



Appeal Decision

Site visit made on 22 June 2022

by Tamsin Law BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 November 2022

Appeal Ref: APP/C3430/W/22/3294667

Upper Westbeech Farm, Nurton Hill Road, Pattingham, WV6 7HG

- 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 R Patel against the decision of South Staffordshire District Council.
 - The application Ref 21/00952/VAR, dated 1 September 2021, was refused by notice dated 22 October 2021.
 - The application sought planning permission for a replacement dwelling and glazed link to stone outbuilding to be converted as part of dwelling without complying with conditions attached to planning permission Ref 21/00098/FUL, dated 19 August 2021.
 - The conditions in dispute are Nos 4 and 5 which state that:
 - 4. With the exception of those shown to be retained on approved plan check plan, before the development hereby approved is occupied/brought into use, any buildings within the red line shown on the aforementioned plan shall be demolished and the materials arising therefrom permanently removed from the site.*
 - 5. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (as amended), or any other subsequent equivalent order, no development within the following classes of development shall be carried out to the dwelling, the subject of this approval, without the prior approval of the Local Planning Authority: a. Schedule 2, Part 1, Class A - enlargement, improvement or other alteration b. Schedule 2, Part 1, Class B - addition or alteration to the roof c. Schedule 2, Part 1, Class C - any other alteration to the roof d. Schedule 2, Part 1, Class D - porches e. Schedule 2, Part 1, Class E - outbuildings.*
 - The reasons given for the conditions are:
 - 4. The site is within the Green Belt within which, in accordance with the planning policies in the adopted Core Strategy, there is a presumption against inappropriate development.*
 - 5. The site is within the Green Belt within which, in accordance with the planning policies in the adopted Core Strategy, there is a presumption against inappropriate development.*
-

Decision

1. The appeal is allowed and the planning permission Ref 21/00952/VAR for the variation of condition 4 from planning approval ref. 21/00098/FUL at Upper Westbeech Farm, Pattingham, WV6 7HG granted on 22 October 2021 by South Staffordshire District Council, is varied by deleting condition 4 and substituting it for the condition detailed in the attached schedule.

Main Issue

2. 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

3. The appeal site comprises a large detached dwelling set within a defined large plot. The dwelling is set back from the adjacent private highway and is bound by residential dwellings to the east and west, the private highway to its south and open agricultural land to its north. During my site visit I noted a number of outbuildings to the side and rear of the host dwelling. These vary in design, age and materials.
4. There is a lengthy planning history to the site, with permission originally granted in 2018¹ for a replacement dwelling. A further permission was granted in 2021² which included the removal of most of the outbuildings, apart from a stone barn and dovecote. During my site visit I noted that the 2021 permission had not yet been implemented.
5. 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 Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO), so that it is clear exactly which rights have been limited or withdrawn.
6. The GPDO sets out the Permitted Development (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.
7. The Framework denotes openness as an essential characteristic of the Green Belt. The openness of the Green Belt has a spatial aspect as well as a visual aspect. 'Open' can mean the absence of development in spatial terms, and it follows that openness can be harmed even when development is not readily visible from the public realm.
8. The reason for refusal is clear in that the Council wants the existing outbuildings to be removed and they seek control in assessing any future effects on the Green Belt. A detached house on a large plot 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.

¹ 18/00987/FUL

² 21/00098/FUL

9. The proposed dwelling would sit on a large plot and would be large in scale. It would not be a wholly conventional new build structure but a partial new build with a glazed link building to a stone outbuilding to be converted. Consequently, it would be highly sensitive to change from further, what could be quite substantial outbuildings. The presence of boundary vegetation offers some screening, but glimpses of the site are available from the adjacent private highway and via the associated access. Additionally, a right of way runs adjacent to the site to the agricultural land to the rear which would allow for close up views of the proposal. The potential future development could noticeably and significantly reduce the openness of the Green Belt in spatial terms given the scale of the building and the size of its associated curtilage.
10. With regards to the removal of existing outbuildings. It is clear from the original permission that, whilst given limited weight, the removal of outbuildings was a contributing factor to the very special circumstances afforded to allowing a materially larger replacement dwelling. Whilst the outbuildings to be removed are modest in scale and are single storey, they do contribute to the visual clutter, and their removal would improve the sense of openness, particularly to the rear garden which opens on to agricultural land.
11. I have noted that condition 4 makes reference to a plan but has not been included in the condition. As such, currently the condition is imprecise. As I have found harm to the Green Belt should the condition be removed, I will need to alter the wording to include the missing plan in order for the condition to be precise.
12. 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.
13. Accordingly, the removal and variation of the conditions to retain outbuildings and restrict PD rights would not comply with Policy GB1 of the South Staffordshire Core Strategy Development Plan Document 2012 (CS) which seeks to protect the Green Belt from inappropriate and thus harmful development.

Conditions

14. I have varied the disputed condition 4 and retained condition 5 for the reasons set out. The Planning Practice Guide (PPG) indicates that, to assist with clarity, decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original permission, unless they have already been discharged. In this case, it is the conditions attached to the 2021 permission which remain relevant.
15. I have no evidence before me to suggest that any of the other conditions are no longer necessary or relevant and during my site visit, I noted that works had not commenced. I have therefore imposed all of the other conditions attached to the 2021 permission, with only minor drafting modifications where this has been necessary.

Conclusion

16. I therefore allow the appeal, deleting condition 4 and substituting with a condition which is more precise whilst, for the reasons given, condition 5 will remain.

Tamsin Law

INSPECTOR

Schedule of Conditions

1. The development to which this permission relates must be begun not later than the expiration of 3 years beginning with the date on which this permission is granted.
2. The development shall be carried out in accordance with the approved drawings: 1271/P/011 Rev B received 01/04/2021, 1271/P/001 received 27/07/2021 and 1271/A/001 received 04/08/2021
3. No works above damp-proof level shall take place until details of the materials to be used in the construction of the external surfaces of the development have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
4. With the exception of those shown to be retained on approved drawing 1271/A/001 Site Location and Block Plan, before the development hereby permitted is first occupied, any buildings within the red line shown on the aforementioned plan shall be demolished and the materials arising therefrom permanently removed from the site.
5. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (as amended), or any other subsequent equivalent order, no development shall be carried out under Schedule 2, Part 1, Class A (enlargement, improvement or other alteration); Schedule 2, Part 1, Class B (addition or alteration to the roof); Schedule 2, Part 1, Class C (any other alteration to the roof); Schedule 2, Part 1, Class D (porches); or Schedule 2, Part 1, Class E (outbuildings).
6. The archaeological site work shall be implemented in full in accordance with the written scheme of archaeological building recording approved under application 18/00797/COND. The development hereby permitted shall not be first occupied until the site investigation has been completed in accordance with the written scheme of archaeological building recording approved under application 18/0097/COND and the provision made for analysis, publication and dissemination of the results and archive deposition has been secured.
7. No development shall take place on the construction of the dwelling hereby approved permitted until a scheme for the provision and implementation of surface water drainage works has been submitted to and approved in writing by the Local Planning Authority. The development hereby permitted shall not be first occupied until the approved scheme has been completed.
8. No development shall take place, including any demolition works, until a Construction Vehicle Management Plan (CVMP) has been submitted to and approved in writing by the Local Planning Authority. The approved statement shall be adhered to throughout the construction period. The statement shall include: Arrangements for the parking of site operatives and visitors; Loading and unloading of plant and materials; Storage of plant and materials used in constructing the development; Construction hours; Delivery routeing and hours; Recorded daily inspections of the highway adjacent to the site

access; Wheel washing measures to remove mud or debris; No parking on the private drive leading from Nurton Hill Road

9. If the development hereby permitted has not commenced by February 2023, a further ecological survey for bats must be submitted to the Local Planning Authority for written approval. The survey must: i) establish if there have been any changes in the presence of bats and ii) identify any likely new ecological impacts that might arise from any changes. Where the survey results indicate that changes have occurred that will result in ecological impacts not previously addressed new or amended measures, and a timetable for their implementation, shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. Works shall then be carried out in accordance with the proposed new approved ecological measures and timetable.
10. Within 1 month of the commencement of development, details of biodiversity enhancement measures including 4 integrated bat tubes or bat boxes on the new buildings, shall be submitted to and approved in writing by the Local Planning Authority. The approved measures shall be incorporated into the scheme and be fully constructed prior to the first occupation of the development hereby permitted and retained as such thereafter.
11. Within 1 month of the commencement of development, details of biodiversity enhancement measures including bespoke swallow box or swallow cups under a deep, sheltered overhang shall be submitted to and approved in writing by the Local Planning Authority. These must be installed on the existing or new buildings. The approved measures shall be incorporated into the scheme and be fully constructed prior to the first occupation of the development hereby permitted and retained as such thereafter.