



Appeal Decision

Site visit made on 31 January 2022 by A J Sutton BA (Hons) DipTP MRTPI

Decision by L McKay MA MRTPI

an Inspector appointed by the Secretary of State

Decision date:

Appeal Ref: APP/C3430/D/21/3285237

119 Springhill Lane, Lower Penn, WV4 4TW

- 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 Ranjit Dudrah against the decision of South Staffordshire District Council.
 - The application Ref 21/00836/VAR, dated 5 August 2021, was refused by notice dated 30 September 2021.
 - The application sought planning permission for demolition of existing dwellinghouse and construction of new house and garage without complying with a condition attached to planning permission Ref 03/00173/FUL, dated 2 April 2003.
 - The condition in dispute is No 2 which states that: Notwithstanding the provision of the Town and Country Planning (General Permitted Development) Order 1995 or any other subsequent equivalent Order, no development within the following classes of development shall be carried out without the prior approval of the Local Planning Authority:
 - a) Schedule 2, Part 1, Class A – extensions and alterations
 - b) Schedule 2, Part 1, Class B – roof alterations including dormer windows
 - c) Schedule 2, Part 1, Class C – other roof alterations including roof lights
 - d) Schedule 2, Part 1, Class D – porches
 - e) Schedule 2, Part 1, Class E – garden buildings and structures
 - The reason given for the condition is: the site is within the Green Belt within which, in accordance with the planning policies in PPG2 and the adopted Local Plan, there is a presumption against inappropriate development.
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Decision

1. The appeal is allowed, and planning permission is granted for the demolition of existing dwellinghouse and construction of new house and garage, at 119 Springhill Lane, Lower Penn, WV4 4TW, in accordance with application Ref 21/00836/VAR, dated 5 August 2021, without compliance with condition number 2 previously imposed on planning permission Ref 03/00173/FUL dated 2 April 2003 and subject to the following condition:
 - 1) Before the development is brought into use, a vehicle turning area shall be constructed within the site and thereafter retained and available for this use throughout the life of the development.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Background and Main Issue

3. The appeal property is a large, detached dwelling in the Green Belt. The appellant seeks to remove condition 2 of the 2003 permission which permitted the construction of this replacement dwelling, in order to reinstate permitted development rights.
4. The main issue is therefore whether the condition is necessary and reasonable having regard to local and national policy concerning development in the Green Belt.

Reasons for the Recommendation

5. The National Planning Policy Framework (the Framework) states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. It sets out in paragraphs 149 and 150 specific exceptions where new buildings are not inappropriate in the Green Belt, including extensions to existing buildings.
6. The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO) has not withdrawn permitted development rights in the Green Belt as is the case with other designations such as conservation areas. This has been the position over successive amendments to the GPDO including at the time the condition was imposed. The option has been, and still is, available to the Government to disapply permitted development rights for dwellings in the Green Belt, but it has not opted to do so. This suggests that the type and size of development permitted under the GPDO would not be inappropriate development in the Green Belt as a matter of course. Therefore, if the disputed condition was removed, implementing permitted development rights would not automatically result in inappropriate development in the Green Belt as defined in the Framework.
7. Paragraph 54 of the Framework states that planning conditions should not be used to restrict national permitted development rights unless there is a clear justification to do so. The Planning Practice Guidance (PPG) states that such a condition may not pass the tests of reasonableness or necessity, including in respect of small-scale domestic alterations. Therefore, the fact that the appeal property is within the Green Belt would not in itself provide the clear justification required for the disputed condition.
8. Condition 2 is justified in the 2003 decision notice with reference to Planning Policy Guidance Note 2: Green Belt (PPG2). That guidance significantly predates the Green Belt policies in the current Local Plan and the Framework and has been revoked. However, PPG2 was generally consistent with current policy in respect to its aim, which was to prevent urban sprawl by keeping land permanently open. Guidance in PPG 2 was also similar regarding the construction of new buildings in the Green Belt being considered inappropriate. It also identified certain exceptions which included alterations and extensions which do not result in disproportionate additions and replacement dwellings provided they are not materially larger than the dwelling it replaces, which have continued through to the current Framework.
9. It is not disputed that the replacement dwelling is materially larger than the original dwelling. I do not have the officer's report for the 2003 permission, however in the report for the current proposal the Council advises that there

was a '30% guideline' at the time permission was granted, which was exceeded. I do not however have copies of the relevant policies in force at the time, nor do I have evidence of the '20 – 40% guideline' or a Supplementary Planning Document to which the Parish Council refers.

10. The Council also states that very special circumstances were identified to permit the inappropriate development, having regard to a previous 2002 permission¹ that would have allowed a 60% increase to the floor area of the original dwelling. Previously, that 2002 permission had been allowed due to the property being located within an existing residential cluster with properties that had been extended in similar ways.
11. Therefore, it appears that in 2003, other considerations provided the very special circumstances necessary to justify granting permission for development which fell outside the Green Belt policies and guidance in force at the time. It has not however been demonstrated that those policies or guidance required removal of permitted development rights in such circumstances.
12. Nor is there substantive evidence before me to support the Council's contention that the disputed condition was necessary at that time due to the potential impact of further development on Green Belt openness. Indeed, this is not the reason stated on the decision notice for imposing the condition, which referred only to inappropriateness.
13. The courts have held that where development is not, in principle, inappropriate development, it is regarded by the Government as not inimical to the fundamental aims of Green Belt policy or to its essential characteristics, namely its openness and its permanence. Therefore, the potential impact of any permitted development on Green Belt openness does not to my mind justify removal of such rights.
14. The current development plan predates the revised Framework and PPG, however policy GB1 of the South Staffordshire Core Strategy (Core Strategy) generally reflects the Green Belt policy of the Framework. The policy points to guidance on alterations/extensions and replacement buildings in the Green Belt and Open Countryside Supplementary Planning Document (SPD).
15. In considering whether a building would be materially larger than the one it replaces the SPD refers to a range of 10 – 20% increase in floor area. It also refers to flexibility in the application of the policy however, with consideration to be given to the individual merits of the case. It identifies that the opportunity to off-set ancillary buildings in lieu of a larger replacement building will be dealt with on a case-by-case basis and that if off-setting is considered to be an acceptable approach by the Council, removal of permitted development rights may be considered. It also provides further flexibility, including that *'intelligent architectural design can sometimes increase usable floor area, whilst reducing bulk and impact of the building on the openness of the Green Belt'*.
16. There are no other references in either policy GB1 of the Core Strategy or in advice of the SPD to circumstances where the removal of permitted development rights may be justified. Nor is there specific reference to off-setting extensions or possible alternative developments against a materially

¹ Council Ref 02/01220/FUL

larger replacement building. Consequently, there is no requirement in current policy or guidance to remove permitted development rights just because a replacement building is materially larger, particularly where a proposal has been found acceptable in relation to its specific local context and a fall-back position of an alternative development.

17. A recent application for planning permission indicates a desire on the appellant's part to extend the property. However, as set out above, rights construed under the GPDO are separate from development requiring planning permission. Applications for planning permission are considered on their own merits having regard to the development plan and any other material considerations, including the Framework. The removal of the disputed condition may give the appellant a fall-back position of development that could be carried out without the need for express permission. However, such permitted development would not necessarily equate to the amount or type of development for which permission was recently sought. Nor can there be any certainty that it would result in Green Belt harm, or any other harm, as this would rely on factors other than just its size, such as design and siting.
18. Furthermore, while a fall-back position of permitted development rights might be an 'other consideration' in a planning application, it does not automatically follow that it would clearly outweigh any Green Belt harm such that very special circumstances would exist. The weight to be given to such matters would be for the Council to determine in the context of a specific proposal.
19. In light of these matters, I find that there is no clear justification for the withdrawal of permitted development rights in respect to the appeal property. The disputed condition is therefore not necessary or reasonable having regard to local and national policy concerning development in the Green Belt. It would in this respect not satisfy the tests set out in paragraph 56 of the Framework.

Other Matters

20. Copies of the approved plans of the 2003 permission have not been submitted and therefore I am unable to comment as to whether the dwelling as built accords with these plans. This is a matter for the Council to address with the appellant and not within the scope of this appeal.
21. The appeal decisions cited by all parties differ in terms of details and location and are not directly comparable in these respects to this case. However, they are relevant in so far as requiring a clear justification for conditions that restrict permitted development rights in the Green Belt.²

Conditions

22. The guidance in the PPG 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.
23. The dwelling has been built, therefore the condition for materials to be approved is no longer necessary. In respect to the vehicle turning area, whilst I

² Refs APP/P3420/W/18/3201127, APP/Z4718/W/21/3268030 and APP/K3415/W/18/3208240

saw an area where vehicles can turn at the front of the dwelling, the condition requires this area to be retained for the life of the development. This condition therefore has been retained for highway safety and convenience.

Conclusion and Recommendation

24. For the reasons given above and having had regard to all other matters raised, I recommend that the appeal should be allowed.

A J Sutton

APPEAL PLANNING OFFICER

Inspector's Decision

25. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the appeal is allowed subject to the condition set out above.

L McKay

INSPECTOR