
Appeal Decision

Site visit made on 28 February 2023

by Emma Worley BA (Hons) Dip EP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 April 2023

Appeal Ref: APP/A1910/W/22/3305887

34 Coniston Road, Kings Langley WD4 8BU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Mohammed Ajab against the decision of Dacorum Borough Council.
 - The application Ref 21/04777/RET, dated 18 December 2021, was approved on 27 May 2022 and planning permission was granted subject to conditions.
 - The development permitted is described as 'outbuilding'.
 - The condition in dispute is No 4 which states that: *Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (or any Order amending or re-enacting that Order with or without modification) no development falling within the following classes of the Order shall be carried out without the prior written approval of the Local Planning Authority: Schedule 2 Part 1 Class E.*
 - The reason given for the condition is: *To enable the Local Planning Authority to retain control over the development in the interests of safeguarding the openness of the Green Belt in accordance with Policy CS5 of the Dacorum Borough Core Strategy (2013) and Section 13 of the National Planning Policy Framework (2021).*
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Decision

1. The appeal is allowed and the planning permission Ref 21/04777/RET for an outbuilding at 34 Coniston Road, Kings Langley WD4 8BU granted on 27 May 2022 by Dacorum Borough Council, is varied by deleting condition 4.

Background and Main Issues

2. Planning permission was granted for the erection of an outbuilding at the appeal site which included a condition removing permitted development rights for the erection of outbuildings under Class E of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (the GPDO). The Council considers the condition is necessary to protect the Green Belt. The appellant objects to the condition as they consider that exceptional circumstances have not been demonstrated to justify the condition.
3. The main issue is therefore whether the condition is reasonable or necessary in the interests of protecting the Green Belt.

Reasons

4. The appeal site comprises a semi-detached dwelling in a predominantly residential area. The dwellings in the vicinity of the site on this side of Coniston Road have long rear gardens which slope down towards the adjoining open countryside. The existing outbuilding is sited on lower ground at the far end of the garden close to the rear boundary of the site on land which is located within the Metropolitan Green Belt. Condition 4 removes permitted

development rights for the erection of ancillary buildings from the appeal site in its entirety.

5. Schedule 2, Part 1 of the GPDO sets out the permitted development rights for development within the curtilage of a dwellinghouse. Whilst there are specific exceptions for some classes where permitted development rights do not apply, the GPDO does not withdraw permitted development rights for land within the Green Belt. It can therefore be surmised that land within the Green Belt is regarded by the Government as being no different in terms of the application of permitted development rights to land outside of it. Moreover, the fact that permitted development rights have not been removed from land in the Green Belt suggests that the Government's fundamental Green Belt aim of preventing urban sprawl by keeping land permanently open does not extend to preventing permitted development within a domestic curtilage.
6. The National Planning Policy Framework (the Framework) sets out that planning conditions should not be used to restrict national permitted development rights unless there is clear justification for doing so. The Planning Practice Guidance (PPG) also advises that conditions of this nature will rarely pass the test of necessity and should only be used in exceptional circumstances. Therefore, the starting point is that permitted development rights should remain in place, even in the Green Belt, unless clear justification for their removal is advanced which is specific to the site.
7. The Council indicate that planning permission was granted for the outbuilding having regard to the fallback position of permitted development rights which meant that the building could have been built in a very similar position without planning permission and that the impact of such a building, when compared to the appeal proposal would be indiscernible. Moreover, it was considered that the erection of an outbuilding which would constitute permitted development, elsewhere on the site on higher land closer to the dwelling and beyond the Green Belt, would potentially have a greater effect, including in terms of visual impact and living conditions.
8. The permitted development fallback position combined with the removal of permitted development rights for subsequent outbuildings, in order that the Council could gain control over future development to ensure that the openness of the Green Belt is not diminished further, were considered to amount to very special circumstances. The Council suggest that without the condition to remove permitted development rights, the very special circumstances required to clearly outweigh the harm to the Green Belt by reason of inappropriateness would not have been demonstrated. On that basis the condition to remove permitted development rights for Class E buildings was deemed reasonable and necessary.
9. Given the site topography no significant harm to the openness of the Green Belt was identified by the Council as a consequence of the siting of the outbuilding. Whilst I note concerns that a building on land closer to the house may have a greater impact on openness due to its more elevated position, the appeal submissions indicate that this land falls outside of the Green Belt.
10. Having regard to the limitations of Class E of the GPDO in terms of the dimensions and position of permitted development, I am not persuaded that the erection of further ancillary buildings at the site would have such an effect on the openness of the Green Belt or its purposes that removal of permitted

development rights is justified. Furthermore, I find that the permitted development fallback position itself would provide very special circumstances which clearly outweigh the harm to the Green Belt by reason of inappropriateness to justify the granting of planning permission for the outbuilding.

11. For the above reasons, it has not been shown that there is clear justification for the removal of permitted development rights under Class E as set out in the Framework and the PPG. I therefore conclude that condition 4 is not reasonable or necessary in the interests of protecting the Green Belt. As such, removal of the condition would not be contrary to the Green Belt aims of Policy CS5 of the Dacorum Borough Core Strategy (2013) which sets out that the Council will apply national Green Belt policy to protect the openness and character of the Green Belt and Section 13 of the Framework in relation to the protection of the Green Belt.

Other Matters

12. Interested parties have raised a number of concerns relating to the outbuilding for which planning permission has been granted. However, as these do not specifically relate to the removal of the condition which is in dispute, they are not relevant to the determination of the appeal before me.

Conclusion

13. In light of the above, I conclude that the appeal should be allowed, and planning permission Ref 21/04777/RET varied by the deletion of Condition 4.

Emma Worley

INSPECTOR