
Appeal Decision

Site visit made on 30 March 2022

by O S Woodward BA(Hons.) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th April 2022

Appeal Ref: APP/M3645/D/21/3276892

Park Farm, Rag Hill Road, Tatsfield, TN16 2LS

- 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 Michael Douglas against the decision of Tandridge District Council.
 - The application Ref TA/2021/325, dated 19 February 2021, was refused by notice dated 6 May 2021.
 - The application sought planning permission to demolish existing rear single storey extension and erect two storey rear extension to provide living room and swimming pool and first floor bedroom and bathroom above, without complying with a condition attached to planning permission Ref TA/95/P/292, dated 23 May 1995.
 - The condition in dispute is No 4 which states that: notwithstanding the provisions of Article 3 and Schedule 2, Part 1, Class A, B or C of the Town and Country Planning General permitted Development Order 1988 (or any order revoking and re-enacting that Order) no further extensions or other forms of enlargement of the dwelling shall be carried out within the curtilage of this property without the prior permission in writing of the District Planning Authority.
 - The reason given for the condition is: to enable the District Planning Authority to retain control over extensions and to ensure that the development does not prejudice the District Planning Authority's policy for the Metropolitan Green Belt where new residential development is not normally permitted.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Mr Michael Douglas against Tandridge District Council. That application is the subject of a separate Decision.

Preliminary Matters

3. The description of development on the decision notice referenced the proposed removal of Condition 4. However, as established through the Finney¹ judgment, it is not possible to change the original description of development with a s73 application. I have therefore altered the description so that it is the same as that on the original planning permission Ref TA/95/P/292.

¹ *John Leslie Finney v Welsh Ministers & Carmarthenshire County Council, Energiekontor (UK) Limited* [2019], EWCA Civ 1868, 2019 WL 05699117

4. The appeal property is a single dwelling house, constructed before 1 July 1948. The works to extend the house in accordance with the original planning permission were implemented in 1996.

Main Issues

5. The main issues are:

- Whether or not the proposal would be inappropriate development in the Green Belt; and,
- Whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the 'very special circumstances' required to justify the proposal.

Reasons

Inappropriate development

6. Paragraph 149 of the National Planning Policy Framework (the Framework) makes it clear that disproportionate additions over and above the size of the original building² are inappropriate development.
7. No development is proposed. However, Condition 4 revokes permitted development rights for the extensions of dwelling houses. Therefore, the removal of Condition 4 would afford the opportunity to extend the house through permitted development. The extension(s) could potentially be large, for example, and particularly given the fairly large garden at the appeal property, a single storey extension of up to half the area of land around the original house.
8. If the control over permitted development rights were removed then the Council would not have any control over such extensions. It is possible that the house would then be further extended. This is in fact likely, because it is the clear purpose for making the application to remove the condition. An extension under permitted development rights could potentially be a disproportionate addition over and above the size of the original building on its own. In addition, the house has already been extended through the 1996 permission. There is dispute over the precise size of the 1996 extensions, but they nearly doubled the footprint of the original house. A further, smaller, extension was also constructed in 1997. These extensions therefore provide even less leeway for further extensions before they would become disproportionate in comparison to the size of the original house.
9. The removal of the condition would, therefore, facilitate a situation where inappropriate development could occur with no planning control. I must therefore treat the proposal as if it were for inappropriate development.

Very special circumstances

10. A potential future extension(s) to the appeal property under permitted development rights would likely harm both the spatial and visual openness of the Green Belt due to the introduction of built form. Any extension would also likely be permanent. Therefore, the potential extension(s) would likely harm the two fundamental aims of the Green Belt as set out at Paragraph 137 of the

² Defined in the Glossary to the Framework as the building as it existed at 1 July 1948.

Framework. As directed by Paragraph 148 of the Framework, I place substantial weight on this likely harm.

11. I have not identified any other harm from the proposal. The removal of the condition would afford the opportunity to extend the family-sized house, which would provide some benefits in terms of improved and larger housing accommodation. However, these benefits would be negligible in the context of an already large family-sized home. In addition, there would be short term economic benefits from the construction of any future extension, but these would be relatively minor and only in the short term through the construction period. I place limited positive weight on this factor.
12. Overall, I find that the other considerations in this case do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist. The proposal therefore fails to comply with Paragraph 148 of the Framework. It also fails to comply with Policies DP10B and DP13E of the Tandridge Local Plan Part 2: Detailed Policies 2014-2029 Adopted Version, dated July 2014, which reflect the guidance in the Framework.

Other Matters

13. The Framework and Planning Practice Guidance both make it clear that conditions should only restrict permitted development rights when there is clear justification to do so. In this case, there is clear justification due to the requirement to ensure that the appeal dwelling is not subject to disproportionate extensions that would likely cause harm to the Green Belt.
14. The appellant has referred to a replacement dwelling on the site. However, this is not relevant to the appeal because the condition in question only relates to permitted development rights to extend the existing house.
15. My attention has been brought to an appeal decision³. However, the decision related to a situation where the condition removing permitted development rights did not prevent the rights being removed prior to the proposed extension being constructed. At the appeal property, the extension has already been built and there are therefore considerations of cumulative effects that were not the case in the example appeal.

Conclusion

16. For the reasons above, the appeal is dismissed.

O S Woodward
INSPECTOR

³ Ref APP/K2230/W/19/3238306, dated 29 January 2020