



Appeal Decision

Site visit made on 17 October 2023

by K Williams MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th April 2024

Appeal Ref: APP/N4720/W/23/3327986

2 Swillington Lane, Swillington, Leeds LS26 8QD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr A Howarth against the decision of Leeds City Council.
 - The application Ref is 23/02838/FU.
 - The application sought planning permission for variation of condition 3 (permitted development) of approval 20/02979/FU to amend condition wording to restore permitted development rights excluding Class A (Schedule 2, Part 1) without complying with a conditions attached to planning permission Ref 20/02979/FU, dated 9 November 2020.
 - The condition in dispute is No [2] which states that: *Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking or reenacting that Order with or without modification) planning permission shall be obtained before any extension or enlargement of the dwellinghouse by virtue of Class A, or any development by virtue of Classes B, E and F of Schedule 2, Part 1 is carried out.*
 - The reasons given for the condition is: *In the interests of preventing inappropriate development in the Green Belt.*
-

Decision

1. The appeal is allowed and the planning permission 23/02838/FU for variation of condition 3 (permitted development) of approval 20/02979/FU to amend condition wording to restore permitted development rights excluding Class A (Schedule 2, Part 1) at 2 Swillington Lane, Swillington, Leeds LS26 8QD granted on 21 June by Leeds City Council, is varied by substituting it for the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the approved plans: Site Location Plan/Red Line/OS Plan 09.05.2022; Proposed elevation(s) 2018/24/01 06.10.2020; and Proposed floor plan(s) 2018/19/02 26.05.2020.
 - 2) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking or reenacting that Order with or without modification) planning permission shall be obtained before any extension or enlargement of the dwellinghouse by virtue of Class A, or any development by virtue of Classes B and E of Schedule 2, Part 1 is carried out.

Applications for costs

2. An application for costs by Leeds City Council against Mr A Howarth has been made and this is the subject of a separate decision.

Preliminary Matters

3. During the appeal, a new version of the National Planning Policy Framework (the Framework) was published. However, as the Framework's policy content insofar as it relates to the main issue has not been significantly changed there is no requirement for me to seek further submissions on the latest version. I am satisfied no party would be prejudiced by determining the appeal accordingly.
4. The Council has provided drawing No. 2021/30/01 which relates to a planning application¹ for dormer windows at the appeal property. Similar dormer windows appeared to have been substantially built at the time of my site visit. A related appeal decision² was dismissed on 14 June 2022 (the 2022 appeal). I have had regard to these where relevant in reaching my decision.

Background

5. Following the grant of prior approval³ for a rear extension, planning permission was granted for the as built single storey rear extension in 2020⁴ (the 2020 planning permission). The Council imposed a condition removing permitted development rights for Classes A, B, E and F of Schedule 2, Part 1 of the (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).
6. The appellant sought to vary that condition [3] and the Council's decision notice (the 2023 application) states that permission was granted. However, it is clear that from the decision notice for the 2023 application that the condition [3] of the 2020 planning permission was modified and renumbered as condition 2. Also, the same restrictions to Classes A, B, E and F were imposed on the decision notice relating to the 2023 application, now subject of this appeal. In effect the Council refused the substance of the appellant's planning application.
7. The appellant's position is that the imposition of the condition [2] on the 2023 application removing Classes B, E and F of the GPDO is not necessary, relevant or reasonable. The appellant therefore seeks to vary the condition retaining the removal of Class A only, which would enable the occupant of the dwelling to benefit in the future from permitted development rights for Classes B, E and F.

Main Issue

8. The main issue is whether the condition [2] in respect of Classes B, E and F of the GPDO is necessary, reasonable and relevant to the development to be permitted, having regard to the openness of the Green Belt.

¹ Council Reference: 21/09732/FU - Retrospective application for dormer to sides and rear.

² Appeal Ref: APP/N4720/D/22/3296295 - side & rear dormer windows.

³ Council Reference: 18/07018/DHH - single storey rear extension, 3.975m to ridge height and 2.9m to eaves. Not Required.

⁴ Council Reference: 20/02979/FU - Retrospective application for single storey rear extension; rendering of dwelling.

Reasons

9. The appeal site comprises a detached dwelling within extensive grounds in the Green Belt. Unlike the eastern side of Swillington Lane, which consists of regularly spaced and built-up residential dwellings, the appeal site is an individual property, slightly separate from a small cluster of dwellings. The site is seen from Swillington Lane against the backdrop of mostly undeveloped, spacious garden and open countryside. The relatively sparse and segregated extent of built form on the western side of Swillington Lane is a positive characteristic of the area.
10. The Council considered the 2020 planning application against saved Policy N33 of the Leeds Unitary Development Plan (Review 2006). Insofar as it is relevant to the appeal this states that only limited extension or alteration of existing dwellings will be approved unless there are very special circumstances. This broadly reflects paragraph 154 c) of the Framework which identifies that the extension or alteration of a building is not inappropriate provided that it does not result in disproportionate additions over and above the size of the original building.
11. The Framework does not specify what a disproportionate addition is. However, Policy HDG3 of the Leeds Householder Design Guide Supplementary Planning Document 2012 (the SPD) clarifies that limited development equates to a 30% increase over and above the original house volume. Although not definitive it explains that this will inform the majority of decisions involving Green Belt applications.
12. Unlike the prior approval process, an extension requiring planning permission falls to be considered against the development plan, which requires an assessment against the size of the original dwelling for properties in the Green Belt. The Framework is consistent in this regard. The Government attaches great importance to Green Belts, and the Framework provides that their essential characteristics are their openness and permanence. It also requires that local planning authorities should ensure that substantial weight is given to any harm to the Green Belt.
13. The Council's evidence indicates that the 2020 planning permission was only supported on the basis that very special circumstances existed. Even if there had only been a minor difference between the prior approval scheme and the built extension and the Council conceded enforcement action was unlikely, the imposition of the disputed condition was also a central component of the very special circumstances.
14. The Planning Practice Guidance (PPG) states that 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 GPDO, so that it is clear exactly which rights have been limited or withdrawn. Moreover, area-wide or blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity.⁵

⁵ 017 Reference ID: 21a-017-20190723

15. The GPDO does not restrict permitted development rights relating to development within the curtilage of a dwellinghouse for Classes A to F in the Green Belt. Therefore, small-scale development that falls in these categories, would not generally conflict with the purposes of the Green Belt or its essential characteristics of openness and permanence.
16. The Inspector in the 2022 appeal identified that the rear extension and dormer windows collectively represented disproportionate additions. The officer report for that application identified the dormer windows were less than the 50m³ restriction in the GPDO. The appeal building and site is separated from other dwellings and in a prominent location. Its individual character and the backdrop of open countryside renders it conspicuous and highly visible within the area. Even with smaller dormer windows there could be a visual and spatial reduction in the openness of the Green Belt from alterations to the roof afforded under Class B of the GPDO.
17. Class E of the GPDO would permit development to be carried out on up to 50% of the total area of the curtilage, subject to other restrictions. I recognise that small-scale development under Class E would be unlikely to significantly harm the visual aspect of openness in some locations of the site due to existing boundary hedges, landform and screened views. However, due to the size of the appeal site, which the appellant advises is 1477m², and elements of the appeal site which are highly visible, the spatial harm could be significant dependant on the number and scale of outbuildings erected. The Council would have no control over these, subject to the criteria in the GPDO.
18. Notwithstanding the above, Class F of the GPDO relates to hard surfaces and is subject to specific size restrictions. It is unlikely that the implementation of these permitted development rights would have a harmful effect on Green Belt openness visually or spatially beyond what is envisaged by the GPDO. I therefore find no compelling justification for removing permitted development rights for this Class.
19. The appellant contends that several outbuildings have been removed. However, there is no substantive evidence which identifies the volume and dimensions of all the buildings, their locations, their condition, when they were demolished, the percentage of the site area they occupied or whether they are to be considered as part of the original dwelling.
20. Without the control provided through removing permitted development rights I cannot be certain that any development under Classes A, B and E of the GPDO would not result in disproportionate additions over and above what has already been developed at the site. As such given the extension which has already been approved, further development would compound the harm caused to the openness of the Green Belt.
21. In this context and given that the appeal building and elements of the site are open to close view from a variety of angles, the underlying objective of the disputed condition is necessary, reasonable and relevant to the development to be permitted, having regard to the openness of the Green Belt in respect of Classes A, B and E of the GPDO. As such, the removal of the condition in its entirety would conflict with saved Policy N33 of the Leeds Unitary Development Plan (Review 2006) and the Framework paragraph 154, which jointly seek to keep land permanently open in the Green Belt and not approve inappropriate development except in very special circumstances.

Other Matters

22. I have had due regard to the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it in accordance with the Public Sector Equality Duty (PSED) as set out in section 149 of the Equality Act 2010 (as amended). Age is a relevant protected characteristic to which the PSED applies.
23. It is appreciated that the appellant has sought to update, repair and improve the property. This would make it more comfortable for the occupants, family and elderly relatives to be cared for. However, whilst I have great sympathy with the appellant's circumstances, limited evidence has been provided on the appellant's current accommodation and the benefits that would arise as a result of the proposal. Furthermore, the appellant has highlighted within their final comments that they have not put forward personal circumstances as a reason why the condition should be varied. Hence, I attach limited weight to these other considerations.
24. The Council was not unreasonable imposing the condition at the point of allowing the 2020 planning application. In this case to impose a later time limit on when the disputed condition would have become live could have negated the effect of imposing it. I am not convinced that any other condition than that imposed would have been sufficiently precise to have the intended effect.

Conditions

25. The guidance in the PPG makes it clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission unless they have already been discharged. In this case it is the conditions on the 2023 permission.
26. Condition [1] is varied insofar as to include the approved drawings, as the Council listed these in a schedule. This is necessary as it provides certainty. The disputed condition [2] is necessary as this excludes Classes A, B and E, but it is varied to exclude Class F of the GPDO.

Conclusion

27. I have had due regard to the PSED. Nevertheless, a proportionate and reasonable balance needs to be struck having regard to the legitimate and well-established planning policy aims to protect the openness of the Green Belt. In this case I consider that greater weight attaches to the public interest relating to the protection of the Green Belt.
28. I conclude that elements of the condition are unreasonable and unnecessary and as such Class F should be removed from it, which is why the appeal is allowed. I have however concluded that elements of it to be necessary and reasonable and a modified condition would meet the tests of the Framework. I therefore allow the appeal and delete condition [2], replacing it with a modified version.

K Williams

INSPECTOR