



Appeal Decision

Site visit made on 17 May 2022

by **C Shearing BA(Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 15 June 2022

Appeal Ref: APP/H1515/W/21/3284700

Greenbank, Little Warley Hall Lane, Little Warley CM13 3EX

- 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 & Mrs Hill against the decision of Brentwood Borough Council.
- The application Ref 21/01282/FUL, dated 22 July 2021, was approved on 16 September 2021 and planning permission was granted subject to conditions.
- The development permitted is 'Removal of conditions 4 (Outbuildings 3 and 4 to be demolished), 5 (Permitted Development Rights for Dwelling), 6 (Permitted Development Rights for Outbuildings) and 7 (Use of Outbuildings) of application 18/00315/FUL (Replacement dwelling and associated works (Retrospective))'.
- The conditions in dispute are Nos 1, 2 and 3 which state that:
 1. *The existing outbuildings Nos 3 and 4 and remaining containers on the site, denoted and illustrated on drawing reference '8642/02A', which are indicated for demolition/removal for clarity, shall be demolished and all materials arising shall permanently be removed from the site within 3 months of the date of this permission.*
 2. *Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking, re-enacting or modifying that Order), the dwelling hereby permitted shall not be extended or enlarged in any way without the prior grant of specific planning permission by the local planning authority.*
 3. *Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking, re-enacting or modifying that Order) no development falling within Schedule 2, Part 1, Class E of that Order ('buildings etc incidental to the enjoyment of a dwellinghouse') shall be carried out without the prior grant of specific planning permission by the local planning authority.*
- The reasons given for the conditions are:
 1. *In the interests of maintaining the openness of the Green Belt.*
 2. *To prevent the creation of a dwelling of disproportionate size that would conflict with the policies of restraint within the Green Belt.*
 3. *To prevent the creation of a dwelling of disproportionate size that would conflict with the policies of restraint within the Green Belt and to limit the further spread of built form of adjunct and incidental outbuildings, within the curtilage of the dwellinghouse, into the Green Belt.*

Decision

1. The appeal is allowed and the planning permission Ref 21/01282/FUL for Removal of conditions 4 (Outbuildings 3 and 4 to be demolished), 5 (Permitted Development Rights for Dwelling), 6 (Permitted Development Rights for Outbuildings) and 7 (Use of Outbuildings) of application 18/00315/FUL (Replacement dwelling and associated works) at Greenbank, Little Warley, CM13 3EX granted on 16 September 2021 by Brentwood Borough Council, is

varied by deleting conditions 1, 2 and 3 and substituting them with the following condition:

- 1) The existing outbuildings, structures and containers that are annotated for removal on drawing 8642/02A, shall be removed and all resulting materials removed from the site within 6 months of the date of this decision.

Preliminary Matter

2. The Council recently adopted the Brentwood Local Plan 2016-2033 (2022) (the BLP), replacing the Brentwood Replacement Local Plan 2005. The main parties have had chance to comment on the new policies so far as they are relevant to the main issues. I have determined the appeal in regard to the most up to date development plan.

Background and Main Issues

3. Planning permission was granted for a replacement dwelling on the site on 13 April 2018¹. The application subject to this appeal sought to remove conditions 4, 5, 6 and 7 of that permission. The Council granted planning permission, removing condition 7 and varying and reimposing conditions 4, 5 and 6 as new conditions 1, 2 and 3, which are the subject of this appeal. The main issue is whether the conditions are reasonable and necessary to preserve the openness of the Green Belt and the purposes of including land within it.

Reasons

4. With regard to condition 1, the proposed site plan 8642/02A demonstrates that two outbuildings would be demolished, and all other containers adjacent to the southern site boundary would be removed from the site. While that was not an approved drawing of permission 18/00315/FUL, the Council's officer report for that application states that the removal of the two outbuildings (numbered 3 and 4) as well as all other structures and containers along the southern boundary, would offset the increase in the footprint of the main house. The report concludes that with the demolition of outbuildings 3 and 4, as well as all other structures and containers on the southern boundary, the replacement dwelling was not materially larger than the one it replaced and the development was therefore not harmful to the Green Belt.
5. The considerations carried out by the Council in their officer report align with the objectives at paragraph 149 of the National Planning Policy Framework (the Framework) which states that an exception to inappropriate development in the Green Belt can include the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces. I do not have substantive evidence before me to suggest that the Council's conclusions on this matter would have been the same, and the replacement house found to be acceptable, even if the outbuildings and structures were to be retained.
6. As those demolitions and removals were therefore integral to the Council's conclusions on Green Belt harm, I do not find the condition requiring the removal of those outbuildings to be unreasonable or unnecessary. The replacement dwelling with the demolition shown, is compliant with Policy MG02 of the BLP and the objectives of the Framework insofar as they give provisions for development that is not inappropriate in the Green Belt.

¹ 18/00315/FUL

7. Conditions 2 and 3 relate to the removal of permitted development rights for enlargements to the replacement house and for outbuildings within its curtilage. The Framework set out the tests for planning conditions and, at paragraph 54, states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. Planning Practice Guidance (the PPG) states that conditions restricting the future use of permitted development rights or changes of use may not pass the test of reasonableness or necessity, and that blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity.
8. The Council assert that conditions 2 and 3 are necessary to preserve the openness of the Green Belt, and its officer report explains that this was particularly as the replacement dwelling was larger than the one it replaced. Based on the evidence before me, the previous dwelling was being extended in connection with a lawful development certificate for side, rear and roof extensions², in addition to a prior approval for a rear extension³. During the course of those works the extent of demolition instead necessitated the need for a planning application for a replacement house⁴.
9. While there has been a notable uplift in development on the site historically, the Framework defines the original building as it existed on 1 July 1948 or, if constructed after 1 July 1948, as it was built originally. Consequently, under the provisions of the Framework the replacement dwelling as built should be considered as original, and any future additions would not automatically be disproportionate under the tests at paragraph 149. In any event, the provisions of the Framework would only apply if future development were to require planning permission. For this reason, I am not satisfied that the planning history of the site provides clear justification to remove permitted development rights.
10. While there would inevitably be some impact on openness from extensions and outbuildings, the Town and Country Planning (General Permitted Development) Order (the GPDO) does not place a restriction on dwellings within the Green Belt, as it does in other designated areas such as National Parks. The appeal property is one in a line of properties of similar scale and character which line the eastern side of the road. The properties display various alterations and extensions as well as outbuildings, boundary treatments and residential paraphernalia within their gardens. These factors define and limit the degree of openness on this side of the road.
11. Based on the evidence before me, and the findings of my site visit, I do not consider that there are circumstances particular to this site to justify a stricter approach to permitted development rights than exist on other properties in the Green Belt.
12. Accordingly, I conclude that conditions 2 and 3 are not reasonable or necessary in the interests of openness or the purposes of including land within the Green Belt.

² 17/00839/S192

³ 13/10374/PN42

⁴ 18/00315/FUL

Conditions

13. As I have concluded that condition 1 remains necessary and reasonable, I have replaced that condition with one of similar wording. This more concisely describes that it is only those buildings, structures and containers annotated on plan 8642/02A which need to be removed, removes reference for the building and materials to be removed permanently in the interests of reasonableness, and also amends the period for compliance given the substantial nature of those outbuildings, referring to the date of my decision.

Conclusion

14. For the reasons set out, the appeal should be allowed, and the planning permission varied in the terms I have explained.

C Shearing

INSPECTOR