



Appeal Decision

Site visit made on 4 January 2023

by Samuel Watson BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 February 2023

Appeal Ref: APP/R0660/W/22/3302226

Thieves Hollow, Chelford Road, Cheshire East, Prestbury SK10 4PT

- 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 & Mrs J Fell against Cheshire East Council.
 - The application Ref 22/1474M is dated 8 April 2022.
 - The application sought planning permission for the erection of a rear extension and associated works without complying with a condition attached to planning permission Ref 21/2931M, dated 25 November 2021.
 - The condition in dispute is No 4 which states that: *Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking or re-enacting that order), no development (as defined by Section 55 of the Town and Country Planning Act 1990) as may otherwise be permitted by virtue of Classes AA, A, B, C, D, E and F of Part 1 Schedule 2 of the Order shall be carried out.*
 - The reason given for the condition is: *To ensure continued control over the extent of further building on site to protect the openness, noting the Green Belt location of the site and the circumstances that have justified a grant of planning permission.*
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a rear extension and associated works at Thieves Hollow, Chelford Road, Cheshire East, Prestbury SK10 4PT in accordance with the terms of the application, Ref 22/1474M, dated 8 April 2022, subject to the following conditions:
 - 1) The materials to be used shall be in strict accordance with those specified in the application unless different materials are first agreed in writing with the Local Planning Authority. Development shall be carried out in accordance with the approved details.
 - 2) The development hereby approved shall be carried out in total accordance with the approved plans:
 - 363CHE 112 (Proposed Basement Floor Plan) (Revision F)
 - 363CHE 113 (Main House Proposed Ground Floor Plan) (Revision H)
 - 363CHE 115 (Proposed Elevations Sheet One) (Revision M)
 - 363CHE 116 (Proposed Elevations Sheet Two) (Revision J)
 - 363CHE 118 (Ground Floor Overlay Plan) (Revision H)
 - 363CHE 121 (Proposed Site Plan) (Revision B)
 - 363CHE 140 (Proposed Elevations Sheet One Overlay) (Revision B)
 - 363CHE 141 (Proposed Elevations Sheet Two Overlay) (Revision B)

Preliminary Matters

2. This appeal follows the failure of the Council to determine the planning application within the prescribed period. Had it been able to determine the application, the Council has indicated that the application would have been refused.
3. I note the concerns set out within the Council's submissions. While these do not form the application decision, as jurisdiction over that was taken away when the appeal was lodged, I have treated it as the decision the Council would have made, had it been empowered to do so.
4. Since the time of the Council's decision, the Site Allocations and Development Policies Document (the SADPD) has been adopted. As such, Policy GC12 of the Macclesfield Borough Local Plan (the MBLP) has been superseded and Policy RUR11 of the SADPD has been adopted.

Main Issue

5. The main issue is the effect of removing the condition on the Green Belt and its openness.

Reasons

6. Thieves Hollow is a large property set within a sizeable parcel of land. The site drops away from Chelford Road and is surrounded by a deep area of mature trees on all sides. It is clear from the evidence before me that there is a notable level of planning history relevant to the grant of permission 21/2931M.
7. Briefly, in 1998 permission was granted for an extension to the host dwelling, reference 98/0978P. A subsequent application was made for a similar extension, reference 05/0299P, following the adoption of the MBLP. This proposal exceeded the 30% limit set out under MBLP Policy GC12 for the increase of the original floor space of a dwelling. However, as the Council found it to be smaller than the 1998 permission it was considered to have a lesser impact on the Green Belt and so was deemed not to be inappropriate in that instance.
8. Although of some age, as works associated with permission 05/0299P had begun the permission was still extant at the time of the submission of application 21/2931M. Whilst the Council found again that the scheme exceeded the 30% floor space limit, they state in their submissions that the size and scale of this scheme was reduced compared to 05/0299P. I note that they also found it to be beneficial to permit the development.
9. Although I am mindful that the rights afforded by the Town and Country Planning (General Permitted Development) (England) Order (the GPDO) have changed since the 2005 permission, I do not find that these changes have been significant. Moreover, SADPD Policy RUR11 is, in so far as it is relevant to the appeal before me, very similar to the superseded Policy GC12. In particular, both policies set a limit for extensions, within the Green Belt, of 30%. Therefore, I do not find the changes to the permitted development rights and development plan to be so significant as to constitute a materially different policy context within which to consider the proposal.

10. From the submissions before me it is clear that neither of the previous permissions, 1998 or 2005, were granted with conditions imposed that restricted permitted development rights. Developments covered by those rights could therefore have been carried out under those permissions. As permission 21/2931M was considered, by the Council, to be beneficial to the Green Belt and its openness, and as the policy context has remained the same, I find that even if development was carried out under the permitted development rights, the impact would still be less than that which could have previously occurred.
11. In light of the above, condition 4 is unnecessary in order to protect the Green Belt and its openness, and its removal would not conflict with the aims of Policy PG3 of the Local Plan Strategy 2010-2030 (the LPS, July 2017) and Policy RUR11 of the SADPD. These policies collectively seek to protect the Green Belt from inappropriate development and preserve its openness, including disproportionate additions, which are considered to be increases of more than 30%. The proposed removal of condition 4 would also not conflict with Chapter 13 of the National Planning Policy Framework with regards to the protection of the Green Belt and its openness from inappropriate development.

Other Matters

12. The Council have referred to a recent appeal decision¹ that also relates to the removal of permitted development rights. However, although the background of the two appeals bears resemblance, the background of the appeal before me includes the granting of previous planning permissions rather than an extension under permitted development. Consequently, I find that the context and background of the appeal before me is different to that of the Council's example. All proposals must be considered on their own merit and this recent decision has not been determinative in my consideration of this appeal.
13. The Council have raised a number of other Policies, namely MP1, SD1, SD2, SE1, DC2, DC3 and Appendix C of the LPS and Policy HOU9 of the SADPD. However, I do not find that any of these policies are particularly relevant to the matters upon which this appeal turns.

Conditions

14. As I have concluded that condition 4 would not be necessary to protect the Green Belt and its openness, I have removed condition 4.
15. The guidance in the Planning Practice Guidance makes it 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 was clear at the time of my visit that the development had taken place and so I find it to no longer be necessary to impose a condition on timescale for the commencement of works. As I have no information before me to demonstrate that the other conditions should not be reimposed, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.

¹ Appeal reference APP/R0660/W/22/3292275

Conclusion

16. There are no material considerations that indicate the application should be determined other than in accordance with the development plan. For the reasons given above, I therefore conclude that the appeal should be allowed.

Samuel Watson

INSPECTOR