



Appeal Decision

Site visit made on 9 April 2024

by Lynne Evans BA MA MRTPI MRICS

an Inspector appointed by the Secretary of State

Decision date: 07 May 2024

Appeal Ref: APP/C3620/D/23/3333011

Kimbers, Horsham Road, Beare Green, RH5 4PD

- 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 carried out without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Andy Edwards against the decision of Mole Valley District Council.
- The application Ref: MO/2023/1279/CC dated 23 August 2023, was refused by notice dated 25 October 2023.
- The application sought planning permission for two detached 2 bedroom bungalows each of 79.4 sq.m (856 sq ft) and double garage of 26.8sq m (289 sq ft) without complying with a condition attached to planning permission Ref: MO/84/0633 dated 10 August 1984.
- The condition in dispute is No 5 which states that:
Notwithstanding the provisions of Article 3 and Schedule 1, Class I of the Town and Country Planning General Development Order 1977 as amended by the Town and Country Planning General Development Order 1981 or any subsequent legislation to similar effect, no extensions to these dwellings shall be made without the prior permission in writing of the Planning Authority.
- The reason given for the condition is:
To enable the Planning Authority to retain control over the enlargement of dwellings in this rural area where Metropolitan Green Belt policy applies as set out in the Surrey County Council's Policy Statement dated 20th May 1975, as amended by Mole Valley District Council on 24th November 1982, and the Surrey Structure Plan

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Although the site address given on the application form is specific to one property, Kimbers, the proposal to remove Condition 5 of permission MO/84/0633 relates to two properties, Kimbers and The Firs, as both properties were granted permission under that one permission. This is the basis upon which the Council has determined the application and the Appellant has addressed in his appeal submission.

Main Issue

3. The main issue in this appeal is whether the condition is necessary and reasonable in the interests of protecting the openness of the Green Belt.

Reasons

4. Planning permission was granted in 1984 for two detached bungalows, now known as Kimbers and The Firs, which are on the eastern side of Horsham Road, and share an access off Horsham Road, immediately to the southeast of the elongated roundabout of the A24 and the A29. At the time of the 1984 permission, and today, the two sites lie within the countryside and within the Green Belt. Both bungalows sit on relatively generous plots and have been the subject of extensions and alterations since permission was granted in 1984.
5. Although I have not been provided with all the information, the Council has set out that the permission was granted in 1984 (as well as two alternative permissions) for the replacement of two small bungalows which together had a floorspace of some 100 sq m. The replacement bungalows, each with an area of 79 sq m were considered acceptable in Green Belt terms, taking into account the size of the former bungalows together with an allowance for the extent to which they could be extended under permitted development rights available at that time. Together with the permitted garages, the bungalows, as permitted, secured a doubling of the floorspace of the original bungalows on the site.
6. It is understood that as a result of the significant uplift in floorspace secured through the permission for the new bungalows, which had taken account of potential permitted development options available to extend the original bungalows, Condition 5 was imposed by the Council. This was to ensure that extensions could not be undertaken through permitted development rights which would result in further floorspace increases that might be inappropriate development within the Green Belt.
7. The National Planning Policy Framework (Framework) states at paragraph 152 that *inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances*. Paragraph 154 sets out that the construction of new buildings should be regarded as inappropriate in the Green Belt, except for a limited number of exceptions, including *the replacement of a building providing the new building is in the same use and not materially larger than the one it replaces* (exception d) and *the extension or alteration of a building providing it does not result in disproportionate additions over and above the size of the original building* (exception c).
8. The Appellant has contended that the bungalows were not built in accordance with the approved plans but has not contested the floorspace figures set out by the Council by providing any alternative figures.
9. Paragraph 54 of the Framework states that planning conditions should not be used to restrict national permitted development rights unless there is a clear justification to do so. Paragraph 56 of the Framework makes clear that conditions should only be used where they are necessary, reasonable to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. The National Planning Guidance (Guidance) under Use of Planning Conditions also sets out that conditions to restrict

permitted development rights may not pass the test of reasonableness or necessity. However, neither the Framework nor the Guidance specifically excludes the use of such conditions.

10. Although the permission was granted some 40 years ago the sites still fall within the Green Belt and the same objectives to retain the openness of the Green Belt remains a primary objective at national policy level.
11. The planning history as set out by the Council indicates that permissions for additional development at both properties have been granted by the Council and subsequent alterations and additions were evident at my site visit. The removal of the permitted development rights has not therefore necessarily prevented either the Appellant or the owner of the adjoining property from extending and altering their properties but has allowed the Council to consider each proposal on its merits, and in accordance with relevant national and local policy considerations.
12. The removal of the condition restricting permitted development rights would offer the potential opportunity for considerable additional floorspace at the two bungalows. This potential additional floorspace, when taken together with the original increase in size of the two bungalows permitted in 1984 over the previous bungalows, together with the subsequent additions and alterations which have been permitted, would potentially result in inappropriate development, when considered against the criteria set out under the Framework, at paragraph 154. As already set out, inappropriate development is clearly defined under the Framework as harmful to the Green Belt and should not be approved except in very special circumstances. It is therefore my view that the condition still serves a necessary and reasonable purpose. There is therefore a clear justification for the retention of this condition.
13. The Appellant has referred me to a number of other permissions where the principal consideration related to whether conditions to remove permitted development rights on earlier permissions remained reasonable and necessary. Each application must be considered on its individual merits but to the extent that the information has been made available to me, I have taken them into account.
14. One decision related to a site in the Green Belt in Bookham in the same Authority where the Council permitted, under its reference MO/2022/0038CC, the removal of a condition which had removed permitted development rights pertaining to a permission for a single storey dwelling under the Council's reference: MO/2021/1530. However, on the limited evidence before me, the circumstances in that case do not seem to be comparable with the appeal before me, particularly with regard to a comparison of what had been permitted and the earlier development in floorspace terms.
15. I have also been provided with a number of appeal decisions, also relating to the removal of conditions which had removed permitted development rights on earlier permissions, under the appeal references: APP/C3620/W/20/3248118, APP/C3620/W/20/3249853 and two linked appeals under the references APP/Q5300/A/14/2217664 and 2217665.
16. The appeal decision under the reference 3249853 whilst dealing with the removal of a condition relating to the removal of permitted development rights was in the countryside but not in the Green Belt. In respect of the Newdigate

site, (3248118) it would appear that there was little difference between the size of the replacement dwelling and the existing which is very different to the circumstances in the appeal before me. In the other case (2217664 and 2217665) the Inspector found that the Green Belt objectives would not be materially harmed from reinstating permitted development rights. This contrasts with the conclusions I have drawn in respect of the appeal before me. I have noted the reference to the Government's Growth Agenda in that appeal but the Framework at paragraph 142 makes it clear that the government also attaches great importance to Green Belts and that the essential characteristics of Green Belts are their openness and their permanence. I do not therefore find that these other decisions are directly comparable with the appeal before me and they do not persuade me to a different finding.

17. In the particular circumstances of this case and taking into account the planning history of the site, I conclude that the condition remains reasonable and necessary to protect the openness of the Green Belt. There would be no conflict with the provisions of the Framework both in relation to the use of conditions as well as development proposals within the Green Belt.

Conclusion

18. For the reasons given above and having regard to all other matters raised, I conclude that this appeal should be dismissed.

L J Evans

INSPECTOR