



Appeal Decision

Site Visit made on 23 August 2021

by Ian Radcliffe BSc(Hons) MRTPI MCIEH DMS

an Inspector appointed by the Secretary of State

Decision date: 14th September 2021

Appeal Ref: APP/M3645/W/21/3268614

Keepers Cottage, Keepers Corner, Burstow, Horley, Surrey RH6 9RR

- 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 M Cutter against the decision of Tandridge District Council.
 - The application Ref TA/2020/2195, dated 30 November 2020, was refused by notice dated 26 January 2021.
 - The application sought planning permission for demolition of existing buildings. Erection of a single storey dwelling without complying with conditions attached to planning permission Ref TA/2020/1472, dated 19 October 2020.
 - The conditions in dispute are Nos 14 & 15 which state:
Condition 14: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification) no form of enlargement of the dwellings hereby permitted shall be carried out without the prior permission in writing of the Local Planning Authority.
Condition 15: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 1995 (or any order revoking and re-enacting that Order with or without modification) no garages, sheds, greenhouses or other ancillary domestic buildings shall be erected without the express permission of the Local Planning Authority.
 - The reasons given for the conditions are:
Condition 14: To control further development of the site in the interests of the character of the area and amenities of nearby properties, in accordance with Policy CSP18 of the Tandridge District Core Strategy 2008 and Policy DP7, DP10 and DP13 of the Tandridge Local Plan: Part 2 – Detailed Policies 2014.
Condition 15: To preserve the openness of the Green Belt / to control further development of the site in the interests of the character of the area and amenities of nearby properties, in accordance with Policy CSP18 of the Tandridge District Core Strategy 2008 and Policy DP7, DP10 and DP13 of the Tandridge Local Plan: Part 2.
-

Decision

1. The appeal is allowed and planning permission is granted for demolition of existing buildings and erection of a single storey dwelling at Keepers Cottage, Keepers Corner, Burstow, Horley, Surrey RH6 9RR in accordance with the application Ref TA/2020/2195, dated 30 November 2020, without compliance with condition numbers 14 and 15 previously imposed on planning permission Ref TA/2020/1472, dated 19 October 2020 and subject to the conditions in the schedule at the end of this decision.

Preliminary Matter

2. On 20 July 2021 a revised National Planning Policy Framework ('the Framework') was issued replacing the version of the Framework published in 2019. However, other than paragraph numbering, there are no changes of note to those parts of the Framework referred to by the parties.

Main Issue

3. The demolition of buildings and erection of a bungalow on the site has not yet taken place. The application sought the removal of conditions 14 and 15. The reasons that the Council gave in its reason for refusal of the application included that the conditions are necessary to protect the character of the area and prevent sprawl. Having read the Council's officer report on the application and visited the site, openness and the consequent absence of urban sprawl is the defining characteristic of the rural landscape in which the appeal site is located.
4. The main issue therefore in this appeal is whether, having regard to the location of the appeal site within the Green Belt and openness, it is reasonable and necessary to remove permitted development rights in relation to the enlargement of the bungalow for which permission has been granted and in relation to the provision of buildings within its curtilage.

Reasons

5. The appeal site is a plot of land set within an open landscape of fields enclosed by low hedges within the Green Belt. It is located next to the road that connects Keepers Corner to Copthorne and is occupied by a variety of single storey buildings, an area of concrete hardstanding and a shipping container. The rear part of the site is undeveloped.
6. The National Planning Policy Framework ('the Framework') advises that the redevelopment of previously developed land which would not have a greater impact on the openness of the Green Belt than the existing development is not inappropriate development in the Green Belt. Policies DP10 of the Tandridge Local Plan: Part 2 – Detailed Policies 2014 relates to the Green Belt and policy DSP13, amongst other matters, relates to the redevelopment of previously developed land in the Green Belt. Both are consistent with the approach of the Framework.
7. The single storey dwelling for which permission has been granted has a smaller volume and slightly smaller footprint than the two existing buildings on the site against which the application was assessed. As part of the planning permission the shipping container and other building would be removed from the site. As a result, if implemented, the approved development will reduce the spread of built form on the site, improve its permeability and reduce the amount of hardstanding. In comparison to the existing development against which it was judged, it would therefore improve the openness of the Green Belt. In so doing, and as previously developed land, it met one of the exceptions in national and local green belt planning policy to the position that new buildings in the Green Belt are inappropriate. As a result, it was found to comply with national and local Green Belt policy and permission was granted with conditions.
8. It was the case that Planning Practice Guidance (PPG) advised that conditions restricting permitted development rights rarely passed the test of necessity and

should only be used in exceptional circumstances. This is no longer the case. The wording of the relevant paragraph¹ in PPG was revised in 2019 and its guidance no longer leans heavily against the use of such restrictions. It has removed reference to 'rarely passing the test of necessity' and that such conditions 'should only be used in exceptional circumstances'. Instead, it simply guides that such conditions 'may not pass the test of reasonableness or necessity'. This is a significant change.

9. Any future enlargement of the bungalow, so long as it would not result in a disproportionate addition over and above its original size, would be supported by national planning policy and the development plan. However, fully exercising the limits of permitted development in terms of extensions on the two bedroom bungalow that has been approved, which is not constrained by a small plot, would considerably exceed what could reasonably be considered to be proportionate. Given that large, detached dwellings in the open countryside are considerably more desirable and valuable than modest dwellings in such locations, and the ample plot space around the bungalow, I consider that it is reasonably likely that permitted development rights in relation to the enlargement of the bungalow would be fully utilised.
10. If such rights were used, or a case was made on the basis of the unimplemented permission and associated permitted development rights, there would be scope to apply for a further planning permission to replace the building with one that would be of a more cohesive design that was not materially larger than the one it would replace. This could result in a dwelling on the site that is considerably larger than the bungalow for which permission has been granted.
11. For the site specific reasons given, I therefore find that in relation to the enlargement of the bungalow the potential harm to openness necessitates in this case condition 14 and the removal of related permitted development rights.
12. Condition 15 removes permitted development rights for outbuildings. The presence of only the detached bungalow, hardstanding to provide parking and access to the dwelling, and small terrace, limits the impact of the extant permission on openness. The large size of the plot surrounding the bungalow means that if permitted development rights were retained there is sufficient space for large outbuildings to be constructed. Given that, as explained above, a small dwelling on a large plot would be ripe for considerable enlargement it is likely that such commensurate development of the plot for ancillary buildings would occur. Such development would have a significant adverse impact on the openness of the area. Accordingly, for the reasons specific to the site that I have given, I find that with regard to outbuildings the potential harm to openness necessitates condition 15 and the removal of related permitted development rights.
13. Permitted development rights in relation to dwellings have not been withdrawn in the Green Belt by the General Permitted Development Order. As an appeal decision that has been referred to in support of the appeal shows when a proposed rear extension is similar in size or smaller to that which could be constructed under permitted development rights the presence of these rights can help justify a proposal. However, the issue though before me in this appeal

¹ Paragraph: 017 Reference ID: 21a-017-20190723

in relation to such rights is different: whether the removal of certain of these rights, which could allow the extension of a dwelling and erection of outbuildings covering up to half the total area of the bungalows curtilage, would be reasonable and necessary. As a result, reference to this decision has not altered my finding in relation to the appeal.

14. An application to remove a condition restricting similar permitted development rights that was allowed on appeal has also been referred to by the appellant. However, I note that the permission in question related to a garage conversion rather than a new, two bedroom bungalow on a large plot and that it was determined prior to the revision of PPG in relation to the restriction of such rights. Reference to this decision has therefore also not altered my finding in relation to the appeal.

Conclusions

15. For the reasons given above, I therefore conclude that conditions 14 and 15 are reasonable and necessary having regard to the location of the appeal site within the Green Belt and openness. They are also relevant to planning. In accordance with paragraph 54 of the Framework, I find that clear justification exists to restrict permitted development rights.
16. However, condition 14 refers to dwellings, rather than dwelling, and condition 15 refers to the 1995 GPDO rather than the 2015 GPDO. Consequently, I have concerns regarding the precision of these conditions which may adversely affect their enforceability. I will therefore reword both. Accordingly, I shall allow the appeal and re-impose conditions 14 and 15 in a revised form.
17. The guidance in Planning Practice Guidance makes 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 effect². 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 have in fact been discharged, that is a matter which can be addressed by the parties.

Ian Radcliffe

Inspector

Schedule

- 1) The development hereby permitted shall not start later than 3 years after 19 October 2020.
- 2) This decision refers to drawings numbered 7113-PD-01, 7113-PD-02 Rev B and 7113-PD-03 Rev A scanned on 20 August 2020. The development shall be carried out in accordance with these approved drawings. There shall be no variations from these approved drawings.
- 3) No development shall take place above ground level until details of the materials to be used in the construction of the external surfaces of the

² Paragraph: 040 Reference ID: 21a-040-20190723

dwellings hereby permitted 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.

- 4) No development shall take place above ground level until full details of both hard and soft landscape works (including SuDS) 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:
- means of enclosure
 - car parking layouts
 - other vehicle and pedestrian access and circulation areas
 - hard surfacing materials
 - minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting etc.).

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 be 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 which within a period of 5 years from the completion of the development die, are removed, or, in the opinion of the Local Planning Authority, become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the District Planning Authority gives written consent to any variation. The hard landscape works shall be carried out prior to the occupation of the development.

- 5) No trees or hedges shall be pruned, felled or uprooted during site preparation, construction and landscaping works [except as shown on the documents and plans hereby approved] without the prior written consent of the Local Planning Authority. Any retained trees or hedges which within a period of 5 years from the completion of the development die are removed, or, in the opinion of the Local Planning Authority, are dying, becoming diseased or damaged shall be replaced by plants of such size and species as may be agreed in writing with the Local Planning Authority.
- 6) No development shall start until the tree protection measures detailed within the approved Tree Protection Plan (CB/TPP/1691-03) and Arboricultural Method Statement have been implemented. Thereafter these measures shall be retained and any specified arboricultural supervision or staging of works strictly adhered to throughout the course of development, and shall not be varied without the written agreement of the Local Planning Authority.

In any event, the following restrictions shall be strictly observed unless otherwise agreed by the Local Planning Authority:

- a) No bonfires shall take place within the root protection area (RPA) or within a position where heat could affect foliage or branches.
- b) No further trenches, drains or service runs shall be sited within the RPA of any retained trees.
- c) No further changes in ground levels or excavations shall take place within the RPA of any retained trees.
- 7) Details of any external lighting; including details of the lighting units and light spread, shall be submitted to and approved by the District Planning Authority in writing prior to any such provision on the site.
- 8) The development hereby approved shall not be first occupied unless and until space has been laid out within the site in accordance with the approved plans for vehicles to be parked and for vehicles to turn so that they may enter and leave the site in forward gear. Thereafter the parking and turning areas shall be retained and maintained for their designated purposes.
- 9) The development hereby approved shall not be occupied unless and until the proposed dwelling is provided with a fast charge socket (current minimum requirements - 7 kw Mode 3 with Type 2 connector - 230v AC 32 Amp single phase dedicated supply) in accordance with a scheme to be submitted and approved in writing by the Local Planning Authority and thereafter retained and maintained to the satisfaction of the Local Planning Authority.
- 10) The development hereby approved shall not be first occupied unless and until the following facilities have been provided in accordance with the approved plans for the secure parking of bicycles within the development site, and thereafter the said approved facilities shall be provided, retained and maintained to the satisfaction of the Local Planning Authority.
- 11) No development shall commence until a Construction Transport Management Plan, to include details of:
 - (a) parking for vehicles of site personnel, operatives and visitors
 - (b) loading and unloading of plant and materials
 - (c) storage of plant and materials
 - (d) HGV deliveries and hours of operation
 - (e) measures to prevent the deposit of materials on the highwayhas been submitted to and approved in writing by the Local Planning Authority. Only the approved details shall be implemented during the construction of the development.
- 12) The development hereby permitted shall be carried out in accordance with the Sustainability and Energy Statement created by 'Bluesky Unlimited' dated 26 June 2020 and scanned in on 20 August 2020.
- 13) The development hereby permitted shall be carried out in accordance with the recommendations and mitigation measures set out in Sections 11 and 14 of the Ecological Impact Assessment created by 'Naïve Ecology' dated 06 July 2020 and scanned in on 20 August 2020.
- 14) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (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.

- 15) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (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.