



Appeal Decision

Site visit made on 12 April 2024

by G Sylvester BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th May 2024

Appeal Ref: APP/H1515/W/23/3327810

Warley Gap Greyhound Kennels, Warley Gap, Little Warley, Brentwood, Essex CM13 3DP

- 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 Craig Dewar against the decision of Brentwood Borough Council.
 - The application Ref is 22/01773/FUL.
 - The application sought planning permission for two dwellings on former Kennels site without complying with a condition attached to planning permission Ref 19/01376/FUL, dated 29 November 2019.
 - The condition in dispute is No 10 which states that: *"Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking, re-enacting or modifying that Order), the dwelling hereby permitted shall not be extended or enlarged in any way without the prior grant of specific planning permission by the local planning authority"*.
 - The reason given for the condition is: *"To order (sic) to safeguard the high quality design of the approved dwellings and in the interests of maintaining the openness of the Green Belt"*.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Government published a recently revised National Planning Policy Framework ("the Framework") and all references in this decision relate to the revised document. I am satisfied that the parties will not be prejudiced by the changes to the national policy context as there are no material changes relevant to the substance of this appeal.

Background and Main Issues

3. Disputed condition 10 removed national permitted development rights under the Town and Country Planning (General Permitted Development) Order 2015 as amended ("the GPDO") that would otherwise have allowed for enlargements to the approved dwellings without the need for a planning application. The disputed condition does not necessarily prevent future enlargements but allows the Council to control them through the planning application process. The dwellings were at an advanced stage of construction at the time of my site visit.

4. The main issues are whether the disputed condition is reasonable and necessary with particular regard to:
 - Whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies.
 - The effect on the character and appearance of the area.
 - Whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by any other considerations so as to amount to the very special circumstances required to justify the proposal.

Reasons

Whether inappropriate development

5. Policy MG02 of the Brentwood Local Plan 2022 ("the BLP") states that the Green Belt will be preserved from inappropriate development so that it continues to maintain its openness and serve its key functions. All development in the Green Belt will be considered and assessed in accordance with the provisions of national planning policy, and planning permission will not be granted for inappropriate development, other than in very special circumstances.
6. The removal of the disputed condition would lead to the grant of a new planning permission for the dwellings on the former Kennels site. Paragraph 154 of the Framework, states that the construction of new buildings in the Green Belt should be regarded as inappropriate development, subject to specific exceptions. The relevant exception in the Framework to this appeal is Paragraph 154.g) for: *"limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings) which would: - not have a greater impact on the openness of the Green Belt than the existing development..."*.
7. The evidence indicates that the volume of the approved dwellings would represent a volumetric increase of approximately 30% when compared to the existing (and now removed) buildings on the site. Approximately 10% of this volumetric increase would be above ground level owing to the subterranean basements.
8. However, whilst the approved dwellings would result in an increased volume of built form at two storey level, the dwellings would spread over a lesser area, with a significant reduction in development, hard surfacing and paraphernalia associated with the existing development. Consequently, the Council concluded that the approved dwellings would have a reduced impact on the openness of the Green Belt when compared to the existing development and thus would not be inappropriate development in the Green Belt under the exception above.
9. Unlike in other designated areas such as National Parks, the evidence suggests that the GPDO does not place a restriction on extensions to dwellings in the Green Belt. Restricting national permitted development rights by planning conditions requires clear justification under Framework Paragraph 54. The Planning Practice Guidance ("the PPG") advises that conditions restricting the future exercise of national permitted development rights, and blanket removal of freedoms to carry out small scale domestic alterations that would otherwise not require an application for planning permission, are unlikely to meet the tests of reasonableness and necessity.

10. However, the layout of the approved dwellings would provide space around them on all sides that would largely be free from built development. Whilst not all the land within the application site would necessarily be within the curtilages of the dwellings for the purposes of the permitted development rights, there would be considerable scope for extensions to the dwellings. There is limited evidence to indicate that the permitted development rights would only allow extensions to the dwellings of a modest scale either individually or cumulatively. I am not aware of anything that would prevent permitted development rights from being utilised to their maximum extent.
11. The cumulative volume of the approved dwellings would exceed the volume of the existing (now demolished) buildings by some 30%, with an undisputedly greater volume of built form at two storey level. Therefore, enlarging the dwellings through permitted development has the potential to increase their respective volumes, potentially at an elevated level, and increase the spread of development across the appeal site. Such enlargements would be expected to widen the volume differential between the existing and approved developments, and result in the loss of Green Belt openness in the spatial and visual dimensions.
12. Consequently, taking account of the site-specific circumstances, the disputed condition is justified as necessary to control extensions to the approved dwellings. This is to prevent them from having a greater impact on the openness of the Green Belt than the existing development, in accordance with the exception in Framework 154.g), and the requirements of BLP Policy MG02, which are set out above.

Character and appearance

13. The dwellings under construction are designed as a 'handed' pair with clear and obvious similarities in terms of their scale, form and materials. They will be embedded within a countryside landscape of dense woodland and open grassland, which together with the relative absence of other buildings around them, would emphasise their unity as a pair of attractive and distinctive contemporary dwellings, sympathetic to their setting.
14. The space that would exist around them and within their likely curtilages would provide considerable scope for extensions and enlargement. I am not persuaded that such extensions would necessarily be small scale or modest. Enlargements to either or both dwellings could markedly unbalance them as a handed pair and erode their attractive visual consistency and distinctive unity. This would be detrimental to their appearances and that of the wider area.
15. For these reasons, the disputed condition is necessary and reasonable to allow the Council to retain control over the development and avoid conflict with BLP Policy BE14, insofar as it requires development to be of a high design standard that responds positively and sympathetically to its context. Although views of the dwellings would largely be limited to their future occupiers and the users of the nearby Golf course, the objectives of the relevant design policy are not limited to developments only visible from the public domain.

Other Matters

16. Some general similarities can be drawn between the appeal proposal and the appeal decisions that are before me. However, I am not familiar with the

evidence placed before those Inspectors, including in the allowed appeal in West Malling¹. The appeal decisions in Halifax², Huddersfield³, Lightwood⁴, Enfield⁵, Guildford⁶, Wakefield⁷ and Solihull⁸ were based on the now superseded guidance in an earlier version of the PPG, which stated that conditions restricting the future use of permitted development rights should only be used in 'exceptional' circumstances.

17. In contrast to my conclusions in this appeal, there was limited scope for any additional extensions at the property in the Halifax appeal. The appeal in Guildford pre-dates the Framework and does not appear to relate to the Green Belt. In the Danzey Green⁹ appeal, the main parties concluded that the proposal would comply with Green Belt policy and the Inspector found no reason to disagree.
18. The appeal decisions submitted in evidence, including those¹⁰ in the Council's area, would have been subject to site-specific considerations and judgements, and determined on their own merits. As such, they are of limited weight in favour of the appeal proposal, and they do not alter my conclusions on this appeal.

Planning Balance and Conclusion

19. Paragraphs 152 and 153 of the Framework state that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances, and that substantial weight should be given to any harm to the Green Belt. I have given substantial weight to the harmful effect on the Green Belt that would be expected to arise from the removal of the disputed condition and utilisation of permitted development rights by reason of inappropriateness and harm to openness. The harm I have identified to the character and appearance of the dwellings and area adds further weight against the proposal. The totality of the harm is not outweighed by any other considerations and therefore the very special circumstances necessary to justify granting planning permission without the disputed condition does not exist.
20. I conclude that the disputed condition is reasonable and necessary to avoid inappropriate development in the Green Belt, preserve Green Belt openness, and avoid harm to the character and appearance of the area, in accordance with BLP Policies MG02 and BE14, and the exception in Framework Paragraph 154.g). Consequently, the disputed condition is consistent with Framework Paragraphs 54 and 56, and the development would not be acceptable without it.

G Sylvester

INSPECTOR

¹ APP/H2265/W/20/3264915

² APP/A4710/W/17/3174097

³ APP/Z4718/W/20/3255705

⁴ APP/M3455/W/19/3226953

⁵ APP/Q5300/A/14/2217664 & APP/Q5300/A/14/2217665

⁶ APP/Y3615/A/11/2144286

⁷ APP/X4725/D/18/3201609

⁸ APP/Q4625/A/12/2170281

⁹ APP/J3720/W/20/3251058

¹⁰ APP/H1515/W/20/3250232 & APP/H1515/W/20/3250250