
Appeal Decision

Site Visit made on 23 November 2021

by Luke Simpson BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 January 2022

Appeal Ref: APP/A1910/W/21/3273994

Cedar Barn, Half Moon Lane, Pepperstock LU1 4LL

- 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 K Lane against the decision of Dacorum Borough Council.
 - The application Ref 21/00544/ROC, dated 9 February 2021, was refused by notice dated 7 April 2021.
 - The application sought planning permission for 'demolition of outbuildings and construction of 3 dwellings and new vehicular access' without complying with a condition attached to planning permission Ref 4/03038/16/FUL, dated 17 January 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 amending or re-enacting that Order with or without modification) no development falling within the following classes of the Order shall be carried out without the prior written approval of the local planning authority: Schedule 2 Part 1 Classes A, B, C, D, E, F, G and H Part 2 Classes A, B and C.
 - The reason given for the condition is:
To enable the local planning authority to retain control over the development in the interests of safeguarding the residential and visual amenity of the locality and to ensure the development does not increase the amount of development on this previously developed site in the green belt.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of outbuildings and construction of 3 dwellings and new vehicular access at Keepers Cottage, Half Moon Lane, Pepperstock, Luton, LU1 4LL in accordance with the application Ref 21/00544/ROC dated 9 February 2021, without compliance with condition number 6 previously imposed on planning permission Ref 4/03038/16/FUL dated 17 January 2017 and subject to the conditions listed in the attached schedule.

Preliminary Matters

2. On 20 July 2021 the Government published a revised version of the National Planning Policy Framework (the Framework). Both main parties were invited to provide representations thereon. I have taken any made into account and referred to the revised Framework in my decision.
3. In their appeal, the appellants have effectively sought consent for the re-instatement of permitted development rights for Cedar Barn. However, the

Original Permission¹ relates to a wider site, which comprises two other dwellings. In considering whether Condition 6 meets the tests set out in the Framework, I have therefore also had regard to its effect in relation to those dwellings, where relevant.

Background and Main Issue

4. The reason given for the contended condition is to enable the Council to retain some control over future development in the interests of both visual and residential amenity and the increase of development in the Green Belt.
5. Notwithstanding this, none of the evidence before me, including either the original Officer Report or the Officer Report in respect of this appeal, indicates that the condition was imposed to preserve neighbouring living conditions or character and appearance. Indeed, the evidence demonstrates that the Council imposed the condition in order to preserve the openness of the Green Belt.
6. Even if this is not the case, the Council has not provided any compelling evidence pertaining to the rationale for imposing condition 6 relating to living conditions or character and appearance (beyond the character of the Green Belt).
7. The appellants 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).
8. Given the above, the main issue is whether or not the condition is reasonable and necessary in the interests of preserving the openness of the Green Belt.

Reasons

9. 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 6 serves a reasonable and necessary function in the present. However, in doing so, it is relevant to consider the context of the Original Permission.
10. Core Strategy (2013)² Policy CS5, requires in part that the Council will apply national Green Belt policy to protect the openness and character of the Green Belt. It also states that small-scale redevelopment of previously developed sites, such as the appeal site, will be permitted.
11. Framework Paragraph 149 states that the construction of new buildings should be regarded as inappropriate in the Green Belt unless certain exceptions apply. One such exception is set out under paragraph 149(G), which refers in part to limited infilling or the partial or complete redevelopment of previously developed land, which would not have a greater impact on the openness of the Green Belt than the existing development.

¹ Council reference 4/03038/16/FUL

² Dacorum Borough Council Core Strategy 2006-2031 (Adopted 25 September 2013)

12. The Council's Officer Report in respect of the Original Permission indicates that the floor area, height and volume, of the development were taken into account and compared to the previously approved scheme and the outbuildings to be replaced. On the basis of the evidence before me, including the plans submitted in respect of the Original Permission, it is evident that the impact on openness was finely balanced.
13. Within this context, the correct approach in considering this appeal is to assess whether or not development under the relevant classes of the GPDO would, when combined with the existing development, potentially fail to preserve the openness of the Green Belt. In undertaking this assessment, I have taken into account my observations from the site visit. All three of the dwellings approved under the Original Permission have been constructed. As such, an assessment of the facts on the ground in this case is particularly useful.
14. Cedar Barn is a single storey detached dwelling. Adjacent are two similar dwellings which are also detached and single storey. These dwellings are all served by a shared access. All were approved under the Original Permission. The dwellings are visible from the access, but wider views of the dwellings are limited. This is due to the screening effect of boundary treatments within and surrounding the site and mature trees within the surrounding area.
15. Under Class A, single storey and two storey extensions are allowed subject to certain limitations, including a maximum depth of 4 metres. The height of extensions under this class cannot be greater than the height of the existing dwelling. As such, the height of such extensions would effectively be limited to single storey scale. Notwithstanding this, extensions under this class could be fairly substantial, covering up to 50% of the total area of curtilage, subject to other limitations. As such, they could result in a significant spatial reduction in the openness of the Green Belt. The site is relatively well screened from the surrounding area by existing boundary treatments. As such, the visual impact on openness would be limited. However, noting the potentially significant spatial reduction in openness which could occur, development under this Class, combined with the existing development, would potentially fail to preserve the openness of the Green Belt. Therefore, the removal of permitted development rights under Class A is reasonable and necessary.
16. Under Class B, alterations to the roof of the dwelling would be possible. The limitations under Class B restrict the volume of such extensions to not in excess of 50 cubic metres of the existing cubic content of the roof space. Extensions under this class would also be limited to the rear and side of the property and the height of any such extensions could not exceed the height of the highest part of the existing roof. Notwithstanding these limitations, large additions to the roof would be possible under this class. This would potentially result in a spatial reduction in the openness of the Green Belt. Extensions under this class would also be visible from surrounding areas. As such, there could also be a visual reduction in openness as a result of development under this class. Taking these factors into account, development under this class, when combined with the existing dwelling, would potentially fail to preserve the openness of the Green Belt from a spatial and visual perspective. As such, the removal of permitted development rights under Class B is reasonable and necessary.

17. 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.
18. 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 existing 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.
19. Class E, relates to buildings incidental to the enjoyment of a dwellinghouse. The limitations under this class allow for relatively substantial buildings to be developed within the curtilage of a dwellinghouse. Again, there are limitations under Class E, including that the development does not exceed more than 50% of the total area of the curtilage. However, the garden is fairly large, relative to the size of Cedar Barn. Therefore, development under this class has the potential to significantly increase the amount of development on the site, which could result in a significant spatial reduction in the openness of the Green Belt. As such, in combination with the existing development, development under this class may fail to preserve the openness of the Green Belt. For these reasons, the removal of permitted development rights under Class E is reasonable and necessary.
20. Classes F, G and H relate to hard surfaces, chimneys/flues and microwave antenna, respectively. Development under these classes would be very unlikely to result in any significant reduction in the spatial or visual openness of the Green Belt, when considered in combination with the existing development. This is because development under these classes would be very limited in terms of scale, particularly when compared to the scale of the existing development. As such, the removal of permitted development rights under Classes F, G and H is neither reasonable nor necessary.
21. The Council removed permitted development rights for Minor Operations under Classes A, B and C of Part 2 of Schedule 2 of the GPDO 2015 (As amended). These classes relate to gates, fences and walls; means of access to the highway; and exterior painting, respectively. In relation to Class A the scale of development would be limited such that, in combination with the existing development it would likely preserve the openness of the Green Belt. Class B relates to means of access, which would not be likely to have any significant spatial or visual impact on openness given the limited scale of development allowed under this Class. Exterior painting, as specified under Class C, would not have any impact on openness, either spatially or visually.
22. Taking these factors into consideration, development under these classes, in combination with the existing development, would be likely to preserve the openness of the Green Belt. As such, the removal of permitted development rights under Classes A, B and C in Schedule 2 Part 2 is neither reasonable nor necessary.

23. In its current form, disputed Condition 6 is neither reasonable nor necessary given that it is not necessary to remove permitted development rights under Classes C, D, F, G and H of Part 1 of Schedule 2 and Classes A, B and C of Part 2 of Schedule 2 of the GPDO 2015 (as amended). This is because development under these classes, in combination with the existing development, would preserve the openness of the Green Belt.
24. However, a condition removing permitted development rights under Classes A, B and E is necessary and reasonable, in order to preserve the openness of the Green Belt and consequently, ensure compliance with Core Strategy (2013) Policy CS5 and the relevant provisions of the Framework. Without such a condition the existing 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.
25. 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.
26. The appellants have also referred to various appeal decisions, some of 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.

Other Matters

27. In August 2020, subsequent to the original grant of planning permission under Council reference 4/03038/16/FUL, Class AA was added to Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). This Class allows the enlargement of dwellings by the construction of additional stories. Both parties have been consulted on this matter. The Council did not provide any additional representations and the appellants confirmed that they had no further representations.
28. Given that condition 6 of the Original Permission did not include a restriction pertaining to Class AA, it is not considered reasonable to now withdraw this permitted development right through imposition of a planning condition. This is because the Original Permission represents a fallback position.

Conditions

29. I have concluded that Condition 6 as attached to the Original Permission is neither reasonable nor necessary. However, development under GPDO Classes A, B and E, may not preserve the openness of the Green Belt. As such I am removing condition 6 and substituting it with a condition which withdraws permitted development rights under Classes A, B and E.
30. Whilst the appeal relates specifically to the re-instatement of permitted development rights at Cedar Barn, in considering whether a condition removing permitted development rights would meet the tests set out within the Framework, it is necessary to consider whether the conclusions which I have

reached are equally applicable to the other two dwellings comprised in the wider development.

31. I have not been able to visit the other two dwellings and as such, it is not possible to reach a conclusion on Classes A, B and E (Part 1, Schedule 2). As such, there is insufficient evidence to suggest that a condition removing these rights in respect of the other properties would not meet the tests set out in the Framework.
32. However, in relation to Classes C, D, F, G and H (Part 1 of Schedule 2) and Classes A, B and C (Part 2 of Schedule 2) I see no reason why the same logic does not apply to the other two dwellings. Development under these classes would be minor in scale and when combined with the existing development it would likely preserve the openness of the Green Belt. As such, the substituted condition should apply to all three dwellings.
33. This condition meets the tests set out within the Framework and is enforceable, precise, relevant, necessary and reasonable in all other respects.
34. I am therefore allowing the appeal but not in the terms sought by the appellants.
35. 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. The Council has suggested that various conditions have been discharged and as such are no longer necessary. However, some of these conditions require development to be retained in accordance with the approved details. Whilst the Council has provided the reference numbers for these applications, the precise details of those applications and the information submitted have not been provided. Neither have the decision notices.
36. As such, there is insufficient information before me about the status of the other conditions imposed on the original planning permission to allow each to be considered individually and amended accordingly. As such, I shall impose all those conditions that I consider remain relevant. In the event that some have in fact been discharged (as indicated by the Council), that is a matter which can be addressed by the parties. I have not included the time limit condition, given that the development has clearly commenced.

Conclusion

37. 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

SCHEDULE OF CONDITIONS

- 1) No development shall take place until details and samples of the materials proposed to be used on the external [walls/roofs] of the development shall have been submitted to and approved in writing by the local planning authority. A sample panel of all external materials for approval shall be set up on site (at a time agreed with the LPA). The approved materials shall be used in the implementation of the development.
- 2) No development shall take place until full details of both hard and soft landscape works shall have been submitted to and approved in writing by the local planning authority. These details shall include: hard surfacing materials; means of enclosure; soft landscape works which shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/ densities where appropriate; trees to be retained and measures for their protection during construction works; proposed finished levels or contours; car parking layouts and other vehicle and pedestrian access and circulation areas; The approved landscape works shall be carried out prior to the first occupation of the development hereby permitted.
- 3) The development hereby permitted shall not be occupied until the arrangements for vehicle parking, and circulation shown on Drawing No. BURKEE/21608/LAYOUTNEW1A shall have been provided, and they shall not be used thereafter otherwise than for the purposes approved.
- 4) Visibility splays of not less than 2.4 m x 43 m shall be provided before any part of the development hereby permitted is first brought into use, and they shall thereafter be maintained, in both directions from the crossover, within which there shall be no obstruction to visibility between a height of 0.6 m and 2.0 m above the carriageway.
- 5) 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, B or E of Part 1 of Schedule 2 of the 2015 Order (as amended), shall be carried out or made to the dwellings hereby approved, at any time.
- 6) Unless otherwise agreed in writing by the Local Planning Authority, development other than that required to be carried out as part of an approved scheme of remediation must not commence until Conditions (a) to (d) below have been complied with. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the Local Planning Authority in writing until Condition (d) has been complied with in relation to that contamination.

(a) Site Characterisation

An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance

with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:

- (i) a survey of the extent, scale and nature of contamination;
- (ii) an assessment of the potential risks to: human health, property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes, adjoining land, groundwaters and surface waters, ecological systems, archeological sites and ancient monuments;
- (iii) an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

(b) Submission of Remediation Scheme

A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

(c) Implementation of Approved Remediation Scheme

The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification report (referred to in PPS23 as a validation report) that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.

(d) Reporting of Unexpected Contamination

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken

in accordance with the requirements of Condition (a) above, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of Condition (b), which is subject to the approval in writing of the Local Planning Authority.

- 7) Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with Condition (c).
- 8) Prior to the occupation of the development hereby approved full details of fire hydrants or other measures to protect the development from fire will be submitted to and approved in writing by the local planning authority. Such details shall include provision of the mains water services for the development whether by means of existing water services, new mains, or extension to or diversion of existing services where the provision of fire hydrants is considered necessary. The proposed development shall not be occupied until such measures have been implemented in accordance with the approved details and thereafter maintained as such.
- 9) The development hereby permitted shall be carried out in accordance with the following approved plans: BURKEE/21608/LAYOUTNEW1A
BURKEE/21608/PLOT2A BURKEE/21608/PLOT3A BURKEE/21608/SITE1A
BURKEE/21701/COMPARE1 1:1250 OS Extract Design and Access Statement
Arboricultural Report Preliminary Roost Assessment.