



Appeal Decision

Site visit made on 21 September 2021

by Paul Cooper MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 October 2021

Appeal Ref: APP/R0660/W/21/3275257

Brook Cottage, Chapel Lane, Mere, Cheshire WA16 6PP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr & Mrs J & R Hassett against the decision of Cheshire East Council.
 - The application Ref 20/5231M, dated 22 November 2020, was approved on 4 March 2021 and planning permission was granted subject to conditions.
 - The development permitted is proposed conversion of existing two storey outbuilding to a separate domestic dwelling.
 - The conditions in dispute are Nos 4 & 5 which state that: (4) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking or reenacting that order), no development (as defined by Section 55 of the Town and Country Planning Act 1990) as may otherwise be permitted by virtue of Class A, Class AA, Class B or Class E of Part 1, Schedule 2 of the Order shall be carried out on the dwellinghouse hereby permitted. (5) Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking or reenacting that order), no development (as defined by Section 55 of the Town and Country Planning Act 1990) as may otherwise be permitted by virtue of Class E of Part 1, Schedule 2 of the Order shall be carried out within the curtilage of the dwellinghouse known as 'Brook Cottage'.
 - The reason given for the conditions is : (4) & (5) : To ensure continued control over the extent of further building on the site having regard to the circumstances of the application and in the interests of the openness of the Green Belt.
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Decision

1. The appeal is allowed, and planning permission is granted for the conversion of two storey outbuilding to a separate domestic dwelling at Brook Cottage, Chapel Lane, Mere, Cheshire WA16 6PP in accordance with the application Ref 20/5231 dated 22 November 2020 without compliance with condition numbers 4 and 5 but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect.

Background and Main Issue

2. The conditions in dispute relate to the removal of permitted development (PD) rights, and the appellant seeks to remove these conditions. The Council state in the reason for the conditions, that it is in order to protect the openness of the Green Belt having regard to the circumstances of the application.
3. Given the above, the main issue in this appeal is whether or not the conditions are necessary in protecting the openness of the Green Belt.

Reasons

4. Conditions 4 & 5 remove elements of PD rights to both Brook Cottage and the new residential development. PD rights do not differentiate whether a site is in or out of the Green Belt. Furthermore, there is no requirement within the terms to test whether a proposed development would be inappropriate or impact the character or openness of the Green Belt.
5. Paragraph 54 of the National Planning Policy Framework (the Framework) states that planning conditions should not be used in order to restrict national PD rights unless there is a clear justification to do so. The Planning Practice Guidance (PPG) set out that conditions restricting the future use of PD rights may not pass the test of reasonableness or necessity.
6. The original consent relates to the use of an outbuilding for residential use. The removal of the conditions would allow future occupiers to increase the built form without the need for planning permission, within certain limitations. Given the site circumstances and the nature of the locality, I am satisfied that development that could be carried out under PD rights would not be widely conspicuous in the wider area. The Council has not demonstrated that the character of Brook Cottage or the new residential development require special protection to the extent that PD rights should be withdrawn.
7. There is no evidence before me that the buildings are statutorily or locally listed or that any further extensions or outbuildings that could be constructed under permitted development rights would have any significant harm on the heritage of the buildings.
8. I acknowledge the Council's desire to control future development within the appeal site due to its Green Belt location. However, having regard to paragraph 55 of the Framework and the PPG, as well as the context of the appeal site, the Council has not clearly justified the need for the conditions within this location. There is no evidence before me that the planning application would have been refused without the conditions being imposed.
9. Therefore, I consider that imposing the conditions for the reasons given by the Council, do not constitute the 'clear justification' referred to in the Framework.
10. Both main parties have drawn my attention to appeal decisions that support their position. Limited information has been submitted with regards to these decisions and I am unable to directly compare them to the scheme before me. In any event, I have determined the appeal on its individual merits.
11. Accordingly, I consider that conditions 4 and 5 are not reasonable or necessary in the interests of the character and openness of the Green Belt. The removal of these conditions would not conflict with the purposes of including land within the Green Belt.

Conclusion

12. In the light of the above, and mindful that I am not creating a new approval but rather that my decision is to be read in tandem with the approval notice dated 4 March 2021, I conclude that the appeal should be allowed, and the approval varied by the deletion of Condition 4 and Condition 5.

Paul Cooper

INSPECTOR