



Appeal Decision

Site visit made on 16 November 2022

by **O Marigold BSc DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 5 December 2022

Appeal Ref: APP/N0410/W/22/3297693

**Land opposite The Chinnery, Church Road, Penn, Buckinghamshire
HP10 8NU**

- 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 Ms Elaine Noonan against the decision of Buckinghamshire Council.
 - The application Ref PL/22/0502/VRC, dated 11 February 2022, was refused by notice dated 6 April 2022.
 - The application sought planning permission for conversion of existing storage barn to a dwelling without complying with a condition attached to planning permission Ref PL/20/4289/FA, dated 10 August 2021.
 - The condition in dispute is No 17 which states that: *Notwithstanding the provisions of Article 3(1) of the Town & Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that Order) no development falling within Classes A to H inclusive, of Part 1 of Schedule 2 to the said Order shall be erected, constructed, or placed within the application site unless planning permission is first granted by the Local Planning Authority.*
 - The reasons given for the condition is: *In order that the Local Planning Authority can properly consider whether any future proposals will maintain the openness of the Green Belt and the scenic rural character of the Chilterns AONB and general character of the locality, in accordance with policies GC1, LSQ1 and GB2 of the Chiltern District Local Plan Adopted 1 September 1997 (including alterations adopted 29 May 2001) consolidated September 2007 and November 2011, and policies CS20 and CS22 of the Core Strategy for Chiltern District (Adopted November 2011) and the provisions of the NPPF.*
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Decision

1. The appeal is allowed and planning permission is granted for conversion of existing storage barn to a dwelling at Land opposite The Chinnery, Church Road, Penn, Buckinghamshire HP10 8NU in accordance with the terms of the application, Ref PL/22/0502/VRC, dated 11 February 2022, without compliance with condition number 17 as previously imposed on planning permission reference PL/20/4289/FA, dated 10 August 2021, but subject to the conditions in the Schedule at the end of this decision.

Preliminary Matters

2. The planning application form refers to the appellant as Ms Elaine Noonan of Michael Conoley Associates, but it has since been confirmed that inclusion of the company name was an error. I am satisfied that the appellant can make the appeal.

3. The Town and Country Planning (General Permitted Development) Order 2015 (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 17 of permission PL/20/4289/FA.
4. No specific proposal is before me, but the appellant has indicated the maximum footprint of a potential rear extension, porch and outbuilding, if rights under GPDO Classes A, D and E respectively are made available. The Council has not suggested that additional development beyond that shown could be undertaken if those rights were available, and I have considered the proposal on this basis.
5. Furthermore, although condition 17 removed rights under GPDO Classes F (hard surfaces), G (chimneys, flues etc) and H (microwave antenna), the Council's reason for refusal only refers to the effect of Classes A to E inclusive. From this, I take it that the Council does not object to development under GPDO Classes F, G and H, although hard surfaces are controlled by condition 6 in any event.
6. The reason for the condition also refers to the effect of development otherwise permitted on the scenic rural character of the Chilterns Area of Outstanding Natural Beauty (AONB), within which the site lies, and the general character of the locality. However, the Council's reason for refusal does not refer to these matters and the Case Officer's report confirms that the proposal would not be harmful to the character and appearance of the area. I see no reason to take a different view and so I will not consider these issues further.

Main Issue

7. The site lies within the Metropolitan Green Belt. The main issue is whether the condition is reasonable or necessary in the interests of preserving the openness of the Green Belt.

Reasons

8. The National Planning Policy Framework (the Framework) states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. Furthermore, the Planning Practice Guidance (PPG) gives guidance¹ in relation to conditions restricting the future use of permitted development rights. It says that 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.
9. The fact that the site is within the Green Belt and the AONB is not sufficient reason of itself to remove the remaining permitted development rights that are normally available in these areas. Parliament has not sought to exclude such rights from land within these designations and domestic proposals are commonly undertaken to dwellings in the Green Belt and AONB.
10. Furthermore, the location of the site within the AONB means that development is not permitted by the GPDO for Classes AA (additional storeys) or B (an enlargement by an addition or alteration to its roof). Therefore, the effect of the proposal would not be as great as that envisaged by the Council.

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

11. However, paragraph 149 of the Framework makes clear that the construction of new buildings is inappropriate in the Green Belt. Exceptions to this include the extension or alteration of a building, provided it does not result in a disproportionate addition over and above the size of the original building. Policy GB2 of the Chiltern District Local Plan, adopted September 1997² (CDLP) similarly seeks to resist inappropriate development in the Green Belt with exceptions to this including the limited extension of dwellings.
12. The building is a wooden barn with a small plan form and size. The proposal shown is the maximum extent of development that could be undertaken if the relevant permitted development rights were available. I acknowledge that the proximity of the boundary may well in practice limit the size of any rear extension.
13. Even so, development that could potentially be undertaken under GPDO Class A, such as that suggested, could significantly enlarge the size of the dwelling. This could be to an extent that would be disproportionate to the original building and so would constitute inappropriate development within the terms of the Framework. This would be harmful to the Green Belt by definition (Framework paragraph 147) and so would require very special circumstances to justify approval. Similarly, an outbuilding under GPDO Class E could also constitute inappropriate development.
14. The openness of the Green Belt can have both visual and spatial elements. At the site there are dense, mature trees and hedgerows on the boundary with the highway. However, although planning conditions can require their protection, such screening cannot be relied upon, particularly in the long term, and an extension and/or outbuilding as suggested may well be visible in public views from the highway through the vegetation.
15. In any case, spatially, an extension and/or outbuilding would be likely to add to the overall size and volume of the resultant dwelling and to the amount of mass and built form within the rear garden, reducing its openness. As such, development permitted by GPDO Classes A and E could have a harmful effect on the openness of the Green Belt. These reasons provide a clear justification for the Council to retain control over such development and, from the Case Officer's Report, this was the basis of the imposition of the condition originally.
16. However, the same is not true of potential development under GPDO Class D. The size constraints imposed by the GPDO mean that any porch would be small-scale and would be very unlikely to constitute inappropriate development or to harm the openness of the Green Belt. This is also true of any alteration to the roof under Class C, such as rooflights, where the GPDO's limitations on their protrusion mean they would have very little effect on the openness of the Green Belt.
17. The appellant has referred to a number of other Green Belt appeal decisions. In that at Werrington³, the Inspector did not consider the removal of permitted development rights was justified given Government advice, including in the PPG. However, that site also had a Prior Approval fallback which does not appear to apply to the current appeal. Furthermore, the PPG's guidance no longer requires exceptional circumstances to be demonstrated to justify the

² including Adopted Alterations May 2001 and July 2004

³ APP/B3438/W/19/3225769

removal of permitted development rights. This is also true in respect of the matters under consideration in the appeal at Guildford⁴, which pre-dates the change to the PPG.

18. At Mere, Cheshire⁵, the Inspector found no evidence that the planning application would have been refused without the conditions restricting permitted development rights. In contrast, in the current appeal, I have found clear evidence from the Case Officer's Report that permission would have been refused had it included the type of development proposed. I therefore give these appeals only limited weight and they do not change my overall conclusions.
19. I therefore conclude that the condition is reasonable and necessary in the interests of preserving the openness of the Green Belt but only in respect of GPDO Classes A and E. For the reasons given above, such a condition is required for compliance with the Framework and with CDLP Policy GB2.

Other Matters

20. The site is adjacent to, but outside of, the Penn Conservation Area (CA). There is no dispute that the proposal would have no adverse effect on the character or appearance of the CA. Having visited the site and its surroundings, I concur with that view. Accordingly, the character and appearance of the CA would be preserved, but this does not alter my conclusion on the main issue.

Conditions

21. The Planning Practice Guidance (PPG) makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission unless they have already been discharged. The PPG also indicates that a grant of planning permission under section 73 should not extend the time period for implementation. I have no evidence that any of the other, non-disputed conditions from the previous permission have been discharged and so I repeat these as previously worded, but with condition 1 amended to reflect the relevant time limit.

Conclusion

22. I therefore conclude that the appeal should be allowed, and a new planning permission granted with a new, re-worded condition 17 to only refer to GPDO Classes A and E as being the permitted development rights that do not apply, and not to the other classes of development as previously worded. However, in practice Classes AA and B cannot be exercised here, because of the location of the site within the AONB.

O Marigold

INSPECTOR

Schedule of Conditions

- 1) The development to which this permission relates must be begun before the expiration of three years from the date of planning permission reference PL/20/4289/FA; granted on 10 August 2021.

⁴ APP/Y3615/D/19/3232290

⁵ APP/R0660/W/21/3275257

- 2) No development shall take place (including any demolition, ground works or site clearance) until a method statement for protected species has been submitted to and approved in writing by the local planning authority. The content of the method statement shall include:
- a. the purpose and objectives for the proposed works;
 - b. detailed design(s) and/or working method(s) necessary to achieve stated objectives (including, where relevant, type and source of materials to be used);
 - c. pre-commencement checks and/or working practices for badger, bats, breeding birds and amphibians and reptiles by a suitably qualified ecologist
 - d. mitigation measures relating to unimproved neutral grassland habitat
 - e. extent and location of proposed works shown on appropriate scale maps and plans;
 - f. timetable for implementation
 - g. persons responsible for implementing the works.

The works shall be carried out strictly in accordance with the approved details and shall be retained in that manner thereafter.

- 3) No development shall take place until the applicant, or their agents or successors in title, have secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved by the planning authority.
- 4) Prior to the commencement of development approved by this planning permission (or such other date or stage in development as may be agreed in writing with the Local Planning Authority), the following components of a scheme to deal with the risks associated with contamination of the site shall each be submitted to and approved, in writing, by the local planning authority:
- i) A preliminary risk assessment which has identified:
 - all previous uses
 - potential contaminants associated with those uses
 - a conceptual model of the site indicating sources, pathways and receptors
 - potentially unacceptable risks arising from contamination at the site.
 - ii) A site investigation scheme, based on (i) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site. This should include an assessment of the potential risks to: human health, property (existing or proposed) including buildings, crops, pests, woodland and service lines and pipes, adjoining land, ground waters and surface waters, ecological systems, archaeological sites and ancient monuments.
 - iii) The site investigation results and the detailed risk assessment (ii) and, based on these, an options appraisal and remediation strategy giving full

details of the remediation measures required and how they are to be undertaken.

iv) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in (iii) are complete and identifying any requirements for longer term monitoring of pollutant linkages, maintenance and arrangements for contingency action. Any changes to these components require the express consent of the local planning authority. The scheme shall be implemented as approved.

- 5) Following completion of measures identified in the approved remediation scheme and prior to the first use or occupation of the development, a verification report that demonstrates the effectiveness of the remediation carried out must be produced together with any necessary monitoring and maintenance programme and copies of any waste transfer notes relating to exported and imported soils shall be submitted to the Local Planning Authority for approval. The approved monitoring and maintenance programme shall be implemented.
- 6) Before any construction work commences above slab level, details of the hard landscaping within the site shall be submitted to and approved in writing by the Local Planning Authority. The new hardstanding shall be of a permeable material or shall allow for natural drainage within the site. The works shall be carried out in accordance with these approved details.
- 7) Prior to occupation of the dwelling hereby permitted, full details of the means of enclosure to be erected around the edges of the site shall be submitted to and approved in writing by the Local Planning Authority. The approved means of enclosure shall be erected prior to the occupation of the new dwelling and thereafter retained, with no alterations.
- 8) Prior to occupation of the development, a landscape and ecological management plan (LEMP) shall be submitted to, and be approved in writing by, the Local Authority. The content of the LEMP shall include the following.
 - a) Description and evaluation of features to be managed.
 - b) Ecological trends and constraints on site that might influence management.
 - c) Aims and objectives of management.
 - d) Appropriate management options for achieving aims and objectives.
 - e) Prescriptions for management actions.
 - f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five year period).
 - g) Details of the body or organisation responsible for implantation of the plan.
 - h) Ongoing monitoring and remedial measures.

The LEMP shall also include details of the legal and funding mechanism(s) by which long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan shall also set out (where results from monitoring show that conservation aims and objectives of the LEMP are not being met) how

- contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The approved plan will be implemented in accordance with the approved details.
- 9) Prior to occupation of the development space shall be laid out within the site for parking for cars, loading and manoeuvring, in accordance with the approved plans. This area shall be permanently maintained for this purpose and shall not be enlarged or altered thereafter without first having written approval by the Local Planning Authority.
 - 10) Prior to the occupation of the development minimum vehicular visibility splays of 43m from 2.4m back from the edge of the carriageway from both sides of the existing access onto Church Road shall be provided in accordance with details to be submitted to and approved by the Local Planning Authority. The visibility splays shall be kept clear from any obstruction between 0.6m and 2.0m above ground level.
 - 11) The development hereby approved shall be implemented in accordance with the tree and hedge protection measures described in the Arboricultural Impact Assessment and Method Statement report Ref: MW.20.1018.AIA dated 14 December 2020 by Mark Welby Arboricultural Consultant and those shown on the Tree Protection Plan Ref: MW.20.1018.TPP dated 14/12/2020 in Appendix II of the report. This shall include the use of tree protection fencing, ground protection measures and no-dig construction in accordance with these documents.
 - 12) The existing facing materials and roofing materials shall be retained in situ and utilised as part of the conversion and any repairs shall take place using materials of a similar colour, texture and appearance.
 - 13) Before the first occupation of the dwelling hereby permitted, the bathroom window in the western elevation shall be fitted with obscure glazing and a secure limiting stay to restrict opening to 100mm. The window shall be side hung and permanently retained in this position thereafter.
 - 14) The window frames for the new windows hereby permitted shall be of timber, to match the adjacent timber of the existing barn. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that Order, with or without modification), no openings, other than those expressly authorised by this permission, shall be inserted or constructed at any time in the building.
 - 15) In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition 4, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 4 which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with condition 5.

- 16) Notwithstanding the provisions of Section 55 of the Town and Country Planning Act 1990, no external lighting shall be installed on the site or be affixed to any structure hereby permitted without first receiving approval in writing by the Local Planning Authority.
- 17) Notwithstanding the provisions of Article 3(1) of the Town & Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that Order) no development falling within Classes A and E of Part 1 of Schedule 2 to the said Order shall be erected, constructed, or placed within the application site unless planning permission is first granted by the Local Planning Authority.
- 18) Notwithstanding the provisions of Article 3(1) of the Town & Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that Order) no development falling within Classes A to B of Part 2 of Schedule 2 to the said Order shall be erected, constructed, or placed within the application site unless planning permission is first granted by the Local Planning Authority.
- 19) This permission relates to the details shown on the approved plans as listed below: Drawing No.(s): 1508/P-05B received on 2 August 2021, 1529/P-05A received on 2 August 2021, 1508 -P-04 PROPOSED SITE SECTION(1) received on 16 December 2020, 1508/P-03A - FP and Roof plan received on 15 June 2021, 1529/P-02A - ELEVATIONS received on 15 June 2021, 1508-OS-01 SLP received on 16 December 2020 and in accordance with any other conditions imposed by this planning permission.

End of Conditions