



Appeal Decision

Site visit made on 29 November 2022

by **O Marigold BSc DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 20th December 2022.

Appeal Ref: APP/B1930/W/22/3298415

Former NHS Stores, Hill End Lane, St Albans, Hertfordshire

- 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 Karim Tawfik against the decision of St Albans City Council.
 - The application Ref 5/21/3582, dated 22 December 2021, was refused by notice dated 31 March 2022.
 - The application sought planning permission for 'Demolition of existing and erection of 40 houses – reserved matters pursuant to application 5/99/1354 (resubmission following refusal of 5/00/2088)' without complying with a condition attached to planning permission Ref 5/01/0684, dated 17 August 2001.
 - The condition in dispute is No 1 which states that: *Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 and any subsequent amendments, no enlargements of the dwelling(s) hereby permitted, or any building or enclosure within the site curtilage shall be built or shall take place without the prior permission of the District Planning Authority or Secretary of State.*
 - The reason given for the condition is: *To allow the District Planning Authority to retain control over the development.*
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The site is within the Metropolitan Green Belt. However, it has not been suggested by either main party that the proposal would represent inappropriate development in the Green Belt, and I have little evidence to indicate otherwise. As such, I will determine the appeal on the basis that the proposal would not constitute inappropriate development in the Green Belt.

Background and Main Issues

3. The appellant occupies a dwelling, 3 Sovereign Park and wants to build a dormer and rooflights to create a master suite. No specific proposal is before me, but the appellant seeks to remove condition 1 of permission 5/01/0684 (hereafter referred to as condition 1) which removes permitted development rights for development that is now within Classes A, B, D and E of Part 1 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), hereafter referred to as the GPDO.
4. Although condition 1 applies to all the dwellings subject to the reserved matters consent, it is only in respect of 3 Sovereign Park (No 3) that it is

proposed to be removed. The appeal differs from a previous appeal decision¹, made by the same appellant, and for removal of the same condition 1. However, this sought to remove the condition for the whole estate, rather than just No 3. Therefore, although I have had regard to this appeal decision, the circumstances are different, and I have reached my own conclusions on the proposal.

5. The appeal application seeks to remove condition 1 entirely in respect of all enlargements to the dwelling and any building or enclosure. As a result, although not the focus of the appellant's aim, I will consider the effect of all such development that could be carried out if condition 1 were removed.
6. Paragraph 56 of the National Planning Policy Framework (the Framework) requires that, amongst other things, planning conditions should be kept to a minimum and only imposed where they are necessary and reasonable. Therefore, the main issues are whether, in respect of No 3, the condition is necessary and reasonable, having regard to the character and appearance of the area and the living conditions of the occupants of nearby residential properties.

Reasons

Character and Appearance

7. The area consists of a modern, suburban housing estate, predominantly of two-storey dwellings, although some have 2.5 storeys. The density of development varies within those dwellings granted permission by consent 5/01/0684 and the earlier outline consent. Condition 1 applies to a range of dwellings including terraced, semi-detached and detached properties which give the area a relatively high density, close-knit character.
8. The site is not within a Conservation Area and dwellings are of different house types, but the scale and roof forms of dwellings within the estate have a uniformity of appearance, contributing to the visual cohesiveness of the area. No 3 contributes to this character. It has a larger rear garden and more space around it than some other properties nearby, built under the same permission, but it is still relatively modest in size.
9. The Planning Practice Guidance² makes clear 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. If condition 1 were removed, any roof extension to No 3 would be subject to the limitations of the GPDO.
10. However, this would still allow for a dormer to be erected that does not reflect the design or character of the area. The front and rear roof slopes of No 3 are quite visible from the main estate road, as well as from nearby properties. Therefore, any such roof extension permitted if condition 1 were removed could well detract from the uniformity of the area and therefore its character and appearance. In my view, this is a clear justification for such development to require the consent of the Council.

¹ APP/B1930/W/21/3274511

² Paragraph: 017 Reference ID: 21a-017-20190723

11. Nearby housing was granted under a different permission³ and is not subject to the same restrictions. As a result, dwellings with rear elevations prominent from Sovereign Park, such as on St Bart's Close, or close by, such as at Grafton Road, are able to erect certain dormers or roof extensions without needing planning permission. I understand why the appellant feels that restrictions on permitted development rights locally seem inconsistent and unjustified.
12. My attention has been drawn to properties nearby that have accommodation within their roofspace above first floor level, using rooflights or dormer windows. I saw these and others on my visit. However, these are generally small scale and of modest design or are not prominent in the street scene. As such, they do not disrupt the character of the estate. Reference has been made to flat roof dormers recently approved⁴ but I have been given few details of these and so cannot make a useful comparison. As such, the examples cited by the appellant do not change my conclusions.
13. Other forms of development, such as extensions, also require planning permission because of condition 1. No 3 has a modest-sized garden, and the dwelling has already been extended to the rear. Any additional development that could be erected under permitted development rights would be likely to reduce the space around the dwelling further and may well also be visible from the surrounding area. As such, they would intensify development on the site, add to visual clutter and could therefore harm the character of the estate.
14. For these reasons, condition 1 is reasonable and necessary having regard to the character and appearance of the area. As such, the proposal would not accord with Policy 70 of the St Albans District Local Plan Review 1994 (LPR) that requires amongst other things that proposals provide attractive spaces.
15. LPR Policy 70 pre-dates the Framework but it is consistent with it, including its requirement that planning decisions should ensure that development is sympathetic to local character. The Framework seeks to ensure that appropriate change should not be discouraged but as there is no specific scheme before me, I cannot be sure that removal of condition 1 would enable such change. The proposal would therefore also conflict with the Framework.

Living Conditions

16. There are other dwellings adjoining most of the boundaries of No 3. Any proposed rear roof extension would face towards 9 Sovereign Park behind. There are other dwellings nearby, including 4 to 9 Sovereign Park and dwellings in Sturmer Close, and 2 Sovereign Park to the front.
17. Excluding the subsequent ground floor extension, the Council does not dispute that the rear, back-to-back distance between the No 3 and 9 Sovereign Park to the rear is at least 27 metres. This is similar to the back-to-back distances between other nearby properties, which the other Inspector referred to as being minimal. However, this distance would meet the minimum window-to-window separation requirement of LPR Policy 70, and of the Council's design guidance⁵.

³ Reference 5/97/0258, known as Phase 2, Highfield North

⁴ References 5/2022/0488 and 5/2022/0489

⁵ Design Advice Leaflet No 1 'Design and Layout of New Housing'

18. The Council refer to shorter distances to the properties on Sturmer Close. However, views to these properties from the rear of No 3 would be at an oblique angle and there would be no directly facing views into the windows of these properties. Furthermore, No 3 already has windows serving habitable rooms at first floor level to the front and rear, and so any roof proposals on these slopes would be unlikely to unduly add to the degree of overlooking experienced by neighbouring properties.
19. Other forms of development, such as extensions, would also be permitted if condition 1 were removed. However, the concerns of the Council are focused on the effect of roof extensions on the privacy of nearby properties. No specific concerns have been raised regarding the effect of other development on the privacy of neighbouring properties that would be permitted if condition 1 is removed. I see no reason to take a different view.
20. As such, the proposal would accord with Policy 70 of the LPR and its requirement that proposals provide privacy between dwellings. LPR Policy 70 is consistent with the requirement of the Framework that planning decisions should ensure a high standard of amenity, with which the proposal would also accord. The condition is therefore not reasonable or necessary in respect of the living conditions of the occupants of neighbouring properties.

Planning Balance and Conclusion

21. Although I have found that the condition is not reasonable or necessary in respect of the living conditions of the occupants of neighbouring properties, it is reasonable and necessary having regard to the character and appearance of the area. I therefore dismiss the appeal.

O Marigold

INSPECTOR