



Appeal Decision

Site visit made on 18 April 2024

by R Morgan BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd May 2024

Appeal Ref: APP/C1055/W/23/3327752

Woodbine Lodge, 399 Sinfin Lane, DERBY, DE24 9HW

- 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 Mrs D Sharratt against the decision of Derby City Council.
- The application Ref is 23/00642/VAR.
- The application sought planning permission for incorporation of land into residential curtilage without complying with conditions attached to planning permission Ref 23/00228/FUL, dated 17 April 2023.

- The conditions in dispute are Nos 3 and 4 which state that:

3. Notwithstanding the provisions of the Town & Country Planning (General Permitted Development) Order 2015, or any Order revoking or re-enacting that Order, there shall be no new buildings, structures or other enclosures (including fences/walls etc) erected within the curtilage of the site.

The reason given for condition No 3 is:

The site is part of allocated Green Wedge and its visually open character and appearance contributes to the definition of the built up area and to accord with the adopted policies of the Derby City Local Plan Part 1: (Core Strategy) and the saved policies of the adopted City of Derby Local Plan Review as included in this Decision Notice.

4. Unless otherwise agreed in writing by the Local Planning Authority the existing outbuildings on the site shall remain ancillary to the enjoyment of the host dwelling house. The buildings shall not be used as any form of separate residential accommodation or for use in connection with any commercial use.

The reason given for condition No 4 is:

To ensure that the open undeveloped character and appearance of the green wedge is maintained and to accord with the adopted policies of the Derby City Local Plan Part 1: (Core Strategy) and the saved policies of the adopted City of Derby Local Plan Review as included in this Decision Notice.

Decision

1. The appeal is allowed and planning permission is granted for incorporation of land into residential curtilage at Woodbine Lodge, 399 Sinfin Lane, Derby DE24 9HW in accordance with the application Ref 23/00642/VAR without compliance with conditions number 1, 3 and 4 previously imposed on planning permission ref. 23/00228/FUL dated 17 April 2023, and subject to the following condition:
 1. The development must conform in all aspects with the following plan:
Existing and proposed location and site plan, ref 04338 01-00 rev PA1.

Background and Main Issue

2. The appeal site forms part of the Green Wedge designation, the purposes of which are set out in Policy CP18 of the Derby City Local Plan Part 1 (2017). The policy restricts development within areas of Green Wedge to that falling within specific categories, in order to retain their open and undeveloped character.
3. Woodbine Lodge is a large detached dwelling on the edge of the urban area. Planning permission ref 23/00228/FUL allowed for additional land to be incorporated into the domestic curtilage. The house now sits within a substantial plot, with a large rear garden that extends behind the adjacent commercial premises.
4. The Council has advised that permission 23/00228/FUL was granted on the basis that the land would remain open, so as to retain its Green Wedge characteristics. In pursuit of this aim, condition 3 was imposed, which removes permitted development rights for new buildings, structures or enclosures within the curtilage of the site. For a similar reason and to avoid increasing the intensity of use of the site, condition 4 restricts the use of the existing outbuildings.
5. The appellant now wishes to remove conditions 3 and 4. The main issue in this appeal, therefore, is:
 - whether conditions 3 and 4 of planning permission 23/00228/FUL are reasonable and necessary, having particular regard to the requirements of development plan policy to protect the Green Wedge.

Reasons

Condition 3

6. Within areas of designated Green Wedge, Local Plan Policy CP18 allows for the extension of existing dwellings and the erection of ancillary buildings under criterion (a)7. Part (b) of the Policy requires that development does not endanger the open and undeveloped character of the Wedge, its links and green infrastructure value.
7. There is no indication that the appellant intends to fully utilise the permitted development right, but were they (or another future occupier) to do so, ancillary buildings could be constructed on up to 50% of the area around the original house. Policy CP18 does not refer to any restriction of permitted development rights in areas of Green Wedge. However, given the size of the garden and the amount of development that could theoretically take place, consideration of the effect of permitted development rights on the Green Wedge is legitimate.
8. The area of extended garden at the appeal property is surrounded by open land to the north, east and south, with tall trees and hedges along the boundaries. Its flat topography and surrounding vegetation means that the site, including the two existing sheds within the rear garden, are not readily visible from the surrounding area. The site is set well back from Sinfin Lane, with screening provided by both the existing dwelling, which has been significantly extended, and the buildings associated with the adjacent commercial premises.

9. Although the appeal site extends beyond the existing built up frontage of Sinfin Lane, its well-defined boundaries means it feels more connected to the adjacent built form than the surrounding countryside. On its own, the site makes a limited contribution to the Green Wedge purpose of defining the city's urban structure. Its position to the rear of existing employment buildings, and enclosed with a line of tall trees, means that the site feels well contained, and does not read as an 'uninterrupted link' to the countryside beyond.
10. The addition of further outbuildings, which could be constructed under permitted development rights, would have the potential to reduce the internal openness of the site, and alter its character. However, the principle of incorporating the land into the domestic curtilage has already been established, so a degree of change has been accepted, and the effect of additional development in the garden area on the wider area would be very limited. Any ancillary buildings on the site would be screened by existing built form, and would not be readily visible from Sinfin Lane or the surrounding area.
11. As such, I am satisfied that additional ancillary development on the site, which could be constructed under permitted development rights, would have little effect on the openness and undeveloped character of the wider Green Wedge. Furthermore, given its existing enclosure by surrounding trees and hedges, the restriction of further means of enclosure within the site through condition 3 would have little impact on the openness of the Green Wedge.
12. The purposes of the Green Wedge designation include its contribution to wider green infrastructure and climate change adaptation. The appeal site now forms part of a domestic garden, and the potential for it to contribute to these functions depend very much on how the land is used by the appellant or future occupiers. Additional garden planting could contribute to these aims, whereas the incorporation of large areas of impermeable paving or other artificial surfaces could detract. These choices are open to the appellant, regardless of whether or not condition 3 is imposed.
13. The Planning Practice Guidance notes that conditions restricting the future use of permitted development rights may not pass the test of reasonableness or necessity. In this case, for the reasons set out I find that the provisions of Policy CP18 do not provide a reason to retain condition 3.

Condition 4

14. Condition 4 restricts the use of the existing outbuildings on the site to those ancillary to the main dwelling house, and not as any separate residential accommodation or in connection with any commercial use.
15. The two existing sheds in the rear garden would not lend themselves to residential use without substantial alteration, and in any case, any such change of use would require planning permission. Condition 4 is not necessary in that respect.
16. Similarly, any business use at the site which was not incidental to the use as a dwellinghouse would need planning permission if it led to a material change in the intensity of use at the site. Activities associated with a business use of a scale that could cause harm the purposes of the Green Wedge would require planning permission, regardless of condition 4.

17. For the reasons set out, I find that conditions 3 and 4 of permission 23/00228/FUL are not reasonable or necessary, having regard to policy to retain the character and appearance of the Green Wedge. I have therefore removed both conditions.
18. As the development has already been carried out, and the land incorporated into domestic garden, condition 1 of the original permission is no longer required. Condition 2, which specifies plans, is still needed in the interests of certainty. I have modified the wording of this condition to make it more concise.

Conclusion

19. For the reasons set out above, the appeal is allowed and planning permission is granted for the incorporation of land into domestic curtilage at the appeal site, subject to the single condition specified above.

R Morgan

INSPECTOR