



Appeal Decision

Site visit made on 17 January 2023

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th February 2023

Appeal Ref: APP/P4225/W/22/3306051

23 Rhodes Green, Middleton, Rochdale M24 4SL

- 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 Miss Rebecca Siddall against Rochdale Borough Council.
 - The application Ref 22/00557/VRCON is dated 22 April 2022.
 - The application sought planning permission for the demolition of existing dwelling and construction of replacement dwelling without complying with a condition attached to planning permission Ref 19/00256/FUL, dated 17 June 2019.
 - The condition in dispute is No 14 which states that: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), or any equivalent Order following the revocation and re-enactment thereof, the dwelling hereby approved shall not be altered or extended, and no buildings or structure shall be erected within its curtilage under Schedule 2, Part 1, Classes A, B, C, D and E of the above Order except with the prior written approval of the Local Planning Authority.
 - The reason given for the condition is: To prevent overdevelopment in Protected Open Land in accordance with policies G4 and G5 of the Rochdale Core Strategy, saved policy D/10 of the Rochdale Unitary Development Plan and the National Planning Policy Framework.
-

Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing dwelling and construction of replacement dwelling in accordance with the application Ref 22/00557/VRCON dated 22 April 2022, without compliance with condition No 14 previously imposed on planning permission Ref 19/00256/FUL dated 17 June 2019 and subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The appeal is made against the Council's failure to give notice of its decision within the prescribed period. The Council's case and its putative reason for refusal are set out in its appeal statement. I have considered the appeal on this basis.

Background and Main Issue

3. As detailed above, planning permission has been granted for the erection of a replacement dwelling on the appeal site. The new dwelling has been constructed and appears to be occupied. The site does not lie within the Green Belt but is within an area of Protected Open Land, as identified in Policy D/10 of

the Rochdale Unitary Development Plan, adopted 2006 (the UDP) and Policy G5 of the Rochdale Core Strategy, adopted 2016 (the CS). Both policies resist development in Protected Open Land unless it is of a type that would be acceptable were it in the Green Belt. Policy G4 of the CS restricts development in the Green Belt to that which is deemed not to be inappropriate by national planning policies unless very special circumstances can be demonstrated. The Council also identifies that the site is within a Greenspace Corridor.

4. The planning application was approved subject to a number of conditions including condition No 14, as detailed above, which removes specified permitted development rights. The appellant contends that the condition is unnecessary and unreasonable, and has sought its removal and, as a consequence, the reinstatement of the rights for extensions and buildings within the curtilage.
5. The main issue is therefore whether the condition is reasonable and necessary with regard to the site's location within Protected Open Land and a Greenspace Corridor.

Reasons

6. The National Planning Policy Framework (the Framework) at paragraph 56 states that planning conditions should be kept to a minimum and only imposed when they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. More specifically, paragraph 54 states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. The Planning Practice Guidance (PPG) advises 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.
7. The permitted development rights for development within the curtilage of a dwellinghouse as conferred by Schedule 2 Part 1 of the GPDO¹, are qualified or removed for development within certain Classes, including Classes A, B and E, on land covered by article 2(3). Article 2(3) land is described in the GPDO and does not include Green Belts. Given the specific areas of land included under article 2(3), it can be surmised that the omission of land within the Green Belt from the list was intentional on the government's part, and as a result, land within the Green Belt is regarded as no different in terms of the application of permitted development rights as land outside of it.
8. Therefore, the starting point is that permitted development rights should remain in place, even in the Green Belt, unless clear justification is advanced which is precisely defined and specific to the site.
9. Guidance in the Council's SPD² advises that normally, in principle, house extensions in the Green Belt that result in up to a 35% increase in floorspace or volume over and above the original dwelling would be considered appropriate and not disproportionate. The dwelling at the site is around 39% larger than the one it replaced. On this basis, the Council contends that any additional extensions would be disproportionate additions to the original

¹ Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

² Guidelines & Standards for Residential Development Supplementary Planning Document, 2016

building with consequent harm to the openness of the Protected Open Land. As such, the site benefitting from permitted development rights would be contrary to the requirements of paragraph 149 c) of the Framework and CS Policy G5.

10. The Council appears to be basing its consideration of disproportionate extensions on the basis of the size of the dwelling that was replaced on the site. The definition of 'original building' in the Framework's Glossary does not specifically address replacements and I have not been directed to any similar references in the development plan. However, in my view, the 'original building' in such a case would be the replacement dwelling rather than the one that was replaced.
11. Even if I were to take the same approach as the Council, I note that in terms of house extensions in the Green Belt, the SPD acknowledges that the characteristics of properties and proposals will vary significantly and there may be instances when a 35% increase would be considered disproportionate and other occasions when a greater than 35% increase may be considered proportionate. The SPD figure is not therefore a maximum.
12. I appreciate the Council's point that the scope of what can be constructed through the use of permitted development rights can be quite extensive. I also note its concern that this could adversely affect the openness of the Protected Open Land especially given the site's quite prominent location in the surrounding area, including from vantage points on Heywood Old Road, Ellis Lane and Boardman Lane.
13. However, there will be many dwellings within both the Green Belt and Protected Open Land, including those on visible sites such as is the case here, which retain and may exercise permitted development rights. The circumstances described by the Council are not therefore unique to the appeal site. Furthermore, the fact that permitted development rights have not been removed for land in the Green Belt means that the government's fundamental Green Belt aims of preventing urban sprawl by keeping land permanently open do not extend to preventing permitted development within a domestic curtilage.
14. I am not therefore persuaded that there would be clear justification for restricting permitted development rights at the site simply by virtue of its location within an area of Protected Open Land.
15. The Council's other concern relates to the site's location within a Greenspace Corridor. The site, although separate from the main built form of surrounding settlements, is nevertheless quite closely associated with other properties on Rhodes Green and is seen in conjunction with them when viewed from the surrounding area, including from vantage points along Ellis Lane, Heywood Old Road and Boardman Lane. In addition, a dwelling inevitably brings with it signs of domestic paraphernalia, such as a garden, washing lines and car parking. Consequently, extensions to the dwelling or typical domestic outbuildings would not appear as unexpected sights in this context.
16. Based on the submitted evidence, I am not satisfied that it has been demonstrated that development of the type allowed under the specified GPDO Classes would result in an over development of the site such that material harm would inevitably result to the rural character of the area, or that it would

unacceptably impede the functions of the Greenspace Corridor as identified in Policy G6 of the CS.

17. I recognise the importance of the continued protection and maintenance of the Protected Open Land, as set out in Policy D/10 of the UDP and Policy G5 of the CS, and the requirements for development in Green Belts set out in chapter 13 of the Framework. I also appreciate the role that green infrastructure can play in supporting growth and regeneration and in providing environmental and recreational benefits as identified in Policy G6 of the CS. However, for the reasons set out, a clearly justified case has not been made as to why the specified permitted development rights need to be removed in order to safeguard the openness of the Protected Open Land or the Greenspace Corridor.
18. Consequently, with reference to paragraphs 54 and 56 of the Framework and the guidance within the PPG, I conclude that the condition is not reasonable or necessary with regard to the site's location within Protected Open Land and a Greenspace Corridor.

Conditions

19. The guidance in the PPG makes 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. It would appear that permission reference 19/00256/FUL has been implemented, and so I do not need to re-impose a time limit condition. The original permission was granted subject to a number of conditions which require the submission of further details for approval. Confirmation has been provided on which conditions have been discharged by the Council. In addition to condition no. 14, I have not re-imposed conditions nos. 3, 4, 6, 7, 9 and 11 of the original permission as these relate to the construction of the dwelling and therefore are no longer necessary. I have reimposed conditions 5, 8, 10, 12 and 13 as these include a retention element, with amendments to reflect that details have been approved by the Council.

Conclusion

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

F Wilkinson

INSPECTOR

SCHEDULE OF CONDITIONS

1) This permission relates to the following plans:

- Location Plan (Plan received 05.03.19)
- Site plan as Existing
- Site plan as Proposed (Amended Plan Received 03.04.19)
- Tree Survey, Drawing No. 247/1
- Plans, Elevations and Sections as Existing, Drawing No. 34
- Plans, Elevations and Sections as Proposed, Drawing No. 34B

and the development shall be carried out in complete accordance with these drawings hereby approved.

- 2) The drainage infrastructure shall be retained and maintained in accordance with the details on drawing reference 34 D BB dated June 2020 to be read in conjunction with the 'Marsh Off-Mains Drainage Products' brochure.
- 3) The vehicular access and car parking arrangements as shown on drawing reference 34 D BB dated June 2020 shall be retained for their intended purpose.
- 4) Any retained or planted trees or shrubs as detailed on drawing reference As Proposed revised March 2019 which are removed, uprooted, destroyed, die or become severely damaged or become seriously diseased within 5 years of planting shall be replaced within the next planting season by trees or shrubs of similar size and species to those originally planted.
- 5) The bird and bat boxes including 'Schwegler 1SP Sparrow Terrace – Stone' and 'Conservation Bat Box' attached to the western gable shall be retained as installed.
- 6) The windows in the ground floor and mid-elevation level on the side elevation facing north shall be retained as non-opening lights and textured glass which obscuration level is no less than Level 3 of the Pilkington Glass scale (or equivalent) to a height of no less than 1.7 metres above finished floor level.