



Appeal Decision

Site visit made on 7 December 2022

by David Smith BA(Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 December 2022

Appeal Ref: APP/M1595/W/21/3288105

River View, Kirkham Road, Horndon on the Hill, SS17 8QE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for 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 Martin Leyland against Thurrock Borough Council.
 - The application Ref 21/01469/CV is dated 24 August 2021 .
 - The application sought planning permission for one for one dwelling and detached garage without complying with a condition attached to planning permission Ref THY/697/93, dated 7 January 1994.
 - The condition in dispute is No 10 which states that: "Notwithstanding the provisions of the Town and Country Planning General Development Order 1988, no development included in Schedule 2, Part 1, Classes A, B, C, D, E, F, G and H, shall take place without the grant of an additional planning permission by the Local Planning Authority."
 - The reason given for the condition is: "To determine the scope of this permission in view of the site's location within the Metropolitan Green Belt and the Local Planning Authority's policies relating thereto."
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Decision

1. The appeal is allowed and planning permission is granted for one for one dwelling and detached garage at River View, Kirkham Road, Horndon on the Hill, SS17 8QE in accordance with the terms of the application, Ref 21/01469/CV, dated 24 August 2021.

Main Issue

2. The main issue is whether Condition 10 is reasonable and necessary.

Reasons

3. The appeal property is a replacement dwelling following the grant of permission in 1994. It is within the Green Belt. The National Planning Policy Framework indicates that planning conditions should not be used to restrict national permitted development rights unless there is a clear justification to do so. The Council has provided no explanation as to why it is reasonable and necessary to remove all permitted development rights for the enlargement, improvement or other alteration of the dwellinghouse.
4. Permitted development is not restricted in the Green Belt as it is for some designated areas. There is therefore no overarching justification for retaining the condition. Policy PMD6 of the Core Strategy and Policies for Development Management makes no mention of removing permitted development rights for replacement dwellings in the Green Belt. Furthermore, no detail has been

given about the planning history of the site that might have formed the basis of the original condition. The reason given for it is generic. As River View has a large plot and is well separated from neighbouring houses, there are no site specific reasons to prevent permitted development rights from being exercised.

5. The Planning Practice Guidance (PPG) on *Use of Planning Conditions* warns that conditions restricting the future use of permitted development rights may not pass the tests of reasonableness or necessity. This is one such case and there is no reason to keep the condition. This would not exempt the appellant or any future owner or occupier from applying for planning permission if that were necessary. Allowing the appeal would simply put River View on the same footing as other houses in the vicinity.

Conditions

6. The PPG indicates that when granting permission under section 73, decisions should restate the conditions imposed on earlier permissions that continue to have effect. The majority of the original conditions related to the construction of the dwelling and are therefore now superfluous.
7. Of the others, Condition 3 imposes controls over all existing trees, shrubs and hedges. However, this is not justified by the quality of the domestic planting within the site or its contribution to the character of the area. Limiting use of the garage to the parking of cars as it is within the Green Belt is unreasonable (Condition 5) and there is ample space for vehicles. Condition 6 precludes windows in the garage roof to prevent conversion to living accommodation but it is unclear how this would be contrary to Green Belt policies.
8. Therefore there is no need to attach any conditions to the new permission that will be granted.

Conclusion

9. The condition in dispute is not reasonable or necessary and should be removed. Therefore, for the reasons given above, the appeal should succeed.

David Smith

INSPECTOR