



Appeal Decision

Site visit made on 9 August 2023

by J Hobbs MRTPI MCD BSc (hons)

an Inspector appointed by the Secretary of State

Decision date: 20 November 2023

Appeal Ref: APP/C3620/W/22/3312772

Grene Trest, Horsham Road, Beare Green, Surrey RH5 4PS

- 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 Gez Drohan against the decision of Mole Valley District Council.
 - The application Ref MO/2022/1461/CC, dated 12 August 2022, was refused by notice dated 13 October 2022.
 - The application sought planning permission for erection of a replacement dwelling without complying with a condition attached to planning permission Ref MO/2020/0913/PLA, dated 28 July 2020.
 - The condition in dispute is No 7 which states that: *"Notwithstanding the provisions of the Town and Country (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no extensions within Schedule 2, Part 1, Classes A, B, or C to any dwelling hereby permitted shall be erected."*
 - The reason given for the condition is: *"To control any subsequent enlargements in the interests of the visual and residential amenities of the locality, in accordance with Mole Valley Local Plan policy ENV22 and policy CS14 of the Mole Valley Core Strategy and to restrict the enlargement of dwellings in this rural area in accordance with Mole Valley Local Plan policy RUD7."*
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Decision

1. The appeal is allowed and planning permission is granted for erection of a replacement dwelling at Grene Trest, Horsham Road, Beare Green, Surrey RH5 4PS in accordance with the application Ref MO/2022/1461/CC dated 12 August 2022, without compliance with condition number 7 previously imposed on planning permission Ref MO/2020/0913/PLA dated 28 July 2020 and subject to the conditions in the attached schedule of conditions.

Background and Main Issues

2. During my site visit I observed a house, which appeared similar to that permitted, under construction. I will refer to the replacement dwelling as the proposed development throughout my decision, albeit certain aspects may already be constructed.
3. The proposed development was permitted as it complied with policy RUD8 of the Mole Valley Local Plan (LP), adopted October 2000, and paragraph 149d) of the National Planning Policy Framework (the Framework). To comply with both the LP and the Framework the appellant demonstrated that the replacement dwelling was not materially larger than the original dwelling. The council assessed the proposal based on the volume of the original dwelling plus

extensions that could have been permitted under Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the Order). It concluded that the volume of the proposed development was less than 10% larger than the original dwelling with the permitted extensions and, therefore, was not materially larger. As such, the replacement dwelling was found not to be inappropriate development in the Green Belt.

4. Condition No. 7 seeks to control the enlargement, improvements or other alterations to the house; as well as additions and alterations to the roof which would usually be permitted under the Order. The reason given for condition No. 7 on the decision notice¹ can be summarised as a need to control future extensions in the interest of preserving the character and appearance of the area and to ensure any extension would not affect neighbouring residents' living conditions. The planning officer report² also contends that the condition is reasonable and necessary in the interest of preserving the openness of the Green Belt.
5. Taking the above background into account, the main issue is whether condition No. 7 is reasonable and necessary, in the interest of preserving the openness of the Green Belt, the character and appearance of the area, and protecting the living conditions of residents of Stonebridge.

Reasons

Green Belt

6. Paragraph 137 of the Framework explains that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.
7. As described above, the council has granted planning permission for a replacement dwelling that would not be materially larger than the original dwelling including extensions allowed under the Order. If condition No. 7 was not attached to the planning permission the property could be further extended in line with the provisions of Schedule 2, Part 1, classes A and B of the Order, which would result in a dwelling that would be materially larger than the original dwelling. As a result, the proposed dwelling would no longer conform with either LP policy RUD8 or paragraph 149d) of the Framework. It would therefore be considered inappropriate development in the Green Belt, and it would not preserve the openness of the Green Belt.
8. Regardless of the restrictions to the scale of extensions outlined within the Order, including the proportion of the remaining curtilage to remain undeveloped, removing the control on the use of permitted development rights would allow the property to be extended by an unacceptable amount and would result in a disproportionate addition over and above the size of the original dwelling, contrary to LP policy RUD7.
9. The concept of openness has both visual and spatial aspects. Any extension may be, at least partially, screened by the high hedge lines, fences, and large trees and therefore the visual effect would be reduced. Nevertheless, it would

¹ Planning permission Ref. MO/2020/0913/PLA

² Planning application Ref. MO/2022/1461/CC

have a spatial effect as it would result in additional bulk and potentially extend the property into an external amenity area which would reduce the openness of the Green Belt.

10. I note the Dartford BC v SSCLG judgement³. Even if I was to consider that the whole garden area was previously developed land, the support given by the Framework to the development of previously used land would not overcome the harm to the Green Belt which I have identified. Framework paragraph 148 requires substantial weight to be given to any Green Belt harm.
11. The installation of rooflights would not add additional bulk to the proposed dwelling and would assimilate with the proposed rooflights already permitted. As such, development allowed under Schedule 2, Part 1, Class C of the Order would not affect the openness of the Green Belt.
12. As an extension allowed under Schedule 2, Part 1, Classes A or B of the Order could affect the openness of the Green Belt, it is necessary and reasonable for a condition to be imposed to ensure the council retain control over these types of extensions. Conversely, as rooflights allowed under Schedule 2, Part 1, Class C of the Order would not affect the openness of the Green Belt, it would not be necessary or reasonable for a condition to be imposed to ensure the council retain control over the installation of rooflights.

Character and appearance

13. The appeal property is located on the edge of a group of properties which represent ribbon development along this section of Horsham Road. These are all relatively large properties set in long, narrow plots. Notwithstanding this, the properties are of differing designs and scales. The proposed dwelling would reflect the neighbouring properties as it would be a large property set within a long, narrow plot. Dormer windows are also present on other properties in the area. These aspects combine to create a semi-rural character.
14. Under the provisions of the Order a side extension could be added to the proposed dwelling which would reduce the space between the side elevation and the boundary. However, this would lead to the property having a similar appearance to neighbouring properties which are sited within narrower plots and are therefore sited closer to their boundaries.
15. The dormers on neighbouring properties are relatively small and those allowed under the provisions of the Order would be much larger. However, a large dormer extension would not appear out of character on the proposed dwelling as it is larger in scale than neighbouring properties. As such, a large dormer extension would appear in scale with the appeal property.
16. As the proposed dwelling includes rooflights there is no justification for the restriction of development allowed under Schedule 2, Part 1, Class C of the Order, in terms of the character and appearance of the area. This is also acknowledged by the council within the planning officer's report.
17. For these reasons, it would not be necessary or reasonable to impose a condition to control development allowed under the provisions of the Order, in order to protect the character and appearance of the area. To this extent, the proposal would accord with LP policies ENV22, ENV23, ENV24, and ENV32

³ Dartford Borough Council v SSCLG [2017] EWCA Civ 141

which require proposals to respect the character and appearance of the locality considering the scale, character, bulk, proportions and materials of the surrounding built environment; not result in a cramped appearance; and retain the character and style of the existing property.

Living conditions

18. The proposed dwelling would be sited uphill from the neighbouring property Stonebridge and a short distance from the boundary. However, Stonebridge is sited a significant distance from the shared boundary with the appeal site. Also, most windows to the rear of Stonebridge, look out toward their large garden.
19. Whilst extensions allowed under the provision of Schedule 2, Part 1, Classes A and B would add further bulk to the proposed dwelling, it would not have an overbearing effect on neighbouring residents as it would be sited some distance away.
20. As above, the installation of rooflights allowed under Schedule 2, Part 1, Class C would not add bulk to the proposed dwelling and therefore they would not have an overbearing effect on neighbouring residents.
21. It would therefore not be necessary or reasonable to impose a condition for the council to control development allowed under the provisions of the Order, in respect of protecting the living conditions of residents of Stonebridge. To this extent, the proposal would accord with LP policies ENV22 and ENV32 which require proposals for extensions to not be unduly prominent from neighbouring properties and to not significantly harm the amenities of occupiers of neighbouring properties.

Other Considerations

22. The Planning Practice Guidance advises that the blanket removal of permitted development rights is not likely to meet the test of reasonableness or necessity. The condition wording does not lead to the removal of all permitted development rights, and for the reasons given above it is both reasonable and necessary to restrict development allowed under Schedule 2, Part 1, classes A and B of the Order.
23. The potential for extensions which do not lead to overshadowing or overlooking of neighbouring properties and which retain the existing access arrangements does not lead me to a different conclusion on the reasonableness or necessity of the disputed condition. Likewise, the contention that the replacement dwelling complies with the definition of sustainable development in paragraph 8 of the Framework, would not lead me to an alternative conclusion.

Conditions

24. I have amended the wording of condition No. 7 to remove reference to Schedule 2, Part 1, Class C of the Order, for the reasons given above.
25. I have removed the condition specifying a time limit for the development to commence, as construction works have started. I have amended the wording to conditions 3 and 5 attached to the original permission, to reflect the fact they have been discharged, but retained them in the interests of preserving the character and appearance of the area; and, to ensure the proposed development drains appropriately, respectively. I have amended the timings of

conditions 5 and 6 to reflect the existing circumstances. The wording of the remaining conditions is unaltered.

Conclusion

26. I conclude that condition No. 7 is reasonable and necessary, in the interest of preserving the openness of the Green Belt with regard to classes A and B of the Order. However, this does not apply to Class C and nor is the condition necessary to safeguard the character and appearance of the area or the living conditions of residents of Stonebridge.
27. Accordingly, I will vary the planning permission by amending the disputed condition to remove reference to Schedule 2, Part 1, Class C of the Order.

J Hobbs

INSPECTOR

Schedule of Conditions

- 1) 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 extensions within Schedule 2, Part 1, classes A or B to the dwelling hereby permitted shall be erected.
- 2) The external surfaces of the development hereby permitted shall be constructed in the materials shown on plan Nos. 200-01, 201-01, 202-01 and 203-01.
- 3) The dwelling hereby permitted shall not be occupied until the drainage works approved under application Ref. MO/2020/1367 have been completed in accordance with the submitted and approved plans.
- 4) The development hereby permitted shall not be carried out and completed in all respects strictly in accordance with the submitted documents and plan numbers 003, 006, 007, 004 and 005 contained within the application and no variations shall take place.
- 5) Prior to the installation of the hard surfacing, details of the hard surfacing to be used within the site shall be submitted to and approved in writing by the Local Planning Authority. The details shall indicate either porous materials or the provision of a direct run-off from the hard surface to a permeable or porous area. All hard surfacing shall be carried out in accordance with the approved details, completed prior to the first occupation of the development hereby permitted and thereafter, permanently retained as such.
- 6) The development hereby approved shall not be first occupied until details to reduce the carbon emissions of the predicted energy use of the development hereby permitted by at least 10% through the on-site installation and implementation of decentralised and renewable or low-carbon energy sources shall be submitted and approved by the Local Planning Authority and be implemented.
- 7) The development hereby approved shall not be first occupied unless and until space has been laid out within the site in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority for vehicles to be parked and for vehicles to turn so that they may enter and leave the site in forward gear. Thereafter the parking and turning areas shall be retained and maintained for their designated purposes.