



Appeal Decision

Site visit made on 26 April 2022

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th June 2022

Appeal Ref: APP/Z4718/W/22/3291623

44 Jagger Lane, Emley Moor, Huddersfield HD8 9SY

- 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 C Fosbrook against the decision of Kirklees Metropolitan Council.
 - The application Ref 2021/70/93894/E, dated 1 October 2021, was refused by notice dated 20 December 2021.
 - The application sought planning permission for re-use of existing barn and new extension to form extension to dwelling and change of use of land to garden without complying with a condition attached to planning permission Ref 96/62/92816/E7, dated 13 September 1996.
 - The condition in dispute is No 6 which states that: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 no buildings or extensions shall be erected in the area edged red on the approved plan without the prior written approval of the Local Planning Authority.
 - The reason given for the condition is: To ensure that unsatisfactory extensions do not result in close overlooking of adjoining property and the site lies within the Green Belt in which development is not normally permitted for purposes other than those appropriate to the Green Belt.
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. Planning permission was granted in 1996 for the re-use of an existing barn and a new extension to the dwelling and to change the use of land to garden. This now forms the appeal dwelling and its garden area. Condition 6 of the permission removed permitted development rights for buildings and extensions, to prevent overlooking and because the appeal site is within the Green Belt.
3. The Council does not seek to argue that the condition should be retained in the interests of preventing overlooking, and I find no reason to take a different view in that regard. Therefore, the main issue is whether or not the condition is required to comply with the provisions of local and national planning policies in relation to the protection of the Green Belt, and consequently whether the condition is reasonable and necessary.

Reasons

4. The National Planning Policy Framework (the Framework) states at paragraph 54 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 Guidance¹ (PPG) advises that conditions restricting the future use of permitted development rights or changes of use may not pass the test of reasonableness or necessity. It also states that area-wide or 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.
5. The Council no longer has a record of the reasoning as to why the disputed planning condition was imposed on the 1996 planning permission. Therefore, it is not certain as to the exact basis on which the condition was imposed at that time, with respect to the element of its reasoning that refers to Green Belt considerations. I furthermore do not have any details before me as to the size of the extension that was permitted in 1996 or the planning policies that were in place at that time. Irrespective of this however, in determining this appeal an assessment is required as to whether or not the condition meets the requirements of current planning policy.
6. The Framework sets out at paragraphs 137 and 138 that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open and that its purposes include assisting in safeguarding the countryside from encroachment. At paragraph 149 it states that the construction of new buildings is inappropriate in the Green Belt, but there is an exception at paragraph 149c) which allows for the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building. Policy LP57 of the Kirklees Local Plan Strategy and Policies 2019 (LPSP) states that in the case of extensions, the original building should remain the dominant element both in terms of size and overall appearance.
7. The condition as imposed places control on buildings and extensions at the appeal site, beyond the extension that was permitted in 1996. It has not served to prevent additional development, as it is evident that successful planning applications have been made post-1996 and that works have taken place, assessed against the relevant policies and their aims. This does mean however that there is now a clear potential that further development would be disproportionate and dominant, and thus contrary to local and national planning policy, including in terms of causing harm to openness. In this context, the condition remains both necessary and reasonable. Its retention also does not preclude the appellant from making future planning applications, which would be considered against the relevant planning policies.
8. I acknowledge that permitted development rights are not restricted at dwellinghouses in the Green Belt by The Town and Country Planning (General Permitted Development) (England) Order 2015 (GDPO) and my attention has been drawn to several appeal decisions related to that consideration. However, in the Stow-Cum-Quy² appeal decision the Inspector finds that it is for the decision maker to assess and explain why an individual class or classes within

¹ Paragraph: 017 Reference ID: 21a-017-20190723

² APP/W0530/W/21/3272766

the relevant parts of the GPDO would harm openness in a specific case, necessary to justify the need for a restrictive condition. That is the approach I have followed, and I take a fundamentally different view as to whether development constructed under permitted development can cause harm to openness and can be disproportionate. In the Enfield and Wakefield³ appeals the Inspectors made their balanced considerations against now revoked guidance that permitted development rights should only be removed in exceptional circumstances. That is not the context in which I must determine this appeal and it reduces the weight I give to those other decisions.

9. I accept that the Emley⁴ case is geographically very close to the appeal site and that there are a number of similarities with what is before me. However, it is evident the Inspector too made his assessment against the test of exceptionality, weighing considerations including previous works and the potential for future development against this. I have addressed these matters in my determination of the appeal, and I am not persuaded that the fact there are restrictions on what can be built under permitted development addresses the concerns that I have identified. The Pilgrim's Hatch⁵ decision also predates the change in the wording of the PPG, albeit there is no explicit reference in it to exceptional circumstances. But, in any event, I do not interpret national and local Green Belt policy as requiring no restriction on the permitted development rights applying to dwellings.
10. Ultimately however, in exercising my planning judgement I give lesser importance to the fact that permitted development rights are not removed in the Green Belt *per se* and greater weight to the site-specific considerations arising from the application of Green Belt planning policy in the case that is before me. For the reasons set out above, I find there to be a clear justification in this instance for the condition to prevail. I accept that this scenario has come about to some extent because there has been further development subsequent to the 1996 permission, but this only strengthens the need for the condition and means that in practice it has served to address a concern that has come to bear.
11. I note that the site is reasonably well enclosed by other buildings and that this proximity may also limit the scale of permitted development that could be undertaken. These considerations do not however alter my assessment against the relevant planning policies.

Conclusion

12. In conclusion, the condition is both reasonable and necessary to ensure that the objectives of the relevant local and national Green Belt planning policies are met. Consequently, there is a clear justification for the continuing restriction of permitted development rights in this instance. The condition is therefore required to ensure compliance with Policy LP57 of the LPSP and the Framework where they seek to protect the Green Belt. It is also in accordance with paragraphs 54 and 56 of the Framework. The appeal should therefore be dismissed.

Graham Wraight INSPECTOR

³ APP/Q5300/A/14/2217664(&5) & APP/X4725/D/18/3201609

⁴ APP/Z4718/W/20/3255705

⁵ APP/H1515/W/16/3165798