



Appeal Decision

Site visit made on 19 September 2023

by J Gunn DipTP, DipDBE, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 September 2023

Appeal Ref: APP/V1505/D/22/3312294

Reflections, New House Avenue, Wickford SS12 0JY

- 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 & Mrs Seeley & Canwell against the decision of Basildon Borough Council.
 - The application Ref 22/01175/VAR, dated 12 August 2022, was refused by notice dated 17 October 2022.
 - The application sought planning permission for a new roof to existing bungalow without complying with a condition attached to planning permission Ref BAS/680/00, dated 30 August 2000.
 - The condition in dispute is No 3 which states that: No window opening(s), including rooflights and/or dormers, providing light to all or part of the roof shall be created in the building, without the prior approval in writing of Basildon District Council.
 - The reason given for the condition is: To protect the privacy of the occupiers of neighbouring dwellings and in accordance with the Council's Green Belt policies, to control the amount of living accommodation provided in the Green Belt.
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Decision

1. The appeal is allowed and the planning permission Ref BAS/680/00 for a new roof to existing bungalow at Reflections, New House Avenue, Wickford SS12 0JY granted on 30 August 2000 by Basildon Borough Council, is varied by deleting condition 3.

Preliminary Matter

2. The property at the time of the original application was described as Three Boys and has also been known as Ken-Cot. For the purposes of this appeal, I have used its current name Reflections.

Main Issue

3. The appellant considers that there are no justifiable reasons why the Council have imposed a condition, which in effect restrict 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 55 of the National Planning Policy Framework (the Framework).
4. The Council in their delegated report acknowledge that any development permitted by Class B of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (the GPDO) is subject to the condition that any windows inserted on a wall or roof slope forming a side elevation of the dwellinghouse must be obscure-glazed and non-

opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which it is installed. Consequently, in the event that I was to allow the appeal I am satisfied that the privacy of neighbouring occupiers would be safeguarded.

5. Therefore, the main issue is whether the condition is reasonable or necessary to prevent harm being caused to the openness of the Green Belt (GB).

Reasons

6. Paragraph 56 of the Framework advises that planning conditions should be kept to a minimum, and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. The Planning Practice Guidance (PPG) says that conditions restricting the future use of permitted development rights or changes of use will rarely pass the test of necessity and should only be used in exceptional circumstances.
7. Permitted development rights to extend dwellings and construct domestic outbuildings under the GPDO apply in the GB. Had the Government wanted to withdraw or restrict permitted development rights for householder developments in the GB it could have done so, as it has done with other locations such as Conservation Areas and National Parks. The fact that it has not is evidence that it considers the implementation of permitted development rights to be acceptable in a GB location.
8. The appeal dwelling could have been extended, or outbuildings constructed, in accordance with the conditions and limitations set by the GPDO prior to the grant of the planning permission in question. These rights could still be exercised if the planning permission had not been implemented. There is no advice in the Framework or the PPG to suggest that the grant of planning permission for the provision of a new roof on the host dwelling in the GB amounts to the exceptional circumstances necessary to impose a condition which has the effect of limiting permitted development rights.
9. The Council imposed the disputed condition, in part, due to concerns about potential harm to the openness of the GB and refused permission to remove it on the basis that a roof alteration could hypothetically be carried out using permitted development rights. However, no reasoned explanation of the particular circumstances have been provided to indicate how this case would differ from proposals for householder extensions and alterations elsewhere in the GB.
10. Furthermore, in granting planning permission, the Council accepted that the provision of a new roof would not, in itself, cause unacceptable harm to the openness of the GB. That said, I saw on my site visit that an extension was under construction to the rear of the host property and a number of outbuildings were located within the rear garden. However, I have no substantive evidence before me to suggest that an addition or alteration to the roof, when combined with these structures, would represent disproportionate additions to the original dwelling, or would affect openness .
11. As the likelihood of future harm to the openness of the GB is not significantly increased as a result of the new roof, with or without additions or alterations to the roof, the disputed condition is not reasonable or necessary. I therefore

conclude that, without the disputed condition, the development would accord with paragraph 149 (c) which seeks to protect the GB from inappropriate development and maintain its openness.

Other Matters

12. The Council has suggested the addition of a condition requiring that ' Any windows in roofspace to side elevations shall be obscurely glazed and non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which they are installed. These qualities should thereafter be permanently maintained.' This is a precondition of any roof alterations carried out under Class B of Part 1 of Schedule 2 of the GPDO and therefore I am not required to respecify it in my decision.
13. The Council has indicated in their delegated report that an application for an addition or alteration to the roof of the host property roof under Class B of Part 1 of Schedule 2 of the GPDO may fail as the current roof could no longer be considered to qualify as the 'original roof'. Whilst noting this point it is not a matter before me to consider in the determination of this appeal.

Conclusion

14. For the reasons given above, I conclude that the appeal should be allowed. I will vary the planning permission by deleting the disputed condition.

J Gunn

INSPECTOR