



Appeal Decision

Site visit made on 23 May 2023

by Nichola Robinson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 July 2023

Appeal Ref: APP/T0355/W/22/3310262

Dawn Chorus, Poundfield Lane, Cookham, Maidenhead SL6 9RY

- 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 and Ms David and Helen Oliver and Murphy against the decision of the Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 22/02242, dated 15 August 2022, was approved on 10 October 2022 and planning permission was granted subject to conditions.
 - The development permitted is "variation (under Section 73A) of approved plans to substitute those plans approved under 04/41928/FULL for the construction of two storey side extension with front and rear dormers and further two dormers to front and one to rear of existing roof and new porch canopy amendment to approved planning permission 03/41093 with amended plans".
 - The condition in dispute is No 3 which states that: Notwithstanding the provisions of Classes A, B and E of part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and reenacting that Order with or without modification) no enlargement, improvement or any other alteration (including the erection of any ancillary building within the curtilage) of or to any dwellinghouse the subject of this permission shall be carried out without planning permission having first been obtained from the Local Planning Authority.
 - The reason given for the condition is: the site is located within the designated Green Belt where strict controls over the form, scale and nature of development apply. Relevant Policies - Borough Local Plan QP5.
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Decision

1. The appeal is allowed and the planning permission Ref 22/02242 for development described as "variation (under Section 73A) of approved plans to substitute those plans approved under 04/41928/FULL for the construction of two storey side extension with front and rear dormers and further two dormers to front and one to rear of existing roof and new porch canopy amendment to approved planning permission 03/41093 with amended plans" at Dawn Chorus, Poundfield Lane, Cookham, Maidenhead SL6 9RY, granted on 10 October 2022 by the Council of the Royal Borough of Windsor and Maidenhead is varied by deleting condition No 3.

Background and Procedural Matters

2. This proposal relates to a condition on permission ref 22/02242, as referenced in my heading. That permission was itself granted under Section 73, pursuant to planning permission 04/41928 dated 05/07/2004 which itself was a permission granted under Section 73 pursuant to planning permission 03/41093/FUL dated 25/02/2004.

3. Planning permission ref 22/02242 included a number of conditions, one of which restricts the permitted development rights of the appeal property for certain classes of development.
4. The appellants' names as listed in the above banner heading have been taken from the appeal form as it is felt that this more accurately reflects the appellants' names.

Main Issue

5. The appeal site is located in the Metropolitan Green Belt. The Council's reason for the condition given on the decision notice states that it is necessary to control the form, scale and nature of development in the Green Belt. Taking this into account the main issue is whether the condition is reasonable or necessary having regard to the site's location in the Green Belt.

Reasons

6. Policy QP5 of the Borough Local Plan 2013-2033 (2022) (LP) indicates that there will be a strong presumption against development that would conflict with the purposes of the Green Belt and that planning permission for inappropriate development, as defined by the National Planning Policy Framework (the Framework), will not be granted unless very special circumstances are demonstrated. In accordance with paragraph 149 of the Framework the extension or alteration of a building is not inappropriate development in the Green Belt provided that it does not result in disproportionate additions over and above the size of the original building. Insofar as extensions to dwellings are concerned, the Framework and the LP do not define what it means by disproportionate.
7. The Town and Country Planning (General Permitted Development) Order 1995 has been superseded by the Town and Country Planning (General Permitted Development) Order 2015 (the Order). Part 1 of Schedule 2 of the Order sets out that development under Classes A, B and E allow for the enlargement, improvement or other alteration of a dwellinghouse, additions etc to the roof of a dwellinghouse and buildings etc incidental to the enjoyment of a dwellinghouse, without the requirement for planning permission, subject to specified conditions being met.
8. The site's location within the Green Belt does not prevent the application of these permitted development rights and the Planning Practice Guidance (PPG) advises that conditions restricting the future use of permitted development rights may not pass the test of reasonableness or necessity. Thus, there is a reasonable expectation that such alterations and extensions are permissible where they accord with the provisions of the Order. Whereas Paragraph 54 of the Framework states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so.
9. Notwithstanding this, the supporting text to LP policy QP5 indicates that the Council will impose such conditions as may be appropriate to ensure that the openness of the Green Belt and the purposes of including land within it are maintained and that this may include withdrawal of permitted development rights.

10. At my site visit I observed that Dawn Chorus is a large dwelling set within a substantial plot. The site and dwelling are set at a lower level than the road and neighbouring dwellings, and the site is lined by a thick screen of tall vegetation on all sides which screens the dwelling and appeal site in views from the road and the surrounding area. Consequently, I observed that there was limited visibility of the site from its surroundings, and it appeared to make limited contribution to the openness of the Green Belt.
11. Class A of part 1 of Schedule 2 of The Order relates to extensions of limited scale that would not project from the dwelling to any significant degree and Class B works are confined to the roof and would not exceed the highest part of dwelling or add significant volume to it. Based on my observations on site these extensions would be screened in views by virtue of the sunken nature of the site and the extensive boundary cover.
12. Whilst Class E of part 1 of Schedule 2 of The Order allows for extensive coverage of the curtilage of the dwelling by outbuildings, those potential structures would be restricted in height by the limitations of the class and would be well screened in views by virtue of the sunken nature of the site and the extensive boundary cover. Furthermore, based on my observations during my visit, the sloping nature of the site near the access and at the northern, eastern and western site boundaries and the extensive tree cover along the site boundaries would preclude the erection of outbuildings close to the site boundaries.
13. These factors would all combine to significantly limit any material effects upon the spatial and visual openness of the site, should those works be carried out.
14. On balance of the above, development which could be carried out under Classes A, B and E of part 1 of Schedule 2 of The Order would have a negligible effect on the spatial and visual aspects of openness of the Green Belt. Thus, even if the dwelling were to be extended under these permitted development rights, I have not been presented with any clear justification that this would result in a disproportionate addition to the dwelling which would harm the openness of the Green Belt or the purposes of including land within it. It therefore follows that it is not necessary to control such extensions and alterations through the removal of permitted development rights. Therefore, the condition is not reasonable or necessary in the interests of the Green Belt. As such there would be compliance with LP Policy QP5 which requires that the Green Belt be protected against inappropriate development. I also find compliance with Chapter 13 of the Framework which sets out the fundamental aims and characteristics of the Green Belt.

Conclusion

15. For the reasons given above I conclude that the appeal should succeed, and the planning permission varied by deleting the disputed condition.

Nichola Robinson

INSPECTOR