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# Appeal Decision

Site visit made on 22 February 2023

**by Hannah Guest BSc (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 25<sup>th</sup> April 2023**

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**Appeal Ref: APP/G2245/W/22/3303253**

**Greenacre, Castle Hill, Hartley DA3 7BL**

- 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 B Mullen against the decision of Sevenoaks District Council.
  - The application Ref 22/00152/HOUSE, dated 18 January 2022, was approved on 29 April 2022 and planning permission was granted subject to conditions.
  - The development permitted is proposed part two storey, part single storey rear extension with roof light. Alterations to fenestration.
  - The condition in dispute is No. 4 which states that: *Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (or any Order revoking or re-enacting those orders), no development falling within Classes A, AA, B or E of Part 1 of Schedule 2 to the said Order shall be carried out or made to the dwelling without the grant of planning permission by the local planning authority.*
  - The reason given for the condition is: *In order to protect the openness of the Metropolitan Green Belt and setting of the adjacent Listed Building in accordance with policies GB1 and EN4 of the Sevenoaks Allocations and Development Management Plan.*
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## Decision

1. The appeal is allowed and the planning permission Ref 22/00152/HOUSE for proposed part two storey, part single storey rear extension with roof light and alterations to fenestration at Greenacre, Castle Hill, Hartley, DA3 7BL granted on 29 April 2022 by Sevenoaks District Council, is varied by deleting condition No. 4 and substituting it for the following condition:
  - Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (or any Order revoking or re-enacting those orders), no development falling within Classes A, AA or B of Part 1 of Schedule 2 to the said Order shall be carried out or made to the dwelling without the grant of planning permission by the local planning authority.

## Background and Main Issue

2. Planning permission was granted for a part 2-storey, part single storey rear extension (referred to hereon as the permitted extension), which included a condition removing permitted development rights for the enlargement, improvement, or other alteration to the appeal property (Classes A and AA), including additions or alterations to its roof (Class B) and outbuildings (Class E). The Council consider the condition to be necessary to protect the openness of the Green Belt and the setting of the adjacent Grade II listed building, known as Hartley Cottage. The appellant, however, objects to the condition as they consider it to be unreasonable.

3. The main issues are, therefore, whether the condition is reasonable and necessary to preserve:
  - the setting and significance of the listed building; and
  - the openness of the Green Belt.

## **Reasons**

### *Listed Building*

4. The appeal property sits adjacent to Hartley Cottage, a Grade II listed building, which is thought to be the oldest cottage at Hartley Green and survives as an example of a modest vernacular cottage.
5. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to give special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
6. Views containing both the appeal property and Hartley Cottage are limited from the front of the dwellings due to the relatively tall and dense boundary planting associated with the listed building. The two dwellings therefore appear relatively separate in the street scene although not mutually exclusive. There is a greater degree of intervisibility between the two dwellings from the rear and side. I saw on site that the listed building is very noticeable from the rear garden of the appeal property, particularly the section of garden just behind the permitted extension, to the south of the existing garage, where there is no boundary planting between the two. Despite some conifers, there are also views of the large, thatched roof of the listed building past the northern side of the existing garage from further within the rear garden of the appeal property. The appeal site therefore forms part of the listed building's setting.
7. Given the appeal property is a similar height and width to the listed building, it is not currently dominant or overbearing and makes a neutral contribution to its setting and significance. There is also a generous gap between the two which helps define each dwelling and provides an important spaciousness to the listed building's setting.
8. I appreciate that the Council found the permitted extension would preserve the setting and significance of the listed building and that it was supported by the Conservation Officer. However, while the permitted extension may comply with national and local policies, I must consider the effect of removing the condition, which would allow further extensions and alterations to the appeal property, as well as outbuildings to be constructed, without the need for planning permission.
9. The permitted extension was amended during the planning application process to locate the single-storey element adjacent to Hartley Cottage and the two-storey element further away. This was to reduce the bulk and massing next to the listed building. I also understand that amendments were made to the design and materials.
10. Taking this into account, and from my observations on site, there is a risk that further extension of and/or alteration to the appeal property would harm the setting of the listed building. While the permitted extension is largely screened

from the listed building by boundary treatment, the rear elevation of the appeal property is now set significantly further back than it previously was. Therefore, any further rear extensions, even if modest in scale, would be within an area that has a high degree of intervisibility with the listed building, and any additional bulk and massing could result in the appeal property becoming dominant and overbearing. Thus, it could result in harm to the setting and significance of the listed building. Alterations to its rear roof profile could also result in similar harm, given the intervisibility between the dwellings at this point. Any side extensions would erode the gap between the two dwellings that provides important spaciousness to the setting of the listed building.

11. Therefore, without the condition, the permitted extension could result in extensions of and alterations to the appeal property that would be in positions that could harm the setting of the listed building. This would conflict with Policy EN4 of the Sevenoaks Allocations and Development Management Plan (2015) (Local Plan) that seeks to conserve and enhance the character, appearance and setting of heritage assets. Accordingly, I find the disputed condition is reasonable and necessary with specific regard to the enlargement, improvement, or other alteration to the appeal property, including additions or alterations to its roof (Classes A, AA, and B).
12. However, it is not clear how removing permitted development rights relating to outbuildings (Class E) is relevant to the permitted extension or necessary to make it acceptable in planning terms.
13. Furthermore, although the construction of permitted outbuildings may affect the setting of the listed building, any effect would be limited due to the modest scale of the development permitted and would likely be set further away from the appeal property and thus further from the listed building. It is therefore unlikely that any effect would be to such a degree as to cause harm to the setting of the listed building and, given this, Policy ENV4 of the Local Plan would not be compromised.
14. In addition, I note that the Council only refers to harm to the setting of the listed building arising from further additions of extensions to the house in their statement<sup>1</sup> and not from outbuildings.
15. Accordingly, I find in respect of permitted development rights relating to outbuildings (Class E), the disputed condition is not reasonable, nor is it necessary, in the interests of preserving the setting and significance of the listed building, to make the permitted extension acceptable.

### *Openness of the Green Belt*

16. Only a section at the very end of the appeal property's large rear garden is within the Green Belt. This section of the garden is some distance from the appeal property and therefore any permitted enlargement, improvement, or other alterations to the appeal property would not impact on its openness. Also, as mentioned above, it is not clear how the removal of permitted development rights relating to outbuildings is relevant to the permitted extension or necessary to make it acceptable in planning terms.
17. Paragraph 54 of the Framework is clear that planning conditions should not be used to restrict national permitted development rights unless there is clear

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<sup>1</sup> Letter dated 19 December 2022

justification to do so, and I note that national permitted development rights have not been restricted in the Green Belt.

18. Therefore, although I recognise that any permitted outbuildings may affect the openness of this section of the Green Belt, and that the Council consider it to form part of an open buffer behind the dwellings on Ash Road, this in itself is not a clear justification for restricting national permitted development rights. Furthermore, Policy GB1 of the Local Plan relates specifically to extensions to dwellings within the Green Belt. Thus, it is not applicable in this case.
19. Accordingly, in the absence of any further justification, I find the disputed condition is not reasonable. It is also not necessary, in the interests of preserving the openness of the Green Belt, to make the permitted extension acceptable.

### **Other Matters**

20. The appellant contends that the decision of the Council to include the disputed condition was manipulated by a third party and was based on factually incorrect beliefs. Whether or not this is the case, I have found that the condition is reasonable and necessary in the interests of preserving the setting and significance of the listed building with specific regard to the enlargement, improvement, or other alteration to the appeal property including additions or alterations to its roof.
21. I recognise that the conservation officer raised no objection to the permitted scheme and the recommendation to committee did not include the condition in dispute. However, for the reasons set out above, I have found the condition is necessary to protect the setting of the listed building from harm that could arise from future extensions to the appeal property. The need for the proposal to be amended during the application process to address the concerns of the conservation officer demonstrated that there is a reasonable likelihood for harm to arise from further extensions. Therefore, the absence of a recommendation to include the condition prior to the committee does not lead me away from my conclusion in this regard.

### **Conditions**

22. I have concluded that the disputed condition is only reasonable and necessary to prevent the enlargement, improvement, or other alteration to the appeal property, including additions or alterations to its roof, in the interests of the setting and significance of the listed building. Accordingly, I will replace the condition subject to the appeal with one that refers to Classes A, AA, and B and not Class E. In arriving at this conclusion, I have had regard to the advice within the Planning Practice Guidance that conditions restricting permitted development rights should only be imposed in exceptional circumstances. The desirability of preserving the setting of the Listed Building is one such exceptional circumstance.

### **Conclusion**

23. For the reasons above, I conclude that the planning permission should be varied as set out in the formal decision.

*Hannah Guest*     INSPECTOR