
Appeal Decision

Site Visit made on 9 November 2021

by Luke Simpson BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 December 2021

Appeal Ref: APP/G2245/D/21/3272870

Wildwood, Maidstone Road, Seal TN15 0EH

- 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 T. Moore against the decision of Sevenoaks District Council.
 - The application Ref 20/03478/CONVAR, dated 18 November 2020, was refused by notice dated 26 January 2021.
 - The application sought planning permission for 'Single storey extension to provide home gym and cinema/media room to allow introduction of single storey rear extension to garage / annexe building, first floor side extension to the west, loft conversion with rooflights and alteration to fenestration' without complying with a condition attached to planning permission Ref 19/03364/HOUSE, dated 8 April 2020.
 - The condition in dispute is No 2 which states that:
Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order amending, revoking and reenacting that Order) no enlargement, improvement or other alteration permitted by Class A, C, D or E of Part 1 of Schedule 2 of the 2015 Order (as amended), shall be carried out or made to the dwelling without the grant of a further planning permission by the local planning authority.
 - The reason given for the condition is: 'To prevent inappropriate development in the Green Belt as supported by GB1 of the Sevenoaks Allocations and Development Management Plan'.
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Decision

1. The appeal is allowed and planning permission is granted for single storey extension to provide home gym and cinema/media room to allow introduction of single storey rear extension to garage / annexe building, first floor side extension to the west, loft conversion with rooflights and alteration to fenestration at Wildwood, Maidstone Road, Seal, TN15 0EH in accordance with the application Ref 20/03478/CONVAR dated 18 November 2020, without compliance with condition number 2 previously imposed on planning permission Ref 19/03364/HOUSE dated 8 April 2020 and subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of planning permission reference 19/03364/HOUSE dated 8 April 2020.
 - 2) 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 enlargement,

improvement or other alteration permitted by Class A or E of Part 1 of Schedule 2 of the 2015 Order (as amended), shall be carried out or made to the dwelling at any time.

- 3) No development shall be carried out on the land until full details of tree protection measures for the east of the site have been submitted to and approved in writing by the local planning authority. The details shall include:
 - Type of tree protection fencing,
 - A site plan identifying the extent of the protection measures,
 - A timetable of implementation of the protection measures.The approved protection measures shall be implemented prior to the commencement of the development and maintained for the duration of the development.
- 4) Prior to reaching slab level both hard and soft landscape works shall be submitted to and approved in writing by the local planning authority. Those details shall include:- planting plans (identifying existing planting and trees, plants and trees to be retained and new planting and trees),-written specifications (including cultivation and other operations associated with tree, plant and grass establishment),-schedules of new plants and trees (noting species, size of stock at time of planting and proposed number/densities where appropriate), and-a programme of implementation. If any part of the approved landscaping scheme is removed, dies, becomes severely damaged or diseased within five years of completion of the development shall be replaced with the same species or an approved alternative to the satisfaction of the Local Planning Authority within the next planting season. The approved landscaping shall be implemented prior to first occupation of the development hereby approved and in accordance with the approved landscaping scheme
- 5) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used on the existing building.
- 6) The development hereby permitted shall be carried out in accordance with the following approved plans and details: 3063-19-PL107 P5, 3063-19-PL106 P6, 3063-19- PL103 P5.

Preliminary Matters

2. On 20 July 2021 the Government published a revised version of the National Planning Policy Framework (the Framework). Accordingly, both main parties were invited to provide representations in relation to the revised Framework. I have taken these representations into account and have had regard to the revised Framework in considering this appeal.

Background and Main Issue

3. The Council granted planning permission under application reference 19/03364/HOUSE (the Original Permission) for various extensions to the host property, subject to a condition removing permitted development rights for: extensions to the dwelling; alterations to the roof; and development within the curtilage of the dwelling. The reason given for the condition is to prevent inappropriate development in the Green Belt. The Council's Officer Report suggests that the reason for the condition is also to protect the openness of the Green Belt.

4. The appellants, however, object to the condition on the basis that they consider that there are no exceptional circumstances which justify the removal of permitted development rights (a phrase used in a previous iteration of the Planning Practice Guidance).
5. Given the above, the main issue in this appeal is whether or not the condition is reasonable and necessary in the interests of preserving the openness of the Green Belt.

Reasons

6. The Planning Practice Guidance (PPG) explains how 'In deciding an application under section 73, the local planning authority must only consider the disputed condition/s that are the subject of the application – it is not a complete re-consideration of the application. A local planning authority decision to refuse an application under section 73 can be appealed to the Secretary of State, who will also only consider the condition/s in question' (Reference ID: 21a-031-20180615). It is therefore not for me to 'go behind' the Original Permission but to determine whether disputed condition 2 serves a useful function in the present. However, in doing so, it is relevant to consider the context of the Original Permission.
7. The Council, in granting the Original Permission, concluded that the proposed development was inappropriate development. However, in granting planning permission the Council concluded that very special circumstances existed to justify the development within the Green Belt. The appellants assert that the Council erred in reaching the conclusion that the development was 'inappropriate development' and that the removal of permitted development rights, under the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO), was unnecessary.
8. Local Plan (2015)¹ Policy GB1 states that proposals to extend existing dwellings in the Green Belt will be permitted subject to various criteria. Both main parties agree that Criteria (a) and (b) are complied with. Criterion (c) states in part that proposals for extensions to dwellings in the Green Belt should not result in an increase of more than 50% above the floorspace of the original dwelling, nor any outbuildings within 5 metres of the dwelling.
9. Framework Paragraph 149 states that the construction of new buildings should be regarded as inappropriate in the Green Belt unless certain exceptions apply. Exception (c) refers to 'the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building'. The appellant asserts that the extensions would comprise an approximately 40% increase in floorspace.
10. Nevertheless, a consideration of whether additions would be 'disproportionate' goes beyond size alone: any numerical threshold is inevitably crude given such an assessment entails visual aspects also. In that context, the development approved by the Council under the original permission has a degree of subservience to the original building. Nevertheless, its footprint is extensive, and in visual terms the effect of the development proposed would be significant. It is clear therefore that the development is at the threshold of disproportionality.

¹ Sevenoaks District Council Local Plan – Allocations and Development Management Plan (2015)

11. Within this context, it is necessary to consider each class of permitted development referred to in Condition 2, in order to establish whether development under that class, when combined with the extensions approved under the Original Permission, could be harmful to the openness of the green belt (and therefore whether it is legitimate to exercise control in respect of them by virtue of condition). The appeal site is located within the Kent Downs Area of Outstanding Natural Beauty (AONB). AONB are defined within the GPDO (2015) as Article 2(3) Land, where permitted development rights are typically more constrained than they would otherwise be. In assessing each Class, I have taken this constraint into account.
12. The host property is a large building which is elevated within the surrounding landscape, such that it is visually prominent within the immediately surrounding area, including when viewed from neighbouring gardens. The land surrounding the dwelling comprises substantial gardens, which includes various outbuildings and other small-scale development. In assessing each class of development I have taken this context into account in considering the effect on the visual aspect on openness. Openness also comprises a spatial aspect, which I have also considered.
13. Under Class A, single storey extensions, up to a maximum depth of 4 metres, could be constructed to the rear of the dwelling. Given the large size of the existing dwelling, and in particular extensive width, extensions under Class A, in combination with the proposed development, have the potential to harm the openness of the Green Belt both spatially and visually. This is because, despite being single storey, the extensions possible under Class A could be substantial in size and would likely be visually prominent, given the elevated position of the host property. As such, I consider it reasonable and necessary in this instance to remove permitted development rights under Class A to preserve the visual and spatial openness of the Green Belt.
14. Class C, relates to alterations to the roof of a dwellinghouse. Development under this class would not be harmful to the openness of the Green Belt given the limitations set out under Class C. In particular, alterations to the roof would be limited to a protrusion of no more than 0.15m from the existing roof plane. As such, the removal of permitted development rights under Class C is neither reasonable nor necessary.
15. Class D, relates to the erection or construction of a porch outside any external door of a dwellinghouse. This class stipulates that such extensions must not exceed 3 square metres in ground area and must not be more than 3 metres above ground level, amongst other requirements. Given the limited size of extensions possible under Class D, in combination with the proposed development, extensions under this class would not harm the openness of the Green Belt. As such, the removal of permitted development rights under Class D is neither reasonable nor necessary.
16. Class E, relates to buildings incidental to the enjoyment of a dwellinghouse. Under this class the appellants could feasibly construct a fairly substantial building or buildings within the curtilage of the dwelling. The curtilage of the dwelling is large and there are already a number of buildings within it. There is an additional restriction under Class E, applying to development in an AONB, which would limit the ground area of such buildings located beyond 20 metres from the dwelling to a ground area of no more than 10 square metres.

However, within 20 metres there is no such restriction, other than a requirement that the development does not exceed more than 50% of the total area of the curtilage.

17. For these reasons, it is clear that under Class E, a fairly substantial building, or buildings, could be erected within the curtilage of the dwelling. Indeed, the appellants have indicated that one of the reasons for the application is to allow for the prospect of the future erection of an outbuilding within 20 metres of the dwelling. Such development, given its potential size, in combination with the proposed development, could be harmful to the openness of the Green Belt, both spatially and visually. As such, a condition removing permitted development rights under Class E is reasonable and necessary. The absence of permitted development rights does not prevent such development from coming forward, but rather would require that an application be made to the Council and the effects assessed. My decision does not pre-empt any such assessment.
18. The appellants have referred to various appeal decisions and a Council planning permission, which relate to the removal of permitted development rights in the Green Belt. However, the precise site-specific circumstances and the evidence base of each of these cases are not before me. As such, none of these decisions alter my conclusions in relation to this appeal.
19. The appellants also suggest that other dwellings within the local area are not subject to the same restrictions on permitted development. However, no evidence has been provided to indicate that they have been granted permission to be extended to the extent which is proposed in this case. As such, this consideration does not alter my conclusions.
20. I accept that the GPDO 2015 (as amended) does not include additional restrictions for development of land within the Green Belt. However, in this case, the absence of the disputed condition may allow for substantial extensions to the existing dwelling in addition to those approved under the Original Permission, and I have found that it is therefore reasonable and necessary in this context to remove certain permitted development rights.
21. In summary, in its current form, disputed Condition 2 is neither reasonable nor necessary given that it is not necessary to remove permitted development rights under Classes C and D of Part 1 of Schedule 2 the GPDO 2015 (as amended). This is because development under these classes, in combination with the proposed development, would preserve the openness of the Green Belt.
22. However, a condition removing permitted development rights under Classes A and E is necessary and reasonable, in order to preserve the openness of the Green Belt and consequently, ensure compliance with Local Plan (2015) Policy GB1. Without such a condition the proposed development, in combination with future development under these classes, may not preserve the openness of the Green Belt. Indeed, Framework Paragraph 148 states that substantial weight should be given to any harm to the Green Belt.

Conditions

23. I have concluded that Condition 2 as attached to the Original Permission is neither reasonable nor necessary. However, development under GPDO Classes A and E, may not preserve the openness of the Green Belt. As such I am

removing condition 2 and substituting it with a condition which withdraws permitted development rights under Classes A and E. This condition meets the tests set out within the Framework and is enforceable, precise, relevant, necessary and reasonable in all other respects.

24. I am therefore allowing the appeal but not in the terms sought by the appellants.
25. The guidance in the 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 effect. 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. I have amended the time limit to refer to the Original Permission.

Conclusion

26. For the reasons given above, I conclude that the appeal should be allowed. I grant a new planning permission substituting the disputed condition and restating those undisputed conditions that are still subsisting and capable of taking effect.

Luke Simpson

INSPECTOR