

Appeal Decision

Site visit made on 31 October 2023

by David Reed BSc DipTP DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 December 2023

Appeal Ref: APP/M3645/W/23/3320215

Little Woodbury, Bones Lane, Newchapel, Lingfield RH7 6HR

- 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 M Sherwood against the decision of Tandridge District Council.
 - The application Ref TA/2023/116, dated 25 January 2023, was refused by notice dated 23 March 2023.
 - The application sought planning permission for the demolition of existing dwelling and erection of replacement dwelling without complying with a condition attached to planning permission Ref TA/2022/344 dated 22 December 2022.
 - The condition in dispute is No 9 which states that: Notwithstanding the provisions of Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that order with or without modification) no garages, sheds, greenhouses or other ancillary domestic outbuildings shall be erected without the express permission of the Local Planning Authority.
 - The reason given for the condition is: To preserve the openness of the Green Belt/to control further development of the site in the interests of the character of the area and amenities of nearby properties in accordance with Policy CSP18 of the Tandridge District Core Strategy 2008 and Policies DP7, DP10 and DP13 of the Tandridge Local Plan: Part 2.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing dwelling and erection of replacement dwelling without complying with condition No 9 previously imposed on planning permission Ref TA/2022/344 dated 22 December 2022, subject to the attached schedule of conditions.

Application for costs

2. An application for costs was made by Mr M Sherwood against Tandridge District Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue is whether there is a clear justification for condition No 9 to remove national permitted development rights.

Reasons

4. In December 2022 planning permission was granted for the replacement of Little Woodbury, a substantial house set in extensive grounds at the end of Woodland Lane off Bones Lane in the Surrey Green Belt. The original officer report accepted that the replacement dwelling would not be materially larger than the current dwelling and thus the proposal complied with the relevant Policy DP13 in the Tandridge Local Plan Part 2: Detailed Policies 2014. It would also be a better design with a lower overall height and a more uniform bulk compared to the existing rather disjointed property.
5. Amongst other conditions which are not disputed, No 9 would have the effect of removing permitted development rights under Schedule 2, Part 1, Class E, namely the right to erect any building, enclosure or pool within the curtilage for purposes incidental to the enjoyment of the replacement dwelling. Specific planning permission would thus be necessary for any such proposals.
6. National Planning Policy Framework (NPPF) paragraph 56 states that planning conditions should be kept to a minimum and, inter alia, only imposed when necessary, relevant to the development and reasonable. Importantly, paragraph 54 states that conditions should not be used to restrict national permitted development rights unless there is clear justification to do so.
7. The condition was imposed to protect the character and openness of the Green Belt. However, residential properties within the Green Belt are not excluded from the permitted development rights in question and the existing dwelling on the site enjoys such rights. In this instance, on the Council's figures, the replacement dwelling would have a total volume of 1,393 m³ compared to 1,267 m³ as existing, an increase of 126 m³ or 10%. This would result in some loss of openness, and permitted development rights to extend the new property have been removed as this would further reduce openness and is relevant to the development permitted. By contrast, Class E rights relate to ancillary buildings in the curtilage which are a separate matter, less directly relevant to the development permitted. The unusually extensive grounds in this case - 6.2 ha according to the application form – mean that the exercise of Class E rights could result in a significant loss of openness, but this is already possible with the existing dwelling. Whilst a matter of planning judgement, the increased size of the replacement dwelling in this case is not excessive and does not clearly justify the condition, the relevant test.
8. Since in this case the condition is not sufficiently relevant to the development to be justified, to impose it would not be reasonable. The condition is not necessary to make the development acceptable. Whilst, as the Council say, Class E development would have an impact on the openness of the Green Belt, paragraph 54 of the NPPF advises that planning conditions should not restrict national permitted development rights without a clear justification and such a justification does not arise in this case.
9. The Council refer to an appeal decision¹ where the removal of Class E rights was supported. However, that case involved the erection of a four-bedroom bungalow for occupation in connection with a riding school following removal of a mobile home, a specific set of circumstances that do not apply here.

¹ APP/M3645/W/21/3286606

Conclusion

10. For these reasons there is not a clear justification for condition No 9 to remove national permitted development rights. Given the specific circumstances of this case the condition conflicts with the relevant tests in paragraphs 54 and 56 of the NPPF and should therefore be deleted.
11. This decision amounts to a new planning permission. Apart from No 9 the previous conditions should be attached as the development has not yet commenced.
12. Having regard to the above the appeal should be allowed.

David Reed

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be begun not later than the expiration of 3 years from 22 December 2022.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. This decision refers to drawings numbered AY:99:649:EXG:01 scanned on 30th March 2022, AY:99:649:01A, AY:99:649:02A and AY:99:649:SP:01A scanned on 23rd May 2022. The development shall be carried out in accordance with these approved drawings. There shall be no variations from these approved drawings.

Reason: To ensure that the scheme proceeds as set out in the planning application and therefore remains in accordance with the development plan.

3. No development shall start until details of the materials to be used in the construction of the external surfaces of the dwelling hereby permitted have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with these approved details.

Reason: To enable the Local Planning Authority to exercise control over the type and colour of materials, so as to enhance the development in accordance with Policy CSP18 of the Tandridge District Core Strategy 2008 and Policy DP7 of the Tandridge Local Plan Part 2: Detailed Policies 2014

4. No development shall start until full details of both hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved. These details shall include:
 - means of enclosure
 - car parking layouts
 - other vehicle and pedestrian access and circulation areas

- hard surfacing materials
- minor artefacts and structures (eg. furniture, play equipment, refuse or other storage units, signs, lighting etc.).

Details of soft landscape works shall include all proposed and retained trees, hedges and shrubs; ground preparation, planting specifications and ongoing maintenance, together with details of areas to be grass seeded or turfed.

Planting schedules shall include details of species, plant sizes and proposed numbers/densities.

All new planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the completion or occupation of any part of the development (whichever is the sooner) or otherwise in accordance with a programme to be agreed. Any trees or plants (including those retained as part of the development) which within a period of 5 years from the completion of the development die, are removed, or, in the opinion of the Local Planning Authority, become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation. The hard landscape works shall be carried out prior to the occupation of the development.

Reason: To maintain and enhance the visual amenities of the development in accordance with Policy CSP18 of the Tandridge District Core Strategy 2008 and Policy DP7 of the Tandridge Local Plan: Part 2 – Detailed Policies 2014.

5. Prior to the first occupation of the dwelling hereby approved, a scheme of electric vehicle charging facilities to be provided at the site shall be submitted to and approved in writing by the Local Planning Authority. Subsequently the approved scheme shall be implemented prior to the first occupation of the dwelling.

Reason: The condition is required in recognition of Section 9 "Promoting Sustainable Transport" in the National Planning Policy Framework 2019, to meet the objectives of the NPPF (2019), and to satisfy policy CSP12 of the Tandridge District Core Strategy 2008 and Policy DP5 of the Tandridge Local Plan Part 2: Detailed Policies 2014.

6. Before the development hereby approved is occupied the solar panels as specified in the application details shall be installed and this system shall thereafter be retained in accordance with the approved details.

Reason: To ensure on-site renewable energy provision to enable the development to actively contribute to the reduction of carbon dioxide emissions in accordance with CSP14 of the Tandridge District Core Strategy 2008.

7. The development hereby permitted shall be carried out in accordance with the recommendations and mitigation measures set out in the Bat Roost Assessment and Ecological Impact Assessment prepared by Lizard – Landscape Design and Ecology scanned on 20th September 2022.

Reason: To ensure that the ecological interests of the site and any protected species are adequately safeguarded throughout the development, in accordance with Policy CSP17 of the Tandridge District Core Strategy 2008 and Policy DP19 of the Tandridge Local Plan: Part 2 – Detailed Policies 2014.

8. Notwithstanding the provisions of Classes A, AA, B, C or D of Part 1 of Schedule 2 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 form of enlargement of the dwelling hereby permitted shall be carried out without the prior permission in writing of the Local Planning Authority.

Reason: To control further development of the site in the interests of the character of the area and amenities of nearby properties, in accordance with Policy CSP18 of the Tandridge District Core Strategy 2008 and Policy DP7, DP10 and DP13 of the Tandridge Local Plan: Part 2 – Detailed Policies 2014.

9. Within 3 months of the date the dwelling hereby permitted is first occupied, the existing dwelling shall cease to be used as a dwelling and shall be demolished. The land shall then be restored in accordance with details to be approved as part of the landscaping scheme submitted pursuant to condition 4. Thereafter there shall be only one dwelling within the area edged red on the site plan attached to the application.

Reason: To accord with the terms of the application and to ensure that the proposed dwelling is a replacement of, and not additional to, the existing dwelling and to maintain the openness of the Green Belt, in accordance with Policy CSP18 of the Tandridge District Core Strategy 2008 and Policy DP13 of the Tandridge Local Plan Part 2: Detailed Policies 2014.