



Appeal Decision

Site visit made on 14 December 2021

by F Rafiq BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 January 2022

Appeal Ref: APP/R0660/W/21/3281048

Sandle Heath Farm, Bollington Lane, Nether Alderley SK10 4TB

- 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 a condition subject to which a previous planning permission was granted.
 - The appeal is made by DD Developments against Cheshire East Council.
 - The application Ref 21/2628M is dated 11 May 2021.
 - The application sought planning permission for a replacement dwelling without complying with a condition attached to planning permission Ref 20/2658M, dated 18 February 2021.
 - The condition in dispute is No 4 which states that: *Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking or re-enacting 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 Classes A, B, C, D, E, F and AA of Part 1 Schedule 2 of the Order shall be carried out.*
 - The reason given for the condition is: *To ensure continued control over the extent of further building on the site.*
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Decision

1. The appeal is allowed, and planning permission is granted for a replacement dwelling at Sandle Heath Farm, Bollington Lane, Nether Alderley SK10 4TB in accordance with application Ref: 21/2628M, dated 11 May 2021 without compliance with condition no 4 previously imposed on planning permission Ref: 20/2658M, dated 18 February 2021, subject to the conditions in the attached schedule.

Preliminary Matters

2. Planning permission was granted for a replacement dwelling (LPA Ref: 20/2658M) which included a condition removing permitted development rights as prescribed in Classes A, B, C, D, E, F and AA of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) (GPDO). Although the Council did not issue a decision on the application that sought to remove the subject condition, their statement as well as the reason for imposing the condition stated on the decision notice set out that the condition is necessary to control further building on the appeal site given its location within the Green Belt and the need to preserve the Green Belt's openness.

Main Issue

3. The main issue is whether the condition is reasonable or necessary in the interests of preserving the openness of the Green Belt.

Reasons

4. The appeal property is a detached dwelling, with a broadly L shaped plan that sits within a generous plot. It is located at the end of a private lane, which contains large detached dwellings that are separated from each other by areas of open land and woodland.
5. The Council have set out their concerns that, being within the Green Belt, the removal of the subject condition would enable the future replacement dwelling to increase in size. The full details of the approved replacement dwelling have not been provided, but it is clear from the evidence before me that there would be a significant increase in the size from the existing dwelling. Further development the Council say, would result in incremental harmful additions and I note in this respect reference to the National Planning Policy Framework (Framework), which seeks to keep land permanently open within the Green Belt.
6. The National Planning Practice Guidance (Guidance) states¹ in relation to conditions restricting the future use of permitted development rights that "... *blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity*".
7. Neither the Framework, nor the GPDO place any restrictions on permitted development rights in the Green Belt and in itself, the location of the site in the Green Belt is not a sufficient reason to justify the removal of permitted development rights. Despite this, it is not disputed between the main parties that in this instance, the proposed replacement building was considered to be materially larger than the existing building and therefore would be inappropriate development. The Council have though stated that very special circumstances existed to approve the development, which were justified on the basis of the greater impact that schemes that could be implemented using permitted development rights would have.
8. Consequently, any extensions to the replacement dwelling using permitted development rights would increase the size of the future house, and I consider it reasonable and necessary for certain restrictions, thereby enabling the Council to consider such further proposals in Green Belt terms. As well as Classes A, B and AA which cover enlargements and alterations to a house, including additions to the roof, I consider it necessary for this condition to include Class E, which relates to the provision of buildings within the curtilage of the house. Although many such 'outbuildings' are modest structures such as greenhouses and sheds, Class E allows for much wider types and sizes of buildings within the curtilage that could introduce further substantial development on the appeal site, particularly given the large size of the site. Although the GPDO provides certain safeguards, it is necessary for development within these Classes to be considered by the Council.

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

9. The Council have stated that the condition is not a blanket ban on permitted development rights. However, the subject condition prevents the appellant carrying out minor alterations such as the insertion of rooflights covered in Class C, the addition of a porch (Class D) or the formation of hardstanding areas (Class F). I am not persuaded that there is a clear justification for this as required by Paragraph 54 of the Framework or that it is necessary or reasonable as set out in the Guidance to remove such an extensive list of rights.
10. I therefore conclude that the subject condition is reasonable and necessary in the interests of preserving the openness of the Green Belt insofar as it relates to enlargements and alterations that can be carried out under Schedule 2, Part 1, Classes A, B, E and AA of the GPDO. Given the limited size of extensions and alterations that can be carried out under Classes C, D and F, and based on the evidence provided, I do not consider the openness of the Green Belt would be harmed. Thus, the removal of reference to these Classes from the condition would accord with the relevant parts of Section 13 of the Framework. Reference has been made to Policy PG3 of the Cheshire East Local Plan Strategy, but I have not been provided with details of this policy.

Other Matters

11. I have taken into account the various appeal decisions that have been referenced. I have not been provided with all of the details of these decisions but note that their circumstances differ from this appeal, as one of these appeals relates to conditions on an application which involved the conversion of a building and the other site related to an infill development within a village. Consequently, the weight which can be afforded to these other decisions in considering the removal of permitted development rights in respect of this appeal is limited.
12. I have taken into account all other matters raised, including reference to a judgement² that states that it is not relevant to consider again whether very special circumstances exist following the granting of the planning permission that was justified by very special circumstances that outweighed the inappropriate nature of that development. I also note that the appeal site comprises of a large secluded plot, is not within a sensitive or protected landscape setting and any development would not impact on neighbours' living conditions. I am also sympathetic to the appellant on the length of time the Council are taking to determine applications. None of these matters however outweigh my conclusion in relation to the main issue.

Conditions and Conclusion

13. For the reasons given above I conclude that the appeal should partly succeed insofar as it relates to not covering Classes C, D and F under Schedule 2, Part 1 of the GPDO. This new planning permission will therefore omit the previous permitted development condition and be subject to another with lesser restrictions.
14. The 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

² Taylor Wimpey v SoSCLG and Elmbridge BC [2011]

before me about the status of the other conditions imposed on the original planning permission, I shall impose all those undisputed conditions that are still subsisting and capable of taking effect. I have had regard to the reasons for the imposition of those conditions and consider them to be relevant to the appeal development, including requiring details on tree protection to be approved before any works commence to ensure there are no unacceptable impacts. For the sake of clarity, conciseness and enforceability, I have amended the wording of the Council's conditions as appropriate. In the event that some of the conditions have been discharged, that is a matter which can be addressed by the parties.

F Rafiq

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall commence within three years of the date of the permission Ref: 20/2658M.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans referenced SK001 to SK010.
- 3) The external surfaces of the development hereby permitted shall be constructed in the materials specified in the application.
- 4) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no development falling within Classes A, B, E or AA of Schedule 2, Part 1 of the GPDO shall be carried out.
- 5) No development shall take place until a scheme for the protection of the retained trees produced in accordance with BS5837:2012 Trees in Relation to Design, Demolition and Construction (Recommendations), which provides for the retention and protection of trees, shrubs and hedges growing on or adjacent to the site, including trees which are the subject of a Tree Preservation Order currently in force, has been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved scheme.
- 6) No operations shall be undertaken on site in connection with the development hereby approved (including demolition works, soil moving, temporary access construction and / or widening or any operations involving the use of motorised vehicles or construction machinery) until the protection works required by the approved protection scheme are in place. No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within any area designated as being fenced off or otherwise protected in the approved protection scheme. Protective fencing shall be retained intact for the full duration of the development hereby approved and shall not be removed or repositioned without the prior written approval of the Local Planning Authority.
- 7) Details of an electric vehicle charging point shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details prior to the first occupation of the development hereby permitted and shall be retained thereafter.
- 8) Prior to the removal of any vegetation or the demolition or conversion of buildings between 1st March and 31st August in any year, a detailed survey shall be carried out to check for nesting birds. Where nests are found in any building, hedgerow, tree or scrub or other habitat to be removed (or converted or demolished in the case of buildings), a 4m exclusion zone shall be left around the nest until breeding is complete. Completion of nesting shall be confirmed by a suitably qualified person

and a report submitted to and approved in writing by the Local Planning Authority before any further works within the exclusion zone take place.

- 9) No above ground works shall take place until detailed proposals for the incorporation of features into the scheme suitable for use by breeding birds including house sparrow and swallows have been submitted to and approved in writing by the Local Planning Authority. The approved features shall be installed prior to the first occupation of the development hereby permitted and thereafter retained.
- 10) The development hereby permitted shall be carried out in accordance with the recommendations made by the submitted Extended Phase 1 Habitat Survey & Bat Surveys report (Rachel Hacking Ecology, May-June 2020) unless varied by a European Protected Species licence subsequently issued by Natural England. Agreed features for roosting bats shall be installed in accordance with the approved details prior to the first occupation of the development hereby permitted and shall be retained thereafter.

End