



Appeal Decision

Site visit made on 11 October 2022

by **O Marigold BSc DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 22 November 2022

Appeal Ref: APP/P1805/W/22/3299228

Woodside, Brake Lane, Hagley, Worcestershire DY8 2XP

- 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 Mrs L Moss against the decision of Bromsgrove District Council.
 - The application Ref 22/00205/FUL, dated 10 February 2022, was refused by notice dated 28 April 2022.
 - The application sought planning permission for a replacement dwelling without complying with a condition attached to planning permission Ref 11/0543, dated 13 October 2011.
 - The condition in dispute is No 3 which states that: *Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order) no development included within Schedule 2, Part 1, Classes A to E shall be carried out without the prior approval of the local planning authority to an application in that behalf.*
 - The reason given for the condition is: *To protect the visual amenity of the area and the openness of the Green Belt in accordance with policy DS13 & DS2 of the Bromsgrove District Local Plan January 2004, policy CTC.1, D.38 & D.39 of the Worcestershire County Structure Plan 2001 and the guidance contained in PPG2: Green Belts.*
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Decision

1. The appeal is allowed and planning permission is granted for a replacement dwelling at Woodside, Brake Lane, Hagley, Worcestershire DY8 2XP in accordance with the terms of the application, 22/00205/FUL, dated 10 February 2022, without compliance with condition number 3 previously imposed on planning permission 11/0543, dated 13 October 2011, but subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan, Block Plan, Existing Elevations & Floor Plan at scales 1:1250, 1:500 and 1:100 Dwg No 1243.E01; Proposed floor plan at scale 1:50, Dwg No 1243.B01, Proposed elevations at scale 1:100, Dwg No 1243.B02.
 - 2) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order) no development included within Schedule 2, Part 1, Classes A, AA, B and E shall be carried out without express planning permission first being obtained from the Local Planning Authority.

Background and Main Issues

2. The General Permitted Development Order (GPDO) normally gives a right to undertake certain forms of development to dwellings and within their curtilage without requiring planning permission. At the appeal site, certain rights have been removed by condition 3. No specific proposal is before me, but the appellant seeks the freedom to undertake such development without requiring planning permission.
3. The site lies within the West Midlands Green Belt. The main parties agree that alterations to the roof of the dwelling that do not involve its enlargement (GPDO Class C), and the erection or construction of a porch (GPDO Class D), would have very little impact on Green Belt openness or the character and appearance of the area. I share this view and so consider that such restrictions are not reasonable or necessary.
4. However, the dispute centres on the right under GPDO Class E for the erection of outbuildings within the curtilage of the dwelling. The main issues are whether, in respect of Class E rights, the condition is reasonable or necessary in the interests of:
 - preserving the openness of the Green Belt and
 - the character and appearance of the area.

Reasons

Green Belt

5. The property lies in countryside and consists of a detached bungalow. This replaced an earlier dwelling. The property has a long rear garden, with tall hedging forming its boundaries to the side and rear. There are other dwellings either side of it, which essentially form a ribbon of development into the countryside.
6. The National Planning Policy Framework (the Framework) states that a fundamental aim of the Green Belt is to keep land permanently open. The Bromsgrove District Plan adopted January 2017 (BP) replaced the policies referred to in the reason for the condition, and its Policy BDP4 seeks to ensure that the openness of the Green Belt is maintained. It is therefore consistent with the Framework.
7. Openness has both spatial and visual aspects. Under the terms of GPDO Class E, any outbuilding could only be single storey and used 'incidentally' to the enjoyment of the main dwelling, providing a degree of restriction on the size and scale of any future development. I recognise too that freedom is sought only to undertake minor proposals. Even so, if the condition were to be varied in respect of these rights, a wide range, number and extent of buildings could be erected. This could introduce substantial development on the site, particularly given the length of the garden.
8. Visually, trees and hedges surround the garden and also form part of the boundary between the adjacent field to the rear of the property and a nearby public footpath. Even so, views of the garden and dwelling can be seen from the footpath and so development within the garden, even at single storey height, is also likely to be visible. Spatially, development within the garden

may well increase the volume and mass of built form at the property and its encroachment into the Green Belt. It is therefore likely that such development would result in harm to the openness of the Green Belt.

9. GPDO Class E rights remained intact when permission was granted¹ for extensions to the previous dwelling in 2011. However, that earlier proposal was for a somewhat smaller amount of development than the replacement dwelling. Furthermore, it did not include the detached garage and store that was included in the later consent. Therefore, although outbuildings may not have been used in the calculations for the size of the replacement dwelling, I do not consider that this condition was unreasonably imposed.
10. No outbuildings were erected within the garden when this right was available. Even so, an occupier may well wish to erect such buildings and develop the site further in the future. Any reduction in outdoor space or to the living conditions of occupiers would not necessarily prevent it from being carried out. The ability for other permitted development rights to be exercised, such as for boundary treatments, does not justify the harm I have identified, particularly as these are likely to be smaller than development erected under GPDO Class E.
11. The Planning Practice Guidance (PPG) makes clear that the blanket removal of freedoms to carry out small scale domestic alterations, that would otherwise not require planning permission, is unlikely to meet the tests of reasonableness and necessity. For the reasons I have given, the removal of permitted development rights as originally imposed would not meet these tests. However, development permitted under GPDO Class E could well result in a harmful loss of openness to the Green Belt. I give substantial weight to this harm as required by the Framework.
12. As such, control of the Local Planning Authority is required to consider any specific proposals and their effect on the Green Belt. I therefore conclude that in respect of GPDO Class E rights, the condition is reasonable and necessary in the interests of preserving the openness of the Green Belt. Its removal would conflict with the Framework and with BP Policy BDP4.

Character and Appearance

13. Separately to the effect on the Green Belt, the Council's reasons also refer to the impact of the proposal on the character and appearance of the area. BP Policy BDP1 requires that proposals have regard to the impact on visual amenity and BP Policy BDP19 requires development to enhance the character and distinctiveness of the local area. Similarly, the Framework requires that planning decisions should recognise the intrinsic character and beauty of the countryside.
14. Although there are dwellings nearby, the appeal site and its surroundings consist primarily of attractive, rural and verdant countryside. The appeal site is enclosed by existing trees and hedges, but I have already found that the garden can be seen from the footpath and that GPDO Class E development within it could be significant.
15. By adding to the amount of built form at the site, such development is likely to urbanise and encroach on the green and verdant appearance of the site,

¹ LPA reference 10/1177

detracting from its rural character and that of the wider area. I therefore consider that in respect of GPDO Class E rights, the condition is therefore reasonable and necessary in the interests of the character and appearance of the area and its removal would conflict with the Framework and with BP Policies BDP1 and BDP19.

Other Matters

16. Adjoining dwellings may have their permitted development rights intact, but I have little detail of their planning history and so cannot make useful comparison. That they have erected a number of small outbuildings does not mean that the harm I have identified would be justified and nor does it lead me to a different conclusion on the main issues in respect of the appeal site itself.

Conditions

17. On my visit, I saw that the replacement dwelling did not appear to be complete in that the garage/store building appeared unfinished. As such, a condition is necessary to ensure that the development as previously approved is carried out in accordance with the approved plans. I have confirmed this with the parties who have not objected to such a condition.
18. There is no dispute that the removal of permitted development rights for the enlargement of the dwelling itself (GPDO Classes A, AA and B) is reasonable and necessary. Given the increase in the size of the dwelling from that previously built at the site, and its Green Belt location, I agree. I have already found that the inclusion of GPDO Classes C and D within this condition would not be reasonable or necessary. Therefore, I have amended its wording accordingly, and to reflect the current legislation.

Conclusion

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

O Marigold

INSPECTOR