



Appeal Decision

Site visit made on 28 February 2023

by V Simpson BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 April 2023

Appeal Ref: APP/Y3615/W/22/3296925

Oakfield Cottage, School Lane, Ockham, GU23 6PA

- 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 Mrs Alicia Grainger against Guildford Borough Council.
 - The application Ref 21/P/02104 is dated 1 October 2021.
 - The application sought planning permission for proposed single storey rear extension and single storey front porch following demolition of existing rear conservatory, rear extension and timber outbuilding without complying with a condition attached to planning permission Ref 18/P/01367, dated 22 August 2018.
 - The condition in dispute is No 5 which states that: *Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking or re-enacting or amending those Orders with or without modification), no development within Part 1, Classes B and E shall be carried out on the dwellinghouse hereby permitted or within their curtilage.*
 - The reason given for the condition is: *Having regard to the size of the extensions approved, the local planning authority wishes to retain control over any future extensions and outbuildings at the property, in order to safeguard the character of the area and the residential amenities of adjoining properties.*
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Decision

1. The appeal is allowed and planning permission is granted for proposed single storey rear extension and single storey front porch following demolition of existing rear extension, rear extension and outbuilding without compliance with condition 5 previously imposed on planning permission Ref 18/P/01367 which was approved on 22 August 2018 at Oakfield Cottage, School Lane, Ockham, GU23 6PA, in accordance with the terms of the application, Ref 21/P/02104, dated 4 November 2021.

Preliminary Matters

2. On request, a copy of the Officer Report prepared in connection with planning application Ref 18/P/01367 has been provided by the Council. The appellant would not be prejudiced by my consideration of this publicly accessible document.
3. Within the questionnaire it is indicated that the site is not within the Green Belt. However, within the Officer Report which was prepared in connection with planning application Ref: 18/P/01367 it is indicated that the site is subject of such a designation. This latter view is corroborated by the appellant and

Ockham Parish Council. I therefore proceed on the basis that the site is within the Green Belt.

4. The appellant indicates that the development authorised by the grant of planning permission Ref 18/P/01367 (the planning permission) has been completed. This correlates with my observations on site, and I have considered the appeal on that basis.
5. The policies used in the decision are the ones I consider to be the most relevant from those supplied by the Council as part of the questionnaire

Main Issues

6. This appeal has been submitted on the basis that the Council failed to give notice of its decision within the appropriate period. The Council has not submitted an appeal statement, and it is therefore unclear whether it would have approved or refused the application.
7. Having regard to the content of Officer Report written in connection with the planning permission as well as the reason provided for the imposition of the condition, and my own observations on site, the main issues are whether condition 5 is reasonable and necessary having regard to the effect of the development on;
 - the character and appearance of the Ockham Conservation area;
 - the Green Belt; and
 - the effect of the development on the living conditions of the occupiers of Cricketers Cottage.

Reasons

Background

8. Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 – as amended (the GPDO) authorises via Class B, the enlargement of a dwellinghouse consisting of an addition or alteration to its roof. Class E of the same Part authorises the provision of buildings etc incidental to the enjoyment of a dwellinghouse. Development within these Classes may only be undertaken subject to it meeting certain qualifications and restrictions.
9. The effect of condition 5 of the planning permission is that it prevents development being undertaken which would otherwise be permitted under Classes B and E of Schedule 2, Part 1 of the GPDO.
10. National Planning Practice Guidance (the Guidance) confirms the importance of ensuring that conditions are tailored to tackle specific problems, rather than standardised or used to impose broad unnecessary controls¹. The Guidance also indicates that conditions restricting the future use of permitted development rights or changes of use may not pass the test of reasonableness or necessity².
11. Paragraph 56 of the National Planning Policy Framework (the Framework) guides that planning conditions should be kept to a minimum and only imposed

¹ Paragraph: 001 Reference ID: 21a-001-20140306

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

where they meet 6 tests. These tests include tests of necessity, relevance to planning and relevance to the development to be permitted. Paragraph 54 of the Framework indicates that planning conditions should not be used to restrict permitted development rights unless there is a clear justification to do so.

Character and appearance

12. The appeal site comprises a 2 storey, brick built, semi-detached property. It occupies a large plot in a semi-rural area, and is within the Ockham Conservation Area (CA). As such I have had regard to the duty to pay special attention to the desirability of preserving or enhancing the character and appearance of the CA.
13. The significance of the CA lies in part, by the low density of built development within it. Such development often comprises medium and large brick-built houses, of a variety of ages and styles. The intricate brick detailing on several of these properties adds to the significance of the CA. The sense of openness and the relative tranquillity of parts of the CA, due in part to large gardens and the presence of fields also add to its significance.
14. Permitted development rights granted by Classes B and E of Schedule 2 Part 1 of the GPDO are qualified or removed on land within a CA. The enlargement of a dwellinghouse consisting of an alteration to its roof is not permitted development in a CA. The retention of a condition which withdraws the permitted development rights for such an alteration therefore duplicates a restriction contained within the GPDO.
15. When considering the effect of the development proposals subject of application Ref: 18/P/01367, the Council concluded that the development proposals would preserve the special character and appearance of the CA.
16. The mature hedgerow on the boundary between the appeal site and School Lane remains in situ. It provides effective screening of much of the appeal site. In addition, and from public vantages within School Lane, the dwellinghouse itself obscures views of land to the rear of the house upon which any development permitted by Class E could potentially be undertaken.
17. The proposal subject of this appeal would not necessarily result in development being undertaken within the appeal site. Furthermore, the Council have not provided details demonstrating how development within Classes B or E could be harmful to the character and appearance of the area or of the CA. I have no basis to conclude therefore that the restriction of the permitted development rights beyond that contained within the GPDO, is either necessary or relevant to the development which has been undertaken pursuant of the planning permission
18. For the reasons provided above, I conclude that condition 5 is not necessary as the proposal would not be harmful to the character and appearance of the area or the Ockham CA and its significance as a designated heritage asset. By preserving the character or appearance of the CA, it would comply with the statutory test set out in Section 72(1) of the planning (Listed Buildings and Conservation Areas) Act 1990. Consequently, it would not conflict with policies G5 and HE7 of the Guildford Borough Local Plan 2003 (the Local Plan 2003) or policies D1, and D3 of the of the Guildford Borough Local Plan: strategy and sites 2015-2034 dated 2019 (the Local Plan 2019). Amongst other things these

policies seek to ensure that new development respects local character, preserves or enhances the character or appearance of the CA, and that the historic environment be conserved and enhanced in a manner appropriate to its significance.

Green Belt

19. Within the Green Belt, policy P2 of the Local Plan 2019 and paragraph 147 of the Framework advise that inappropriate development is, by definition, harmful and should not be approved except in very special circumstances. However, permitted development is a form of development for which the principle has already been granted by secondary legislation.
20. Whether or not a site is within a Green Belt, does not alter the permitted development rights afforded by Classes B and E of Schedule 2, Part 1 of the GPDO. It is reasonable therefore to conclude that permitted development rights under Classes B and E are intentionally no different to those outside of the Green Belt, and that if greater control was desired within the Green Belt, then the GPDO would reflect this.
21. The evidence suggests that the development authorised by the planning permission resulted in a decrease in floor area of buildings within the site. Permitted development rights within E could give rise to the construction of fairly substantial buildings, enclosures, pools or containers within the appeal site. However, the Council has not explained how it considers that potential development within Class E would be harmful. Nor have they provided details of the potential nature or extent of development which could be undertaken as a result of the permitted development rights at Class E. Even if they had, there is no evidence that such development would be reasonably likely to be undertaken. I have no basis to conclude therefore that the permitted development rights are likely to be used to their maximum.
22. Therefore, and the absence of any compelling evidence from which to conclude that harm would be caused to the Green Belt by the removal of condition 5, I find that the clear justification to remove permitted development rights, as required by paragraph 54 of the Framework has not been demonstrated. Consequently, and in this respect, the condition is not reasonable or necessary.

Living conditions

23. Oakfield Cottage is located within a large plot and is one of a pair of semi-detached houses. A high, thick and mature hedgerow divides the appeal site from the adjoining Cricketers Cottage.
24. Within its evaluation of the development subject of planning application ref 18/P/01367 and which is contained within the Officer Report, the Council found no adverse effect would result on the living conditions of the occupiers of Cricketers Cottage. However, one of the stated reasons for imposing condition 5, was to safeguard the residential amenities of adjoining properties.
25. As previously stated, Classes B and E of Schedule 2 Part 1 of the GPDO, impose various limitations and conditions to the permitted development rights. These limitations and conditions serve to prevent unacceptable harm being caused to the living conditions of the occupiers of neighbouring properties as a result development permitted by those classes. No evidence has been presented demonstrating why the conditions and limitations at Classes B and E would not

afford suitable protection of the living conditions of the occupiers of Cricketers Cottage. Nor has any cogent case has been made from which to conclude that the removal of the permitted development rights at Classes B and E would cause unacceptable harm to the living conditions of the occupiers of Cricketers Cottage.

26. I therefore find that condition 5 is neither necessary to prevent unacceptable harm being caused to the living conditions of the occupiers of Cricketers Cottage, or relevant to the development permitted. Consequently, and in this respect the proposal would comply with policy G1 of the Local Plan 2003, where it requires the protection of the amenities enjoyed by occupants of buildings, with particular regard to privacy, sunlight, daylight, noise, vibration, pollution, dust and smell.

Other Matters

27. I have found condition 5 to be neither necessary nor relevant to the development permitted. As such there is no need for planning applications to be made for development within is otherwise permitted by Schedule 2, Part 1 Classes B and E of the GPDO.
28. Even if many smaller houses within the area are being lost, I have been presented with no cogent evidence demonstrating that the proposal subject of this appeal would result in the enlargement of the dwelling.

Conditions

29. On the basis that the development authorised by the planning permission has been completed, it is not therefore necessary to re-attach any of the previous conditions.

Conclusion

30. For the reasons given above and having regard to the development plan as a whole and other relevant material considerations, I conclude that this appeal should be allowed and permission be granted.

V Simpson

INSPECTOR