



Appeal Decision

Site visit made on 8 August 2023

by Tamsin Law BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st August 2023

Appeal Ref: APP/A1910/W/23/3316329

26 Hempstead Lane, Potten End, Hertfordshire HP4 2SD

- 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 Mr J Vilkuh against the decision of Dacorum Borough Council.
- The application Ref 22/03390/ROC, dated 11 November 2022, was refused by notice dated 6 January 2023.
- The application sought planning permission for the demolition of existing house and construction of a new house in its place to include over the existing footprint, a two storey side, rear and front extensions, increase in eaves height and ridge height, 1 dormer to the front and 3 dormers to the rear, and alterations to the brickwork and fenestration including installation of heat pumps and solar panel without complying with a condition attached to planning permission Ref 22/01464/FUL, dated 8 July 2022.
- The condition in dispute is No 6 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 Classes [A,AA, B and 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 residential and visual amenity of the locality and impact on the openness of the Green Belt in accordance with Policies CS5, CS6 and CS12 of the Dacorum Borough Core Strategy (2013) and Paragraph 130 of the National Planning Policy Framework (2021).

Decision

1. The appeal is allowed and planning permission is granted for 'the demolition of existing house and construction of a new house in its place to include over the existing footprint, a two storey side, rear and front extensions, increase in eaves height and ridge height, 1 dormer to the front and 3 dormers to the rear, and alterations to the brickwork and fenestration including installation of heat pumps and solar panel' at 26 Hempstead Lane, Potten End, Hertfordshire, HP4 2SD, in accordance with the application Ref 22/03390/ROC, dated 11 November 2022, without compliance with Condition No 6 previously imposed on planning permission Ref 22/01464/FUL, dated 8 July 2022, but subject to the conditions set out in the attached schedule.

Main Issue

2. The main issue is whether the condition is necessary and reasonable having regard to local and national policies relating to proposals affecting the Green Belt and the living conditions of nearby residents.

Reasons

3. The appeal site comprises a large detached dwelling, currently under construction, set within a defined large plot. The dwelling is set back from the adjacent highway and is bound by residential dwellings to the east and west, Hampstead Lane to its north and open agricultural land to its south.
4. From reviewing the submitted evidence, the appeal site history includes permission for a number of extensions to the original property¹. Planning permission was then granted in February 2022² and again in July 2022³ (the subject of this appeal) for a replacement dwelling. During my site visit I noted that the July 2022 permission had been implemented.
5. Paragraph 54 of the Framework states that planning conditions should not be used to restrict national permitted development (PD) rights unless there is clear justification to do so. Expanding on this, the Planning Practice Guidance (PPG) advises 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 Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO), so that it is clear exactly which rights have been limited or withdrawn.
6. The GPDO sets out the PD rights for development within the curtilage of a dwellinghouse. These rights apply generally to all dwellinghouses, with some exceptions. Given that land within the Green Belt was omitted from these exceptions, land within the Green Belt is regarded as no different in terms of the application of PD rights as land outside of it.
7. The Framework denotes openness as an essential characteristic of the Green Belt. The openness of the Green Belt has a spatial aspect as well as a visual aspect. 'Open' can mean the absence of development in spatial terms, and it follows that openness can be harmed even when development is not readily visible from the public realm.
8. The reason for the condition seeks to ensure that the Council retain control over future development in the interest of residential and visual amenity and the impact on the openness of the Green Belt. The reason for refusal is clear in that the Council considers that under PD rights the proposed dwelling could be extended to such an extent that it would harm the openness of the Green Belt and cause a loss of daylight to neighbouring dwellings.
9. The appeal site's location within the Green Belt, does not, in itself, represent an exceptional circumstance to warrant removal of PD rights. I have considered the particular characteristics of the dwelling and its surroundings. The proposed dwelling would sit on a large plot and would be large in scale. However, it would be located between similar size dwellings. The immediate area has a wide range of dwelling types and scales, with larger dwellings noted in close proximity. During my site visit I noted that nearby properties also had a variety of extensions and outbuildings.

¹ 21/01385/FHA granted 21 July 2021

² 21/03463/FUL granted 15 February 2022

³ 22/01464/FUL granted 8 July 2022

10. Glimpses to the agricultural land behind the dwellings that line Hempstead Lane is limited to fleeting glances in gaps between the dwellings. These glimpses would be further reduced by the proposed dwelling.
11. Bearing in mind the limitations of the GPDO in terms of size and position of development, I am not persuaded that the specific circumstances of this site, being part of a built up frontage with a variety of scales, design and outbuildings, are such that extensions and alteration to the approved dwelling would have such an effect on the openness of the Green Belt or its purposes that removal of PD rights is justified.
12. The limitations of PD rights mean that, often enlargements, improvements or alterations to dwellings have had due regard for living conditions. Whilst future alterations or extension could have an impact on the living conditions of neighbouring residents, in this instance, there is nothing to suggest that the appeal site's siting and spacing from neighbouring properties is such to necessitate the removal of PD rights in the interest of safeguarding the living conditions of neighbours.
13. Therefore, a condition restricting PD rights is not reasonable or necessary in the interests of the openness and visual amenities of the Green Belt or the living conditions of nearby residents. Consequently, in this respect, its removal would be in accordance with Policy CS12 of the Dacorum Borough Core Strategy (2013) and paragraphs 130, 143 and 145 of the Framework. These set out that inappropriate development in the Green Belt should not be approved except in very special circumstances and set out a list of exceptions to development that is inappropriate and they also seek to ensure a high standard of amenity for existing users.

Other Matters

14. Both the Council and the appellant have directed me towards appeal decisions which they consider support their case, however I do not have full details of these matters. Nevertheless, these appear to relate to different settlements, dwelling types and one relates to a barn conversion. As such, the matters are not directly comparable. In any event, I have dealt with the appeal before me on its own merits.

Conditions

15. The Planning Practice Guide (PPG) indicates that, to assist with clarity, decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original permission, unless they have already been discharged. In this case, it is the conditions attached to the July 2022 permission which remain relevant. The Council have confirmed that this permission has commenced as such the time limit condition is no longer necessary. No other conditions have been discharged.
16. Apart from the time limit conditions and condition 6, to which this appeal relates, I have therefore imposed all of the other conditions attached to the July 2022 permission.

Conclusion

17. Therefore, for the reasons given above, I conclude that the appeal should be allowed.

Tamsin Law

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be carried out in accordance with the following approved plans/documents: Proposed Floor Plans 001

Rev 06 Proposed Elevations 002 Rev 06 9 Proposed Block Plan and site location plan 004 Rev 06 Proposed Street scene 003 Rev 06 Materials Schedule Heat Pump Details PU2 HWM 140V HA (BS)

2. The development hereby permitted shall be constructed in accordance with the materials specified within the materials schedule for bricks and windows and the application form for roof and doors.
3. Prior to the first use of the development hereby permitted, details of the external lighting shall be provided and agreed in writing with the local planning authority. The agreed details shall be implemented fully before the first use of the development.
4. Prior to the first use of the development hereby permitted, details of bat boxes/habitat creation shall be provided and agreed in writing with the local planning 8 authority. The agreed details shall be implemented fully before the first use of the development and thereafter permanently maintained.
5. The window at first floor level in the eastern side elevation facing No. 28 and the four velux roof lights on the two side roof slopes of the development hereby permitted shall be permanently fitted with obscured glass and non opening to 1.7 metres above internal floor level.