



Appeal Decision

Site visit made on 30 April 2024

by H Senior BA (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th June 2024

Appeal Ref: APP/B2355/W/23/3335028

Land adjacent 295 Rochdale Road, Turn Village, Bury BL0 0RN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a grant of planning permission subject to conditions.
 - The appeal is made by Mr and Mrs K Kowalczyk against the decision of Rossendale Borough Council.
 - The application Ref 2022/0504 was approved on 21 September 2023 and planning permission was granted subject to conditions.
 - The development permitted is change of use of land adjoining 295 Rochdale Road from residential and vacant industrial to residential use to form garden and parking space and ancillary external area within the curtilage of 295 Rochdale Road.
 - The condition in dispute is No 5 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 re-enacting that order, no extensions to the dwelling as may otherwise be permitted by virtue of Class A, or outbuildings which would be otherwise permitted by Class E, or hard surfacing which would otherwise be permitted by Class F, of Part 1, Schedule 2 of the Order shall be carried out within the land outlined in red on the approved location plan, unless formal planning permission has first been obtained from the Local Planning Authority for such development.
 - The reason given for the condition is: To ensure control is retained by the Local Planning Authority over further development on the site in the interests of protecting the openness of the Green Belt.
-

Decision

1. The appeal is allowed and the planning permission Ref 2022/0504 for change of use of land adjoining 295 Rochdale Road from residential and vacant industrial to residential use to form garden and parking space and ancillary external area within the curtilage of 295 Rochdale Road at Land adjacent 295 Rochdale Road, Turn Village, Bury BL0 0RN granted on 21 September 2023 by Rossendale Borough Council, is varied by deleting condition 5.

Background and Main Issue

2. Planning permission was granted, with conditions, for the development described above. This appeal is made directly against condition 5 imposed on this planning permission, with the appellant seeking to delete it.
3. Therefore, the main issue is whether condition 5 is necessary and reasonable, having particular regard to the openness of the Green Belt.

Reasons

4. The appeal site fronts Rochdale Road and adjoins 295 Rochdale Road, an end of terrace dwelling. There is a terrace of dwellings on the opposite side of the road, along with further dwellings beyond the track which forms the western

boundary of the site. At my site visit I saw that the change of use has occurred.

5. Paragraph 142 of the National Planning Policy Framework (the Framework) outlines the fundamental aim of Green Belt policy which is to prevent urban sprawl by keeping land permanently open. The essential characteristics of Green Belts are their openness and their permanence. Inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances. The Framework sets out the types of development which may be regarded as not inappropriate in the Green Belt. This includes in paragraph 155e, material changes in the use of land provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.
6. In this case, the Council considered that the change of use to residential would not preserve openness due to domestic activities and paraphernalia and the construction of outbuildings and therefore it would not meet the exception in Framework paragraph 155e. The Council accepted that there were other considerations that weighed in favour of the change of use including the removal of the lawful industrial use, the remediation of contamination and biodiversity net gain. However, it considered that these benefits only amounted to very special circumstances in combination with a condition restricting the exercise of permitted development rights. Accordingly, it imposed the disputed condition on the planning permission.
7. The exercise of permitted development rights can in some circumstances permit sizeable development, nevertheless permitted developments rights have not been withdrawn (in total or in part) in the Green Belt in the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). Moreover, 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. In addition, the Planning Practice Guidance (PPG) advises that conditions restricting the future use of permitted development rights may not pass the tests of reasonableness or necessity.
8. The disputed condition limits extensions to the dwelling, outbuildings and hard surfacing. However, notwithstanding the Council's concerns in relation to domestic paraphernalia, the restriction on permitted development rights does not control this.
9. The Council accepted amended plans during the processing of the application which exclude No 295 and its immediate garden area from the red line boundary. This, along with the principal elevation of the dwelling facing the appeal site, limits the exercise of permitted development rights in relation to extensions to the dwelling.
10. There is little evidence that the appellant is intending to construct an outbuilding. Nevertheless, a garage was previously permitted and although that permission has lapsed and could not be implemented, there is little explanation as to why such a building would now be unacceptable. Irrespective, based on the evidence before me, it seems unlikely that an outbuilding could be constructed on the appeal site forward of the principal elevation of the dwelling under permitted development. Moreover, even if an outbuilding could be constructed without planning permission, the appeal site is at the end of a row

of terraced housing, contained by fencing and hedging and, given its previous uses, I find that any such new building would not harm openness.

11. I saw from my site visit that much of the site is hardsurfaced. The evidence indicates that the site was previously developed and it had been surfaced with loose stone prior to the permitted change of use. On this basis, the potential replacement of gravel with hardsurfacing, under permitted development rights, would not in my view result in any material loss of openness
12. In light of the above, I find no clear justification for the removal of these permitted development rights in this case. The disputed condition is not demonstrably necessary to protect the green belt. Consequently, in this case the restriction of the appellants' use of their garden is not reasonable. Condition 5 does not therefore satisfy the tests for planning conditions set out in the Framework and the PPG.

Conclusion

13. For the reasons given above I conclude that the appeal should be allowed. I will vary the planning permission by deleting the disputed condition.

H Senior

INSPECTOR