



Appeal Decision

Site visit made on 23 May 2023

by K Townend BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th July 2023

Appeal Ref: APP/R3705/D/22/3308518

The Reddings, Ridley Lane, Nether Whitacre, Warwickshire B46 2DJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant 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 Miss Emily Woodford against the decision of North Warwickshire Borough Council.
 - The application Ref PAP/2022/0122, dated 16 February 2022, was refused by notice dated 28 July 2022.
 - The application sought planning permission for resubmission of planning application PAP/2018/0495 for two-storey rear extension, demolition of existing garage/ store and 1st floor side extension with balcony and works, without complying with a condition attached to planning permission Ref PAP/2019/0479, dated 8 November 2019.
 - The condition in dispute is No 4 which states that: *"No development whatsoever within Classes A, B, C, D and E of Part 1, of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification), shall commence on site without details first having been submitted to and approved by the Local Planning Authority, in writing"*.
 - The reason given for the condition is: *"In recognition of the very special circumstances warranting the approval of planning permission and to control future development in the interest of the openness of the Green Belt"*.
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. Planning permission for a two-storey rear extension, demolition of an existing garage/ store and erection of a first-floor side extension included a condition removing permitted development rights, as detailed in the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the Order), for extensions, alterations and outbuildings. The appellant asserts that the removal of Class E permitted development rights within the condition is not reasonable or necessary. The appellant therefore seeks to remove the condition and replace it with a condition only removing Classes A to D.
3. Taking the above into account the main issue is, therefore, whether the condition is reasonable and necessary to protect the openness of the Green Belt.

Reasons

4. The appeal property is a semi-detached dwelling situated within the Green Belt in an area of dispersed development.
5. The Council considered the original application for extensions and alterations against Policy LP3 of the North Warwickshire Borough Council Local Plan, 2021 (LP) and assessed the size of the extension in quantitative and qualitative terms, against the original building, as defined in LP3. It is clear from the evidence that the Council considered the extensions to be at the maximum scale acceptable to ensure the openness of the Green Belt. The Council, therefore, also considered the removal of permitted development rights as referred to in sub-section d) of LP3.
6. The Council's evidence, submitted for this appeal, indicates that the first planning permission was only supported on the basis that the existing garage/store was being demolished. The demolition of the existing outbuilding provided sufficient justification to allow the proposed extensions to the dwelling, which were considered to result in disproportionate additions over and above the size of the original building, when assessed against Policy LP3 of the LP and paragraph 149 of the National Planning Policy Framework (the Framework).
7. Permitted development rights were removed to ensure that the Council could retain control over any further residential development at the property, to ensure that any other alterations or extensions do not have a greater impact on the openness of the Green Belt. The effect on design and the character and appearance of the area is only part of the consideration of openness. The removal of permitted development rights does not seek to prevent development. It gives the Council control over the development of the site, as is evidenced by the recent consent at the appeal site for a new detached garage.
8. Planning Practice Guidance (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. The scope of such conditions needs to be precisely defined, by reference to the relevant provisions in the Order, so that it is clear exactly which rights have been limited or withdrawn. Moreover, area-wide or blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity.¹
9. The Order does not restrict permitted development rights relating to development within the curtilage of a dwellinghouse for Classes A to E in the Green Belt. Therefore, the small-scale development that falls in these categories, including outbuildings, would not generally conflict with the purposes of the Green Belt or its essential characteristics of openness and permanence.
10. As such the appeal site's location within the Green Belt would not, in itself, represent justification to warrant removal of permitted development rights. However, in this case the permitted development rights were removed to

¹ 017 Reference ID: 21a-017-20190723

ensure that any further development at the property would not conflict with the purposes of the Green Belt, given the scale of the extensions and alterations already permitted.

11. The appellant accepts that removal of Class A permitted development rights is arguably understandable in terms of ensuring that any further development would not result in a disproportionate addition. However, they seek to argue that the condition is unreasonable, with regard to Class E rights, given the advice in the PPG.
12. However, without the control provided through removing permitted development rights I cannot be certain that any development under Class E would not result in disproportionate additions over and above the size of the original building and would not, therefore, harm the openness of the Green Belt.
13. I accept that small-scale development under Class E would be unlikely to significantly harm the visual aspect of openness due to existing boundary hedges, fences and the garage, currently under construction, screening views from outside the property. However, the spatial aspect of openness would be harmed by reason of additional new buildings in the Green Belt, over and above what has already been developed at the site. The spatial harm could be significant dependant on the number and scale of outbuildings erected, which the Council would have no control over, subject to the criteria in the Order.
14. The decision in this case turns on the specific facts relating to the approved extension to the original building, the potential disproportionate expansion of built development on the site and the desire to maintain the openness of the Green Belt, particularly in regard to spatial openness. The disputed condition has not been imposed without appropriate justification. The condition is necessary in this case to ensure that any further development at the property would not cause further harm to the openness of the Green Belt, beyond the extensions and garage already permitted. The disputed condition is precisely defined and is clearly reasonable and necessary to ensure that the proposal complies with the development plan and the Framework.
15. For the above reasons, I conclude that the disputed condition is both reasonable and necessary in order to preserve the openness of the Green Belt. The condition, as imposed, complies with Policy LP3 of the LP which seeks to ensure that extensions to existing buildings are not disproportionate to the original building.
16. The condition also accords with paragraph 149 of the Framework which requires extensions to buildings to not result in a disproportionate addition and not have a greater impact on openness than the original building. Condition 4 satisfies all the other requirements in Paragraph 57 of the Framework and the Planning Practice Guidance, there is, therefore, no need to remove or vary it.

Conclusion

17. For the reasons given above the appeal is dismissed.

K Townend

INSPECTOR