



Appeal Decision

Site visit made on 14 December 2023

by David Murray BA (Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 January 2024

Appeal Ref: APP/D3640/D/23/3326226

Mulberry House, Bagshot Road, West End, WOKING, GU24 9QS

- 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 and Mrs P Mouldsdales against the decision of Surrey Heath Borough Council.
- The application Ref 23/0487/PMR, dated 9 May 2023, was refused by notice dated 11 July 2023.
- The application sought planning permission for the erection of a detached garage without complying with a condition attached to planning permission Ref. 2007/1016, dated 2 November 2007.
- The condition in dispute is No.4 which states that: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order) no further extensions, garages or other buildings shall be erected without the prior approval in writing of the Local Planning Authority.
- The reason given for the condition is: To enable the Local Planning Authority to retain control over the enlargement, improvement or other alterations to the development in the interests of visual and residential amenity and to accord with Policy RE5: Extension, Alteration and Replacement of dwellings in the countryside and Policy H17: House Extensions of the Surrey Heath Local Plan 2000 (AS SAVED) and Policy SE4: Design and Quality of Development of the Surrey Structure Plan 2004 (AS SAVED).

Decision

1. The appeal is allowed and planning permission is granted for the erection of a detached garage at Mulberry House, Bagshot Road, West End, WOKING, GU24 9QS, in accordance with the application Ref 23/0487/PMR, dated 9 May 2023, without compliance with condition number 4 previously imposed on planning permission Ref. 2007/1016, dated 2 November 2007, and subject to the following (original) conditions set out in the attached Schedule.

Procedural matters

2. It is not clear from the submitted evidence whether the original permission for a detached garage granted in 2007 has been implemented or has lapsed. I noted a detached garage to the south-western side of the existing dwellinghouse at my site visit but there is no copy of the approved plan to verify that this is the development approved. Proceeding on the basis that the permission 2007/1016 has been implemented, I shall deal with the current appeal as one made under section 73 of the Act.

3. The government issued a revised version of the National Planning Policy Framework (the Framework) on the 19th December 2023. The main parties were given the opportunity to comment on any changes made as relevant to their submitted case and I have taken account of their submissions.

Main Issue

4. The main issue is whether the condition still serves a proper planning purpose and otherwise meets the various tests of conditions set out in national guidance.

Reasons

Background

5. The appeal site comprises a large, detached house situated in a large garden with a grassed field to the rear which lies on the fringe of West End. The house is a locally listed heritage asset. The site and the surrounding area lie in the countryside away from any recognised settlement and form part of the Green Belt. The appellant seeks to erect a further garage in the curtilage of the property as 'permitted development' but these rights have been removed by virtue of condition No.4 as set out above.
6. The proposal to delete condition No.4 needs to be considered in the context of present national guidance. The Framework indicates in paragraph 54 that 'planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so'. Moreover, the Planning Practice Guidance (PPG) indicates in paragraph 21a-017-20190732 that conditions restricting PD rights may not pass the tests of reasonableness and necessity.
7. Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 1995, as amended (GPDO), restricts some permitted development (PD) within the curtilage of a dwellinghouse where this is sited within an Area of Outstanding Natural Beauty (now referred to as a National Landscape); the Broads; a National Park or a World Heritage site, or a Conservation Area, but no specific restriction applies to 'PD' rights for dwellings in a Green Belt.

Whether necessary and reasonable

8. The Framework indicates in paragraph 149 that the construction of new buildings in a Green Belt should be regarded as inappropriate unless the development falls within one of the recognised exceptions. Part (c) of this covers the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building. It is established in case law that an outbuilding could be classed as an 'extension' as a matter of fact and degree on the individual case¹.
9. In the case of the original grant of permission for a detached garage, in principle it would have been open to the Council to have determined that the approved garage scheme approached the limit of what could have been reasonable within the realms of not being a disproportionate addition to the

¹ See *Warwick DC v SSLUHC, Mr J Storer & Mrs A Lowe [2022] EWHC 2145 (Admin)*

dwellinghouse, given previous extensions, and hence submitted there was a justification for removing PD rights for subsequent additions.

10. However, the Council's stated reason for imposing condition No 4 does not refer to the need to avoid further development which would give rise to inappropriate development in the Green Belt by involving disproportionate additions. The reason for imposing the condition does not mention Green Belts at all. It simply relates to the need for control in the interest of visual and residential amenity. This is too general and non-specific to meet the test of clear justification as set out in national guidance.
11. The development envisaged by the appellant may well have an effect on the character and amenity of the area, as now submitted by the Council, but that in itself is not a good reason to introduce controls which remove the freedoms decided by the government and specified in the Statutory Instrument of the GPDO.
12. The appellant's agent also refers to neighbouring sites where development appears to have been undertaken under PD but these are not relevant to the issue of the justification for the specific condition on the development at Mulberry House. Similarly, various appeal decisions have been referred to but I have to consider this appeal on the merits of the case and the application of government guidance.
13. Overall, I find that there is not clear justification for the imposition of condition No. 4 on proper planning grounds related to the avoidance of inappropriate development in the Green Belt and that the condition fails the tests of necessity and reasonableness. It should therefore not continue to be imposed. No replacement conditions are necessary.
14. The guidance in the PPG makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties. I shall not impose condition No.1 as the time limit specified has now passed.

Conclusion

15. For the reasons given above I conclude that the appeal should be allowed.

David Murray

INSPECTOR

Schedule of (Original) Conditions

2. The building works hereby approved, shall be constructed in external fascia materials; brick, tile, bonding and pointing, to match those of the existing building.
3. The garage hereby permitted shall be retained for such purpose only and shall not be converted into living accommodation without further planning permission from the Local Planning Authority.
5. This permission shall only be exercised in substitution for and not in addition to the garage granted under reference SU/2006/1198.

-End-