuaded that the site circumstances are exceptional in this case, or that extensions to the dwellinghouse would have such an effect on the openness of the Green Belt or its purposes that removal of PD rights would be justified.

15. The Council further argues that PD rights are not afforded to dwellings which have been created through permitted changes of use under certain classes of Part 3 of Schedule 2 of the GPDO, including agricultural buildings under Class Q. However, the dwelling in this case was not created through any of these channels, but was granted planning permission. Therefore, these restrictions of the GPDO are not applicable in this case.
16. Despite the Council's focus on the impact on the Green Belt, the reason given on the decision notice for imposing the condition actually refers to protection of the character and appearance of the area. The Council advances further arguments that the simple, agricultural form of the dwellinghouse would be harmed should extensions be permitted.
17. The site is in a remote, isolated position on upland slopes. Access is via a long track with the building not seen until part way along it, and even then the dwelling is partially obscured by the undulating topography and appears as a very modest structure compared to the expansive hills which surround it. Public views of the site are limited to footpaths on higher ground to the north and long distance views from lower in the valley to the south.
18. In terms of character and appearance, the dwelling was approved as a single, rectangular structure that retained the general form and scale of a traditional, isolated agricultural barn or farmhouse. However, as evident from my site visit, the use of the building as a dwelling inevitably brings with it signs of domestic life, including a patio and garden, more windows, washing lines, storage sheds and car parking. Therefore, I see little substance in the Council's concerns that works under PD would harmfully erode the existing character of the building. In particular, minor works such as those under Classes C, D, G and H would be limited in size and form, and would have little bearing on the overall form or appearance of the dwellinghouse when viewed from the nearest vantage points. From further viewpoints, these minor works would be very difficult to discern on the dwellinghouse and would have little effect as a result. For these reasons, I see no justification for the removal of these PD rights.
19. Similarly, the now established domestic character of the site means outbuildings and areas of hardstanding would not be unexpected sights. I am mindful that these rights are limited to the curtilage of the dwellinghouse, and are subject to restrictions in terms of size and location which would still provide a level of protection that would prevent uncontrolled development beyond the extent of the original dwellinghouse.
20. Size and locational restrictions also exist with respect to extensions under Classes A and B. I also note the site has physical constraints in terms of the topography, and has had walls constructed tightly around the dwellinghouse itself, which would appear to limit the size of any potential extensions. The Council has not given any examples of potential extensions which it considers could be undertaken which would be harmful to the character and appearance of the dwellinghouse or the wider area. As set out above, the remote position of the site means that any extension would have limited effect on the overall

character of the surrounding area. Given these factors, I am not persuaded that the site circumstances are so exceptional or unique in nature that the removal of PD rights for development under Classes A, B, E and F is justified.

21. Finally, walls, gates and railings are common features of the countryside, even in remote areas, and several walls are already present within the site and along its access road. Given this, I see no reason to withhold the PD right under Part 2, Class A in respect of means of enclosure.
22. I note the Council's concerns regarding the likelihood of PD rights being exercised, in light of recent applications for similar development. However, as I have found their removal is neither warranted in terms of the effect on the Green Belt or the character and appearance of the area, the prospect of these rights actually being exercised is not a decisive consideration.
23. Policy 22 of the Oldham Joint Core Strategy and Development Management Policies document (November 2011) sets out the protection of the Green Belt, with Policies 9 and 20 setting out the aspirations for high quality design and environmental quality. These policies also align with the aims of the Framework. However, I am not persuaded by the Council's submissions that clear justification has been demonstrated to support the continued imposition of a condition which entails blanket removal of PD rights on the appeal site, an approach which runs contrary to the guidance of the PPG.
24. For the reasons set out, therefore, and with reference to the Framework and the guidance of the PPG, I do not find the condition to be reasonable or necessary to make the development acceptable in the context of the site's location within the Green Belt or in terms of protecting the character and appearance of the area.

Conclusion

25. It would appear that the original planning permission from 2017 has been implemented, but 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 remain relevant. In the event that some the conditions have in fact been discharged, that is a matter which can be addressed by the parties.
26. Therefore, for the reasons given above, I conclude that the appeal should be allowed.

K Savage

INSPECTOR

Schedule of Conditions

- 1) The development hereby approved shall be fully implemented in accordance with the approved plans and specifications;
 - Drawing no. 1596/4 received 22nd December 2016
 - Drawing no. 1596/6 received 22nd December 2016
 - Drawing no. 1596/5 received 22nd December 2016.
- 2) No development shall take place unless and until samples of the materials to be used on all external elevations, including the roof, of the proposed development, which match those of the existing building have been submitted to and approved in writing by the Local Planning Authority. The materials to be used throughout the development shall be consistent in terms of colour, size and texture with the approved samples.
- 3) The development hereby approved shall not be brought into use unless and until details of facilities for the storage and removal of refuse and waste materials have been submitted to and approved in writing by the Local Planning Authority and the agreed scheme has been fully implemented. Thereafter approved facilities shall at all times remain available for use.
- 4) The mullions, sills and heads to the windows and external doors of the development shall be in natural stone of a colour and texture to match the proposed stonework unless otherwise agreed in writing with the Local Planning Authority.