



Appeal Decision

Site visit made on 8 February 2022

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 February 2022

Appeal Ref: APP/A3655/W/21/3277086

The Gatehouse, Warbury Lane, Knaphill, Woking, Surrey GU21 2TX

- 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 Philip Hyatt against the decision of Woking Borough Council.
 - The application Ref PLAN/2021/0223, dated 18 February 2021, was approved on 19 May 2021 and planning permission was granted subject to conditions.
 - The development permitted is a replacement residential dwelling and demolition of the existing residential dwelling after the replacement dwelling is constructed.
 - The condition in dispute is No12 which states that: *'Notwithstanding the provisions of Article 3, Schedule 2, Part 1, Classes A, B, E and F of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order(s) amending or re-enacting that Order with or without modification(s)) no extension(s), additions(s) or the provision of any other building(s) or hard surfaces within the curtilage other than that expressly authorised by this permission (with the exception of any building(s) or structure(s) approved pursuant to conditions 07 (hard landscape) and 08 (cycle storage) of this notice) shall be constructed without planning permission being first obtained from the Local Planning Authority.'*
 - The reason given for the condition is: *'The replacement building hereby permitted complies with Green Belt policy only because it would not be materially larger than the building it would replace. The Local Planning Authority considers that further development could cause detriment to the openness, and purposes, of the Green Belt and to the character of the area and for these reasons would wish to control any future development in accordance with Policies CS6 and CS21 of the Woking Core Strategy (2012), Policy DM13 of the Development Management Policies DPD (2016), SPD Design (2015) and the provisions of the NPPF.'*
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are whether condition 12 is reasonable or necessary having regard to (1) the impact of the proposal on the Green Belt and (2) the character and appearance of the area.

Reasons

Green Belt

3. The appeal site is located within the Green Belt. Paragraph 137 of the National Planning Policy Framework confirms that the Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to

- prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.
4. The construction of new buildings within the Green Belt is inappropriate with the exception of the types of development listed in paragraphs 149 of the Framework. Sub-paragraph 149(d) allows for the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces. Policies CS6 of the Woking Core Strategy, October 2012 (CS) and DM13 of the Development Management Policies Development Plan Document, October 2016 (DMP) both seek to protect the Green Belt from harmful development and reinforce national policy contained in the Framework.
 5. The Council has previously permitted a replacement dwelling at the appeal site on this basis¹. The appeal proposal is for an alternative replacement dwelling at a similar location but with a different orientation. The Council found this proposal also fell within the exception permitted by paragraph 149(d) of the Framework subject to conditions.
 6. Condition 12 of the permission restricts the permitted development rights normally afforded to householders under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the Order). It generally prevents the extension, addition or provision of buildings or hard surfaces that might otherwise be permitted under Classes A, B, E and F of the Order².
 7. Policy DM13 of the DMP expands upon the Framework and includes specific reference to replacement buildings. It supports the replacement of buildings within the Green Belt where the proposed new building: (i) is in the same use as the building it is replacing; (ii) is not materially larger than the building it is replacing; and (iii) is sited on or close to the position of the building it is replacing, except where an alternative siting within the curtilage demonstrably improves the openness of the Green Belt.
 8. The explanatory text³ states that when assessing whether a replacement building is materially larger than the one it replaces the Council will compare the size of the existing building with that proposed, taking account of siting, floorspace, bulk and height. As a general rule, a replacement building that is no more than 20-40% larger than the one it replaces will not usually be considered to be disproportionate, although this approach may not be appropriate for every site.
 9. Consistent with the approach outlined for policy DM13, the Council's delegation report⁴ contains a table that compares various dimensions of the proposed replacement dwelling with the existing structure. This shows increases in the order of 33.9% to the internal floor area, 38.7% to the footprint and 44.1% to the overall volume. The appellant does not dispute these figures. On that basis, the Council found the proposal broadly complied with the indicative range contained in the DMP and therefore, was not materially larger than the building to be replaced.

¹ Reference PLAN/2019/0290 dated 7.6.19

² Class A – The enlargement, improvement or other alteration of a dwellinghouse; Class B – The enlargement of a dwellinghouse consisting of an addition or alteration to its roof; Class E – Buildings etc incidental to the enjoyment of a dwellinghouse; Class F – Hard surfaces incidental to the enjoyment of a dwellinghouse.

³ Paragraph 5.43

⁴ Page 5

10. Nevertheless, the measurements provided show that the replacement dwelling proposed would be larger than the dwelling to be replaced. Moreover, they are towards the upper limits of the indicative range set out in the general rule, with the volume proposed exceeding 40%.
11. Classes A, B and E of Schedule 2, Part 1 of the Order would allow for sizeable increases to the footprint, floorspace and/or volume of a dwellinghouse by way of extensions or as outbuildings. In addition to the permitted replacement dwellinghouse, such alterations could significantly exceed the indicative range for policy DM13 of the DMP. Moreover, cumulatively there could be a considerable enlargement of new built form adding volume and bulk both to the main dwelling as well as across the residential grounds which would be likely to erode the openness of the appeal site.
12. In addition, in relation to replacement buildings, policy DM13(iii) of the DMP refers to the siting being on or close to the position of the building to be replaced. The existing dwelling in this case is a single storey flat roof structure located close to the boundary with Warbury Lane. The replacement dwelling and grounds are situated on land generally free of built form to the south west. The main dwelling and hardstanding for access and parking would be confined to the north-eastern portion of the site relatively close to the siting of the existing dwelling. This would leave the majority of the grounds to the south west comparatively open.
13. However, Classes E and F of Schedule 2, Part 1 of the Order would allow for the provision of outbuildings and hard surfacing across the remainder of the site. Such developments would not be on or even necessarily close to the building to be replaced. It is foreseeable that as a result, structures or objects, including parked vehicles, would be more dispersed across a larger area than the permitted scheme.
14. Therefore, despite the appellant's assertion that permitted development tolerances would be modest in size, the retention of such permitted development rights could foreseeably result in a building materially larger than the building to be replaced, as well as development being more dispersed. Both would be harmful to the openness of the Green Belt.
15. Consequently, in the absence of the restrictions imposed to enlarge the replacement dwelling, there is little certainty that the resultant development would meet the requirements of policy DM13 of the DMP or paragraph 149(d) of the Framework for new buildings in the Green Belt. Unless shown to meet the limited exceptions set out in paragraph 149 of the Framework, it stipulates that the construction of new buildings should be regarded as inappropriate in the Green Belt. It follows that in this case, condition 12 limiting householder permitted development rights is necessary to ensure compliance with local and national Green Belt policy. Moreover, this amounts to a clear justification to restrict such rights as required by paragraph 54 of the Framework.
16. I am mindful that Planning Practice Guidance states that conditions restricting the future use of permitted development rights may not pass the tests of reasonableness or necessity. However, it does not suggest that those tests could never be passed. In circumstances where they are it states that the scope of such conditions needs to be precisely defined, by reference to the relevant provisions in the Order, so that it is clear exactly which rights have been limited or withdrawn.

17. The wording of condition 12 aligns with this guidance. In addition, not all classes of permitted development rights afforded to dwellinghouses have been restricted, rather the restrictions pertain to those that, for the reasons outlined, could result in inappropriate development in the Green Belt. Hence, the condition does not go beyond what is needed to make the proposal acceptable. Furthermore, conditions 7 and 8 on the permission allow for hard surfacing as part of a landscaping scheme and cycle storage which are explicitly excluded from the scope of condition 12. Finally, condition 12 does not amount to an absolute prohibition on all such future development, rather it means that specific consent must be sought from the local planning authority. Taking these factors together, I find that the wording of condition 12 is proportionate and reasonable in the circumstances.
18. The appellant draws my attention to four recent appeal decisions⁵, three of which relate to different types of development and do not mention the Green Belt. Consequently, they have little bearing on my determination of this case. However, one case⁶ does concern a condition restricting permitted development rights for a proposal in the Green Belt. Nevertheless, as I am only provided with the decision notice this inhibits a meaningful comparison with the circumstances of the case before me. Even so, as the proposal related to a different administrative area, the provisions of policy DM13 of the DMP were not a consideration in that case, which represents a notable distinction. Accordingly, it carries limited weight, and would not lead me to find otherwise in relation to the appeal proposal, which in any event, I have determined on its own merits.
19. Therefore, I find that the imposition of condition 12 is reasonable and necessary to safeguard the essential characteristics of the Green Belt. To do otherwise would conflict with policy CS6 of the CS, policy DM13 of the DMP and the national policy contained in the Framework, which all seek to protect Green Belt land from inappropriate development.

Character and appearance

20. Condition 12 also refers to the character of the area as a reason to restrict permitted development rights. The combination of limited built form and presence of paddocks, trees and hedgerows results in a spacious, rural character to the appeal site and surrounding area. The proposed replacement dwelling would incorporate a form and materials more sympathetic to the surroundings than the functional appearance of the existing dwelling. My findings in this regard are consistent with those of the Council⁷.
21. Although the Council refers to the appeal site as being in a sensitive rural area and prominent in views, little evidence has been provided to demonstrate that it possesses any special landscape qualities, particular designation or features in important views. My observations were that the site and surrounding area contained pleasant countryside, but it was not especially scenic. Consequently, there is little reason to suppose that future alterations that might otherwise normally constitute permitted development would be intrinsically harmful to the prevailing rural character and appearance.

⁵ References APP/H1515/W/19/3242789; APP/M2270/W/20/3265691; APP/U2235/W/20/3265112 & APP/G5180/W/20/3261011 – Appendices C-F, Appellant's Appeal Statement

⁶ Appendix C, Appellant's Appeal Statement

⁷ Page 6, Impact on Character, Council's Delegation Report

22. The Order generally applies to rural areas but contains checks and balances that limit the scale and siting of development and in some instances, the materials that could be employed. Recognition is given to contexts that are likely to be particularly sensitive with the imposition of additional limitations, for example in relation to Article 2(3) land.
23. There is little before me to show why the appeal site would be unusually sensitive to the nature of domestic development permitted under the Order. Hence, the concerns in this respect raised by the Council appear generic rather than being founded upon the specific qualities of the locality. It is not shown that any of the urban design principles outlined in the Woking Design Supplementary Planning Document, February 2015 would be seriously undermined if the permitted development rights remained intact.
24. General concerns in relation to the character and appearance of the area fall short of the clear justification necessary to warrant withholding the permitted development rights listed in condition 12. Neither is it shown that such restrictions would be required to ensure compliance with the design criteria in policy CS21 of the CS.
25. Therefore, in relation to this main issue, such a restriction would not be necessary to make the development acceptable in planning terms and it would be unreasonable to seek to retain control over relatively small scale domestic development on this basis.

Other matters

26. The appellant generally indicates his wish to construct a property with a gymnasium and a plant room⁸. The former would assist in managing the health condition of one of the intended occupants of the dwelling and the latter could assist in greater use of renewable energy. As already outlined, the wording of condition 12 would not necessarily prevent all future development, but it does mean that permission from the local planning authority would be necessary. Such proposals would be assessed on their own merits, which includes taking account of any evidence that relates to personal circumstances. However, based on the limited evidence presented in the case before me, these matters attract little weight and would not lead me to find otherwise.

Conclusion

27. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise⁹. Although I found that the reasoning for withholding permitted development rights on the grounds of character and appearance lacked substance, in contrast there is a sound development plan policy and national policy justification to impose condition 12 to protect land in the Green Belt. Therefore, for the reasons given above I conclude that the appeal should be dismissed. Consequently, planning permission reference PLAN/2021/0223 remains unaltered with condition 12 intact.

Helen O'Connor Inspector

⁸ Appellant's Final Comments

⁹ Section 38(6) Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.