



Appeal Decision

Site visit made on 14 June 2022

by Sarah Manchester BSc MSc PhD MIEnvSc

an Inspector appointed by the Secretary of State

Decision date: 19th July 2022

Appeal Ref: APP/R0660/W/22/3292275

Birtles Farmhouse, Hocker Lane, Over Alderley, Cheshire, SK10 4SB

- 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 Haydar Fathulla against the decision of Cheshire East Council.
 - The application Ref 21/3986M, dated 22 July 2021, was refused by notice dated 17 December 2021.
 - The application sought planning permission for variation of condition 4 to planning application 19/4291M – Variation of condition 2 of 17/4607M – Extension to the farm house without complying with a condition attached to planning permission Ref 19/4291M, dated 29 October 2019.
 - The condition in dispute is No 4 which states that: *Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking or re-enacting that order), no development (as defined by Section 55 of the Town and Country Planning Act 1990) as may otherwise be permitted by virtue of Class(es) A & E of Part 1 Schedule 2 of the Order shall be carried out.*
 - The reason given for the condition is: *To ensure continued control over the extent of further building on the site to protect living conditions of neighbouring properties and the character/ appearance of the Conservation Area.*
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. In the interests of clarity, I have adopted the description of the proposal in the banner heading above from the decision notice.
3. Planning permission was granted in 2017 and it was varied in 2019 for an extension to the existing dwelling subject to conditions. Condition 4 removes permitted development (PD) rights under Class A (extensions) and Class E (outbuildings) of Part 1 Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). The appeal seeks to vary condition 4 to allow development permitted under Class E.
4. The decision notices (permission refs 17/4607M and 19/4291M) state the reason for the disputed condition is the protection of living conditions of neighbouring properties and the character/appearance of the Conservation Area. However, the appeal site is not in a conservation area and it is clear from the Council's officer reports and its evidence to the appeal that the condition was imposed in the interests of protecting the Green Belt.

5. Therefore, based on the evidence, the main issue in the appeal is whether or not the removal of permitted development rights under Class E of the GPDO is necessary and reasonable in the interests of protecting the Green Belt.

Reasons

6. Birtles Farmhouse is a detached 2 storey dwelling prominently sited in a large open plot immediately to the south of Hocker Lane in the countryside and the Green Belt. It forms part of a loose cluster of development that includes dwellings, a Grade II listed building with planning permission for alterations and extensions and a converted curtilage listed barn.
7. Planning permission was first granted in 2017 for extension to the farm house. The Council's officer report notes the 2 storey extension, a roughly 45% increase in the floor space of the original dwelling, exceeds the 30% increase accepted under saved Policy GC12 of the Macclesfield Borough Local Plan. As such, it is a disproportionate addition over and above the size of the original building, in conflict with policy PG3 of the Cheshire East Local Plan Strategy Adopted July 2017 and the relevant National Planning Policy Framework (the Framework) policies that protect the Green Belt.
8. However, there was a valid fallback position in the form of a certificate of lawfulness (ref 17/3987M) for PD single storey extensions and an outbuilding. The fallback would have resulted in a greater increase in floor space and greater harm to the openness of the Green Belt than the 2 storey extension. The fallback therefore amounted to very special circumstances that outweighed the Green Belt harm and the policy conflict. Nevertheless, while it provided a justification for the extension, the fallback does not negate the harm arising from it. Consequently, and in order to prevent further harmful development, the PD rights relating to extensions and outbuildings were removed.
9. Paragraph 54 of the Framework states that planning conditions should not be used to restrict national PD rights unless there is clear justification. The Planning Practice Guidance explains that PD rights can be removed by means of a condition, but such conditions may not pass the test of reasonableness or necessity; the scope of such conditions needs to be precisely defined by reference to the provisions in the GPDO so it is clear exactly which rights have been limited or withdrawn; and the blanket removal of freedoms to carry out small scale domestic alterations that would otherwise not require planning permission are unlikely to meet the tests of reasonableness and necessity.
10. Green Belt is not listed in the GPDO as a protected area where exclusions apply to PD rights. Therefore, the appeal site's location does not in itself provide a clear justification to restrict PD rights. However, the 2 storey extension was only acceptable because of the fallback position. This provides the clear justification to restrict the relevant PD rights in order to prevent greater and cumulative harm to the Green Belt. Condition 4 is precisely defined with reference to the GPDO such that it is clear exactly which rights have been withdrawn. It is not a blanket removal of freedoms to carry out small scale domestic alterations.
11. There is little evidence that the 2 storey extension would have been permitted if not for the fallback position. There is also little evidence that, if the large incidental outbuilding had not been part of the fallback, the modest single storey extensions would have provided a justification for the inappropriate

development. On the basis that the fallback relied on the combined extensions and the outbuilding, it was not unreasonable of the Council to remove the PD rights relating to both extensions and outbuildings.

12. In his final comments, the appellant disputes the Council's assessment of the size of the 2 storey extension over and above the original building. He considers that it is not a disproportionate addition and it did not require very special circumstances to justify it. However, he has not provided any substantive evidence in relation to the size of the original building. In the absence of compelling evidence that the extension is not inappropriate development, such that fallback position is irrelevant, this is not a matter that justifies the proposal.
13. The appellant is seeking to reinstate only the PD rights that relate to outbuildings. In this regard, a small outbuilding close to the dwelling might be assimilated into its surroundings without significant harm. However, Birtles Farmhouse sits in a large plot and outbuildings could be sited some distance away from the dwelling. The evidence indicates that currently only roughly 15% of the curtilage area is currently built. The site is not well screened and a widely separated or potentially large extent of outbuilding could have a significant visual impact in this location, including by extending the envelope and the bulk of built development.
14. A conspicuous increase in the spatial and visual footprint of development would be likely to result in cumulative adverse impacts on the openness of the Green Belt, over and above the existing disproportionate extension to the dwelling. On this basis, the proposed variation to the condition would have the potential to result in a detrimental increase in built development with consequent harm to the character and appearance and the openness of the Green Belt.
15. Therefore, I conclude that condition 4 is necessary and reasonable in the interests of protecting the Green Belt. It is also relevant to the development permitted, enforceable and precise. Although the Council's decision notice does not refer to local or national Green Belt policy, the variation of condition 4 would conflict with the policies in the Framework that protect the Green Belt.

Other Matters

16. While many dwellings in the Green Belt retain their PD rights, there are clear reasons for the limited removal of PD rights at this site. Moreover, while outbuildings could have been constructed under PD rights prior to the implementation of the permission, no outbuildings were constructed and the permission has been implemented. The theoretical exercise of historic PD rights does not justify the proposal.
17. Planning permission has been granted for extensions to nearby properties both with and without removal of PD rights. In the case of the converted curtilage listed building, PD rights were withdrawn. However, while permission has been granted for an outbuilding, there is little evidence that the original conversion included disproportionate additions or that the Council has been inconsistent in its decision making. The Yew Tree extension does not appear to constitute inappropriate development in the Green Belt. The Rosner property is markedly different, being timber clad and with a green roof. On the basis of the evidence before me, none of these appears directly comparable to the appeal property or its extension.

18. My attention has been drawn to several planning permissions and appeal decisions where PD rights removed by planning condition were reinstated. While I have had regard to these schemes, none appears directly comparable and they do not provide a justification for the appeal proposal, which I have considered on its individual merits.
19. Bramble Cottage is a detached dwelling in a ribbon of development in the Green Belt, a conservation area (Article 2(3) land) and in the setting of a listed building. PD rights were removed by a permission (ref 13/0107M) for porches, chimney alterations and other minor alterations. Class E PD rights were reinstated (ref 13/3147M) as the Council found those rights did not relate to the development permitted such that their removal was not fully justified.
20. Langley Road (ref APP/R0660/W/16/3144395) relates to a permission for a new dwelling with Class A and E rights removed. The Inspector found that the unobtrusive siting of a PD extension or domestic outbuilding to the rear of the building would have a minimal effect on visual amenity or the openness of the Green Belt. It differs from the appeal scheme in a number of ways, including by virtue of forming part of a ribbon of closely spaced dwellings set back from the road with rear gardens screened from public views and the policy context.
21. Permission was granted at Oak Farm (ref 17/2105M) for a replacement dwelling with PD rights removed. Class E rights were reinstated (ref 17/6232M) because the permission had not been implemented when the application to vary the condition was made, such that outbuildings could still be constructed. Moreover, unlike this appeal, the exercise of PD rights did not provide a justification for the development.
22. Fieldhouse Farm (ref APP/R0660/W/21/3269597) relates to the conversion of farm buildings to a dwelling where Class A to E PD rights had been removed. It is not in the Green Belt. The building was found to have no special character, the exercise of PD rights would not have a significant effect on the landscape, and the blanket removal of PD rights was not justified. Brook Cottage (ref APP/R0660/W/21/3275257) relates to conversion of an outbuilding to a dwelling subject to conditions removing PD rights under Classes A, AA, B and E for the new dwelling, and Class E rights for its host. PD rights were reinstated as there was no clear justification for their removal.

Conclusion

23. For the reasons set out above, I find that condition 4 is reasonable and necessary in the interests of protecting the Green Belt. It does not prevent the appellant from making a planning application for outbuildings, but it provides the Council with the opportunity to assess whether proposals, in combination with the disproportionate extension to the dwelling, would result in significant cumulative harm to the Green Belt.
24. Therefore, the appeal should be dismissed.

Sarah Manchester

INSPECTOR