



Appeal Decision

Site visit made on 10 May 2022

by Tamsin Law BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 June 2022

Appeal Ref: APP/Q4625/W/21/3288215

Mill Pool Farm, Bradnocks Marsh Lane, Solihull, B92 0LH

- 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 conditions subject to which a previous planning permission was granted.
 - The appeal is made by S & C Toy (M. & R. Kirkham & Sons Ltd) against Solihull Metropolitan Borough Council.
 - The application Ref PL/2021/02142/VAR is dated 29 July 2021.
 - The application sought planning permission for a new dwelling without complying with a condition attached to planning permission Ref F/C/83/1394, dated 23 August 1983.
 - The condition in dispute is No 4 which states that: Notwithstanding the provisions of the Town and Country Planning General Development Orders 1977-81, or subsequent amendments thereof, no development included within Article 3, Schedule I, Class I, shall be carried out within the residential curtilage as approved, without the express consent of the Local Planning Authority.
 - The reason given for the condition is: In order to maintain and preserve the amenities of the area.
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Decision

1. The appeal is dismissed and planning permission is refused.

Preliminary Matters

2. The appeal follows the Council's failure to determine the application within the prescribed period. However, the Council has indicated in its grounds of appeal, that had it been in a position to determine the application, it would have refused planning permission. The main issue has been informed by the substance of the Council's case in this respect.

Background and Main Issue

3. The condition in dispute relates to the removal of permitted development (PD) rights. It references Article 3, Schedule I, Class I of the Town and Country Planning General Development Orders 1977-81, or any subsequent amendment. This would relate to what has been consolidated as Schedule 2, Part 1, Classes A, B, C, D, E and F of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) and specifically development affecting a dwellinghouse or within the curtilage thereof.
4. With the above in mind, the main issue is whether the condition is necessary and reasonable having regard to local and national policies relating to proposals affecting the Green Belt.

Reasons

5. The appeal site comprises a large detached two-storey dwelling and associated outbuildings (garage, stable, two-storey barn) set around a central paved courtyard and set within large grounds. The dwelling and associated buildings are set back from Bradnocks Marsh Lane and is bound by agricultural land to the north, south and west. A river is located to the west of the dwelling and the ground slopes down towards this, as such, the appeal building, and nearby land is located at an elevated position.
6. The submission indicates the building was granted as an agricultural workers' dwelling. No further planning history is apparent at the site and neither the Council nor the appellant have copies of the original plans, including its residential curtilage. As such, the only plan I have before me relating to the extent of the site denotes the appeal dwelling and a curtilage extending to some 77 acres.
7. The Council are concerned that should condition 4 be removed then development could be undertaken that would result in inappropriate development in the Green Belt.
8. Paragraph 54 of the Framework states planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. Expanding on this, the Planning Practice Guidance (PPG) advises conditions restricting the future use of permitted development rights or changes of use may not pass the test of reasonableness or necessity. The scope of such conditions needs to be precisely defined, by reference to the relevant provisions in the GPDO, so that it is clear exactly which rights have been limited or withdrawn.
9. The GPDO sets out the PD rights for development within the curtilage of a dwellinghouse. These rights apply generally to all dwellinghouses, with some exceptions. Given that land within the Green Belt was omitted from these exceptions, land within the Green Belt is regarded as no different in terms of the application of PD rights as land outside of it.
10. It is clear from the Council's submission that they seek control in assessing any future affects on the Green Belt. A detached house within large grounds could otherwise feasibly undertake a significant amount of development without the need for planning permission. The appeal site's location within the Green Belt, does not, in itself, represent an exceptional circumstance to warrant removal of PD rights. I have considered the particular characteristics of the dwelling and its surroundings. The dwelling sits in expansive grounds and is large in scale with a number of outbuildings. Neither main party can identify the original dwelling, nor its residential curtilage, apart from a plan detailing a red outline extending to some 77 acres.
11. Consequently, it would be sensitive to change from further additions. Notwithstanding the presence of boundary vegetation, glimpses of the site are available from the adjacent highway, and longer-range views are also possible through to the open fields nearby.
12. As I have no evidence to the extent of the original dwelling and the curtilage provided could extend to some 77 acres, removing the restrictive condition could permit extensions and alterations that would have the potential to be

disproportionate, significantly increasing the volume of the dwelling and its spread (including outbuildings) across extensive grounds. As such, there is potential for such works to significantly harm the openness of the Green Belt over a very wide area.

13. The appellant has drawn my attention to various appeal decisions relating to removal of PD rights. While there may have been good reasons to amend PD rights in those cases, here I find that the circumstances are incomparable in relation to site characteristics and the reasons for the conditions. In any event I have determined this appeal on its own merits.
14. All types of extensions and alterations that could be carried out under Class I of the Town and Country Planning General Development Orders 1977-81 and therefore Classes A-F of the GPDO have the potential to be disproportionate and/or significantly reduce openness and therefore inappropriate here. As such, I find that the condition should remain as originally worded in order to provide the necessary and proper control of development that could be harmful to the Green Belt.
15. Accordingly, the removal of the condition to restrict PD rights would not comply with Policy P17 of the Solihull Local Plan Local Plan (2013) (LP) which seeks to protect the Green Belt from inappropriate and thus harmful development.

Conclusion

16. The condition is reasonable and necessary in that it allows the Council to assess whether any future additions to the appeal building and site would be disproportionate and/or harmful to the openness of the Green Belt and thereby avoid inappropriate development in the Green Belt. I therefore dismiss the appeal and refuse planning permission.

Tamsin Law

INSPECTOR