



Appeal Decision

Site visit made on 4 May 2022

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 May 2022

Appeal Ref: APP/E3715/W/21/3285260

The Grange Cattery, Wolston Grange, Coalpit Lane, Wolson, Rugby CV23 9HJ

- 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 Ms Maria Edwards against Rugby Borough Council.
 - The application Ref R21/0222 is dated 25 February 2021.
 - The application sought planning permission for variation of Condition 2 of R18/1250 (Demolition of existing buildings and their replacement with a bungalow) without complying with condition 4 attached to planning permission Ref R19/1368, dated 4 March 2020.
 - The condition in dispute is No 4 which states that: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (as amended), or any order revoking or re-enacting those orders, no development shall be carried out which comes within Classes A, B, D, E and F of Schedule 2 Part 1 of the Order without the prior written permission of the Local Planning Authority.
 - The reason given for the condition is: In the interest of residential amenity and the protection of the Green Belt.
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Decision

1. The appeal is allowed and planning permission is granted for variation of Condition 2 of R18/1250 (Demolition of existing buildings and their replacement with a bungalow) without complying with condition 4 attached to planning permission Ref R19/1368, dated 4 March 2020 at The Grange Cattery, Wolson Grange, Coalpit Lane, Wolson, Rugby CV23 9HJ in accordance with the terms of the application, Ref R21/0222, dated 25 February 2021, subject to the Schedule of Conditions attached to this decision.

Main Issue

2. On the information before me, permission was granted for the demolition of the existing buildings on the appeal site and their replacement with a new bungalow (reference: R18/1250).
3. On 4 March 2020, the Council approved a variation to Condition 2 of R18/1250 to change the design of the new dwelling (reference: R19/1368).
4. Condition 4 of R19/1368 removed permitted development (PD) rights for development under several classes of Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO), namely extensions (Class A), additions or alterations to the roof

(Class B), porches (Class D), outbuildings (Class E) and hard surfaces (Class F).

5. Against that background and having regard to the reason for the disputed condition, the main issue is whether this condition is reasonable and necessary in the interests of protecting the Green Belt and the living conditions of neighbours.

Reasons

6. The Planning Practice Guidance states that 'conditions restricting the future use of permitted development rights ... may not pass the test of reasonableness or necessity'.
7. Schedule 2, Part 1 of the GPDO sets out the PD rights for development within the curtilage of a dwellinghouse. These rights apply generally to all dwellinghouses, with specific exceptions for some classes. Rights under Classes A, B and E for example, do not, in part or fully apply to areas such as, land within a conservation area, an area of outstanding natural beauty, a National Park, and a World Heritage Site, but do not include land falling within the Green Belt.
8. On the above basis, it can be surmised that the omission of land within the Green Belt in the GPDO was intentional on the Government's part, and as a result, land within the Green Belt is regarded as no different in terms of the application of PD rights as land outside of it. Furthermore, the requirement of the National Planning Policy Framework ('the Framework') is that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. Therefore, the starting point is that PD rights should remain in place, even in the Green Belt, unless clear justification is advanced which is specific to the site.
9. Moreover, the fact that PD rights have not been removed for land in the Green Belt means that the Government's fundamental Green Belt aims of preventing urban sprawl by keeping land permanently open do not extend to preventing permitted development within a domestic curtilage. Given this position and bearing in mind the limitations of the GPDO in terms of size and position of development permitted, I am not persuaded that the site circumstances are such, that extensions and alteration to the approved dwelling would have such an effect on the openness of the Green Belt or its purposes that removal of PD rights is justified.
10. Based on the limitations of PD rights, these often result in enlargements, improvements or alterations that have due regard for living conditions. However, it is nonetheless possible for homeowners, in implementing these rights, to affect the living conditions of neighbours in a way that the Council would not have found acceptable had a planning application been necessary.
11. Nevertheless, in this instance, there is nothing to suggest that the appeal site's siting and spacing from neighbouring properties is such to necessitate the removal of PD rights in the interest of safeguarding the living conditions of neighbours.
12. Furthermore, there is no certainty that an occupier would utilise PD rights in a way that conflicted with Green Belt policy or the living conditions neighbours.

13. Therefore, I consider that imposing Condition 4 to protect the Green Belt and the living conditions of neighbours, of themselves do not constitute the '*clear justification*' referred for the removal of 'permitted development' as set out in the Framework.

14. Accordingly, Condition 4 is not reasonable or necessary in the interests of protecting the Green Belt and the living conditions of neighbours.

Conditions

15. The guidance in 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. I observed that the development has already commenced. Therefore, it is not necessary for me to impose a condition specifying a timescale for the implementation of the planning permission. 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 for the reasons originally stated. In the event that these have in fact been discharged, that is a matter which can be addressed by the parties.

Conclusion

16. For the reasons given above, I conclude that the appeal should succeed. I will grant a new planning permission without the disputed and implementation conditions and restating those undisputed conditions.

M Aqbal

INSPECTOR

Schedule of Conditions

1. Unless non-material variations are agreed in writing with the Local Planning Authority the development shall not be carried out other than in accordance with the plans 104-19-06, 104-19-09 and 104-19-10 received by the Council on 24 October 2019.
2. No above ground development shall commence unless and until full details of the colour, finish and texture of all new materials to be used on all external surfaces, together with samples of the facing bricks and roof tiles have been submitted to and approved in writing by the Local Planning Authority. The development shall not be carried out other than in accordance with the approved details.
3. 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 points (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) An investigation and risk assessment 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, archaeological 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) 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) 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 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) 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), 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. 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).

4. No works to commence on site, including site clearance, until a combined ecological and landscaping scheme has been submitted and agreed between the applicant and the local planning authority (with advice from WCC Ecological Services). The scheme must include all aspects landscaping including details of proposed species and habitat creation including the location of bat and bird boxes or refugias for amphibians and reptiles. The agreed scheme will be fully implemented before/during development of the site as appropriate.
5. The development hereby permitted shall either: a.) Be timetabled and carried out to avoid the bird breeding season (March to September inclusive) to prevent possible disturbance to nesting birds. b.) Not commence until a qualified ecologist has been appointed by the applicant to inspect the vegetation to be cleared on site for evidence of nesting birds immediately prior to works. If evidence of nesting birds is found works may not proceed in that area until outside of the nesting bird season (March to September inclusive) or until after the young have fledged, as advised by the ecologist. Birds can nest in many places including buildings, trees, shrubs, dense ivy, and bramble/rose scrub. Nesting birds are protected under the 1981 Wildlife and Countryside Act.