



Appeal Decision

Site visit made on 17 April 2023

by K Williams MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 June 2023

Appeal Ref: APP/A0665/W/22/3310904

85 Hermitage Road, Saughall, Chester, Cheshire CH1 6AQ

- 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 David Hill against the decision of Cheshire West and Chester Council.
 - The application Ref 22/00517/FUL, dated 13 February 2022, was approved on 9 September 2022 and planning permission was granted subject to conditions.
 - The development permitted is single storey rear extension, loft conversion including new front gable.
 - 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 (or any order revoking and re-enacting that Order with or without modification), no development falling within Schedule 2, Part 1 (Classes A to E) thereof shall be carried out without the grant of planning permission by the local planning authority.
 - The reasons given for the conditions is: to prevent further overdevelopment within the Green Belt.
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Decision

1. The appeal is allowed and the planning permission Ref 22/00517/FUL for a single storey rear extension, loft conversion including new front gable at 85 Hermitage Road, Chester, CH1 6AQ granted on 9 September 2022 by Cheshire West and Chester Council, is varied by deleting condition 4.

Preliminary Matters

2. The appellant, in their appeal form has advised the description of development on the original application form is not what was finally considered by the Council. The front extension was removed from the proposal prior to the decision being made. I have not changed the description of development on the decision notice as there is no evidence a change is agreed, and an approved plans condition has been attached by the Council to the original permission.

Background and Main Issue

3. Planning permission was granted in 2022 for a single storey rear extension. This permission was subject to several conditions, including condition 4, which removes permitted development rights for the enlargement, improvement or other alteration to the dwelling, additions or alterations to the roof, porches and buildings incidental to the enjoyment of the dwellinghouse. The LPA considers this condition to be necessary to prevent overdevelopment of the Green Belt given that the original dwellinghouse has increased by more than 30%.

4. The appellant considers that there are no justifiable reasons why the LPA have imposed a condition restricting permitted development rights for the property. It is their view that the disputed condition does not satisfy the 'necessary' and 'reasonable in all other aspects' tests set out in paragraph 54 of the National Planning Policy Framework (the Framework).
5. Therefore, the main issue is whether the condition is reasonable and necessary, having regard to the requirements of local and national policy concerning development within the Green Belt.

Reasons

6. The appeal site comprises 85 Hermitage Road (No 85) and its garden. It is a detached bungalow with a direct road frontage. It is sited between a two-storey dwelling, and a bungalow. On the opposing side of Hermitage Road are substantial detached two storey dwellings. The appeal site has a rear boundary with other residential properties (bungalows), where there is in-depth residential estate development which makes up a significant part of the village of Saughall. The properties in the area vary in size and scale and display alterations and extensions and numerous outbuildings.
7. The National Planning Policy Framework (the Framework) sets out the tests for planning conditions and at 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 (the PPG) states that conditions restricting the future use of permitted development rights or changes of use may not pass the test of reasonableness or necessity, and that blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission may not meet the tests of reasonableness and necessity¹.
8. The LPA advises that Policy DM21 of the Cheshire West & Chester Council Local Plan (Part Two) Land Allocations and Detailed Policies (Local Plan) states that in the Green Belt, extensions should not result in disproportionate additions. The supporting text to the Policy sets a size guide of 30% with the aim of maintaining the openness of the Green Belt. It does also suggest that in the Green Belt where these limits have been reached, planning conditions may be applied to remove permitted development rights where necessary.
9. The officer report and statement advises that the proposed development would result in approximately 64.8% increase in the size of the original dwelling. As there is no increase in overall building height, Policy DM21 advises that the increase in size of the original or existing dwelling will generally be determined by assessing the net increase in floorspace (measured externally). The appellant contests this figure. They advise the existing floorspace of the dwelling is 138.4sqm and with the approved single storey extension taking the floorspace to 169.4sqm, an increase of 22.4%. As such this would be below the policy guide of 30%.
10. Unfortunately, neither party has clearly explained how they have reached these figures or what elements were included in the calculations, noting timber structures in the rear garden during my site visit which are not shown on site plans. Neither has it been clearly explained how the fall-back position is

¹ PPG paragraph 21a-017-20190723

relevant as it is not clear whether the rear extension is more or less than that which could be achieved under the Town and Country Planning (General Permitted Development) (England) Order (GPDO) 2015.

11. In any event, the LPA contend that any further extensions and alterations to the dwellinghouse would result in further inappropriate development within the Green Belt. However, I note the appeal decisions provided by the appellant, and concur with the view of the Inspector² that the GPDO places no restrictions on permitted development rights in Green Belts as it does with other designated areas such as National Parks. This suggests that development carried out under permitted development would not necessarily be seen as inappropriate or harmful to its openness.
12. Permitted development under Classes A - E would also be controlled in this case by virtue of the low height of the bungalow, the low eaves, the dwelling fronting the highway and the proximity of the site boundaries, which amongst other conditions all impose restrictions on the extent of development. Furthermore, permitted development would also be limited by the permission granted and any significant extensions to the dwelling would still require planning permission or prior approval.
13. Therefore, whilst permitted development on the site could give rise to development which could exceed the Local Plan Policy DM21 guide of 30%, the supporting text advises the percentage figure is there to maintain the openness of the Green Belt, and the supporting text does not suggest conditions will be applied in all cases. As such I have also taken into account the fact that the appeal site is within a relatively dense built-up area. Noting the surrounding character and variance of property sizes many of which comprise dormer bungalows and two storey dwellings, these factors define and limit the degree of spatial openness. I therefore consider the effect on the openness of the Green Belt as a consequence of extensions permitted under Part 1 Class A - E would be limited. I find that the removal of the subject condition would not harm the openness of the Green Belt.
14. I therefore conclude that the condition 4 is not reasonable and necessary, having regard to the requirements of local and national policy concerning development within the Green Belt. As such, the proposal would not conflict with Local Plan Policy DM21, which seeks to impose such conditions in the interests of openness of the Green Belt. For the same reasons there would also be no conflict with the SPD. For the reasons I have referred to above the proposal would also not conflict with the requirements of paragraph 147 of the Framework.

Conclusion

15. For the reasons given above I conclude that the appeal should succeed. I will vary the planning permission by deleting the disputed condition as set out in my decision.

K Williams

INSPECTOR

² APP/K3415/W/18/3208240