



Appeal Decision

Site visit made on 11 October 2022

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 November 2022

Appeal Ref: APP/N4720/W/22/3297628

The Paddocks, Woodhouse Lane, East Ardsley, Wakefield WF3 2JZ

- 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 I Knight against the decision of Leeds City Council.
 - The application Ref: 22/00735/FU, dated 31 January 2022, was refused by notice dated 6 April 2022.
 - The application sought planning permission for development described as: Substitution of plots 2 and 4, including minor alteration to application no. 20/02456/FU, without complying with a condition attached to planning permission Ref: 21/04954/FU, dated 17 September 2021.
 - The condition in dispute is No. 8 which states that: *Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Orders revoking or re-enacting that Order with or without modification) planning permission shall be obtained before any development falling within Classes A, E and F of the General Permitted Development (England) Order 2015 are erected on the existing and proposed dwellings and sites.*
 - The reason given for the condition is: *As the Local Planning Authority wish to keep control over the erection of these buildings and extensions in the interests of the openness of the greenbelt.*
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Decision

1. The appeal is allowed and planning permission is granted for the substitution of plots 2 and 4, including minor alteration to application no. 20/02456/FU, without complying with Condition 8 attached to planning permission Ref: 21/04954/FU, dated 17 September 2021 at The Paddocks, Woodhouse Lane, Wakefield, WF3 2JZ in accordance with the terms of the application, Ref: 22/00735/FU, dated 10 February 2022 subject to the conditions in the attached schedule.

Preliminary Matters

2. The planning application form gives the description of the relevant proposal as "Demolition of stables and construction of four detached houses". However, the planning permission reference number given is 21/04954/FU. The description of the development on the provided Decision Notice with this reference is "Substitution of plots 2 and 4, including minor alteration to application no. 20/02456/FU".
3. From the submitted evidence, planning permission was granted in 2020 for the demolition of a number of existing stables and to construct four detached houses on the appeal site (planning permission reference: 20/02456/FU).

4. Subsequently, planning permission was granted in September 2021 to change the design of two of the proposed houses on plots 2 and 4 of the site (planning permission reference: 21/04954/FU). That planning application was not made under the provisions of Section 73 of the Town and Country Planning Act 1990 and is a separate permission. The appeal proposal seeks to, in effect, remove the disputed condition from this latter permission and, as such, relates only to Plots 2 and 4. . In the light of the above, I have considered the appeal on the basis that it only applies to Plots 2 and 4. I have also, therefore, used the description from planning permission reference: 21/04954/FU for the purposes of the appeal as it is clear from the evidence that this was the previous permission to which the planning application that now forms the subject of this appeal related
5. Although I have not been provided with a copy of planning permission reference: 20/02456/FU, the submitted evidence indicates that a similar condition to the condition in dispute in this case is attached to that permission and, consequently, still applies to Plots 1 and 3. This would be unaffected by the result of this appeal
6. Whilst Certificate A on the planning application form is dated 10 February 2022, the final declaration at the end of the form is dated 31 January 2022. I have, therefore, taken that latter date as the date of the application.

Main Issue

7. The main issue in this appeal is the effect that removing the condition would have on the openness of the Green Belt.

Reasons

8. The site where the buildings to which this appeal relates is located in the Green Belt just to the south of the built up area of the settlement of East Ardsley. The wider development consists of four dwellings arranged around a courtyard that is accessed from Woodhouse Lane. At the time of my site visit one dwelling (Plot 3) had reached practical completion and appeared to be occupied and the other three were at various stages of construction, with the outer shells largely complete.
9. The disputed condition prevents the exercising of the permitted development rights set out in Classes A, E, and F of Part 1 of Schedule 2 to the Town and Country Planning General Permitted Development Order 2015 (as amended) (hereinafter, the GPDO) namely: the enlargement, improvement, or other alteration of a dwellinghouse; buildings etc. incidental to the enjoyment of a dwellinghouse; and hard surfaces incidental to the enjoyment of a dwellinghouse.
10. The purpose of planning conditions is to make an otherwise unacceptable development acceptable. The National Planning Policy Framework (the Framework) states that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development permitted, enforceable, precise, and reasonable in all other respects.
11. The Council have not identified any policies in the development plan that would be contravened by the proposal although the reason for refusal states that the proposal would be contrary to Paragraph 149 (g) of the Framework. Paragraph

- 149 (g) sets out that the erection of new buildings in the Green Belt is not inappropriate development where it is the partial, or complete, redevelopment of previously developed land which would not have a greater impact on the openness of the Green Belt than the existing development.
12. The appeal site lies beyond the built up area of East Ardsley and is separated from it by a small agricultural field. The appeal site is surrounded by open land with the surrounding landscape comprised of a mosaic of small, medium, and large agricultural fields with a mix of hedgerow boundaries and post and wire fencing. A low stone wall forms the boundary with the highway on the opposite side of Woodhouse Lane between East Ardsley and Kirkfield Farm. Tree cover is restricted to small numbers of trees on field boundaries and on the boundary with the highway. The landform falls away generally to the south and west. Individual buildings and small groups of buildings are strung out along Woodhouse Lane. These are a mix of residential and agricultural buildings. Just to the west of the appeal site, Woodhouse Lane Farm and Kirkfield Farm form a relatively large group of buildings. The four new dwellings, two of which are the subject of this appeal, form another small group in a prominent position adjacent to Woodhouse Lane.
 13. Although the Green Belt in this location would be characterised as countryside, it is close to the edge of a settlement and there is a significant element of existing built development adjacent to Woodhouse Lane in the vicinity of the appeal site.
 14. It is common ground that the proposals which have been granted planning permission previously do not conflict with either national or local Green Belt policies. The Council planning officer's report in respect of the appeal proposal sets out that the original development was considered acceptable as it was significantly lower in volume and building footprint than the buildings that previously occupied the site. It also notes that the design intention of the development was to cluster the buildings together whilst still retaining views through the site, to enhance the relationship between the site and the wider Green Belt.
 15. The decision notice for planning permission reference: 21/04954/FU gives the reason for imposing the condition is that the Local Planning Authority wish to keep control over the erection of these buildings and extensions in the interests of the openness of the Green Belt. The planning officer's report in respect of planning permission reference: 21/04954/FU, whilst similarly noting the significant reduction in volume and footprint from the previous buildings, offers little explanation of the rationale for removing the particular permitted development rights beyond stating that these rights will be removed to ensure that the properties are not overdeveloped, which could potentially have an impact on the openness of the Green Belt in terms of new outbuildings and/or extensions. The report does not refer to any site specific reasons for restricting the operation of the national permitted development rights.
 16. Neither the planning officers report, nor the Council's Statement of Case give specific examples of extensions that the Council consider would be harmful to the openness of the Green Belt. The Council's argument is that were restrictions not imposed then the development could conceivably exponentially grow over time which would erode the openness of the Green Belt. I accept that the exercise of permitted development rights under Part 1 Classes A and E

would increase the size and alter the massing of the development and would inevitably have an effect on the openness of the Green Belt in both spatial and visual terms. However, there is no persuasive evidence before me that, even in the event of the occupiers of both houses forming the subject of this appeal exercising these particular rights to their fullest extent, the resulting built form would exceed that which existed previously on the site. I also saw when I visited the site that the layout and configuration of the permitted dwellings is such that whilst there are some views through the site, from many positions the current built form of the development truncates longer range views. From my observations at the site and in the surrounding area, I do not consider that the exercise of the contested permitted development rights would alter the visual permeability of the development to the extent that it would be more harmful to the openness of the Green Belt than the existing situation.

17. It is not elaborated on in the Council's submissions in what way the formation of hard surfaces provided for by Part 1 Class F would harm the openness of the Green Belt. I recognise that hardstanding areas are likely to be used for the parking of vehicles, nonetheless, this would be transitory and within the context of a development of four houses that would already have hardstandings, garden areas, and boundary treatments. It is, therefore, difficult to see how additional hardstanding areas would have a notably greater effect on openness.
18. The planning officer's report in respect of planning permission reference: 21/04954/FU does not indicate that in the absence of a condition restricting the permitted development rights in question, planning permission would have been refused.
19. At national level, the Government's Planning Practice Guidance (PPG) states that conditions restricting the future use of permitted development rights may not pass the test of reasonableness or necessity. It goes on to set out 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. Paragraph 54 of the Framework is clear that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so.
20. Neither Policy N32, nor Policy N33 of the Leeds Unitary Development Plan Review 2006, which address Green Belt matters, refer to the removal of permitted development rights for residential development which is found to be not inappropriate in the Green Belt. I have not had my attention drawn to any provisions in the Council's Supplementary Planning Documents which indicates the circumstances in which permitted development rights would be withdrawn or restricted.
21. There are no restrictions within the GPDO in respect of extensions to a dwelling house, or development within the curtilage of a dwelling house, which is located within the Green Belt. Had the Government wanted to withdraw or restrict permitted development rights for householder developments in the Green Belt, it could have done so, as it has done with other locations such as Conservation Areas and National Parks. The fact that the GPDO retains permitted development rights indicates that the Government considers the implementation of these permitted development rights to be acceptable in a

Green Belt location. It follows that some extent of development and consequential loss of openness is anticipated, limited in scale to that permitted by the GPDO.

22. In the above context, based on the evidence put to me, I do not find that there is a clear justification for the imposition of the condition.
23. I therefore conclude that the removal of condition 8 from planning permission reference: 21/04954/FU would not cause harm to the openness of the Green Belt and, consequently, the condition is not necessary. As such it would not meet the tests set out in the Framework and the PPG.

Conditions

24. Neither party has suggested any conditions that may be appropriate should the appeal be allowed.
25. Planning permission reference: 21/04954/FU was granted subject to a number of other conditions. Whilst the Council state that the conditions relating to permission reference: 20/02456/FU, which preceded this permission have been discharged, it is not clear whether the conditions attached to permission reference: 21/04954/FU have been discharged.
26. The guidance in the PPG makes it clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. As I have no information before me about the status of the conditions imposed on the planning permission that the appeal proposal relates to, I have imposed the same conditions that were attached to planning permission reference: 21/04954/FU, as I consider that these remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
27. The development has been commenced and, consequently, it is not necessary to impose a condition setting out the time period for commencement.

Conclusion

28. For the above reasons, I conclude that the appeal should be allowed.

John Dowsett

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall be carried out in accordance with the approved plans listed in the schedule of plans.
- 2) The dwellings hereby approved shall be constructed in full accordance with the approved details outlined within applications 20/08140/COND and 21/02388/COND.
- 3) If remediation is unable to proceed in accordance with the approved Remediation Statement, or where significant unexpected contamination is encountered, the Local Planning Authority shall be notified in writing immediately and operations on the affected part of the site shall cease. An amended or new Remediation Statement shall be submitted to, and approved in writing by, the Local Planning Authority prior to any further remediation works which shall thereafter be carried out in accordance with the revised approved Statement.
- 4) Remediation works shall be carried out in accordance with the approved Remediation Statement. On completion of those works, the Verification Report(s) shall be submitted to the Local Planning Authority in accordance with the approved programme. The site or phase of a site shall not be brought into use until such time as all verification information has been approved in writing by the Local Planning Authority.
- 5) Any soil or soil forming materials brought to site for use in garden areas, soft landscaping, public open space or for filling and level raising shall be tested for contamination and suitability for use. A methodology for testing these soils shall be submitted to, and approved in writing by, the Local Planning Authority prior to these materials being imported onto site. The methodology shall include information on the source of the materials, sampling frequency, testing schedules and criteria against which the analytical results will be assessed (as determined by risk assessment). Testing shall then be carried out in accordance with the approved methodology. Relevant evidence and verification information (for example, laboratory certificates) shall be submitted to, and approved in writing by, the Local Planning Authority prior to these materials being imported onto the site.
- 6) The development shall not be occupied until all areas shown on the approved plans to be used by vehicles have been fully laid out, surfaced, and drained such that surface water does not discharge or transfer onto the highway. These areas shall not be used for any other purpose thereafter.
- 7) If within a period of five years from the date of the planting of any tree/hedge/shrub that tree/hedge/shrub, or any replacement, is removed, uprooted or destroyed or dies, or becomes, in the opinion of the Local Planning Authority, seriously damaged or defective, another tree/hedge/shrub of the same species and size as that originally planted shall be planted in the same location as soon as reasonably possible and no later than the first available planting season, unless otherwise agreed in writing by the Local Planning Authority.

Schedule of Plans

Plan Type	Plan Reference
Site Location Plan/Red Line/OS Plan	1841/210
Block Plan/Layout Plan	1841/211 REV C
Floor Plans	1841/214 REV B
Elevations	1841/215 REV B
Floor Plans	1841/218 REV C
Elevations	1841/219 REV C
Sections/Cross Sections	1841/220
Site Location Plan/Red Line/OS Plan	1841/220