



Appeal Decision

Site visit made on 27 June 2024

by B Pattison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 July 2024

Appeal Ref: APP/Z5630/W/23/3335861

414A Leatherhead Road, Chessington, Kingston Upon Thames KT9 2NN

- 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 without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr and Mrs Bowen against the Royal Borough of Kingston Upon Thames.
 - The application Ref is 23/03081/FUL.
 - The application sought planning permission for Outline application to erect a detached bungalow on land to rear to consider Access and Layout without complying with a condition attached to planning permission Ref 15/10106/OUT, dated 27 July 2015.
 - The condition in dispute is No 8 which states that: *Notwithstanding the provisions of Part 1 of Schedule 2 of the Town & Country Planning (General Permitted Development) Order, 1995 (or any Order revoking or re-enacting this Order, no extensions (including porches or dormer windows) to the dwelling house or buildings shall be erected within the curtilage.*
 - The reason given for the condition is: *To safeguard the privacy and amenity of adjoining occupiers, maintain adequate amenity space and safeguard the cohesive appearance of the development in accordance with Policy DM10 (Design Requirements for New developments including house extensions) of the LDF Core Strategy Adopted April 2012.*
-

Decision

1. The appeal is allowed and planning permission is granted for Outline application to erect a detached bungalow on land to rear to consider Access and Layout at 414A Leatherhead Road, Chessington, Kingston Upon Thames KT9 2NN in accordance with the terms of the application Ref 23/03081/FUL without compliance with condition 8 attached to planning permission Ref 15/10106/OUT, dated 27 July 2015, but subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The National Planning Policy Framework ('Framework') was updated in December 2023, and accordingly for the purposes of this decision I have referred to the latest version of the Framework. The content of the Framework has not been materially altered in respect of the main issue which I have considered. Therefore, it has not been necessary to seek further views from the main parties in this instance.

Background and Main Issue

3. The reason, from the original planning permission, given for the condition being imposed was to safeguard the privacy and amenity of adjoining and future occupiers. Notwithstanding this, the Council's reason for refusal focusses on the

grounds that the removal of the condition would be likely to result in development that would impact detrimentally on the openness of the Green Belt.

4. The main issue is the effect that removing condition 8 would have on the openness and visual amenity of the Green Belt.

Reasons

5. The appeal site is occupied by a detached bungalow. It is located within the Green Belt, to the rear of ribbon housing development which fronts Leatherhead Road.
6. Schedule 2, Part 1 of the (General Permitted Development) Order (GPDO) sets out the permitted development (PD) rights for development within the curtilage of a dwellinghouse. These rights apply generally to all dwellinghouses, with specific exceptions for some classes. Rights under Class E, for example, are restricted on Article 2(3) land. This is defined in the GPDO as, inter alia, land within a conservation area, an area of outstanding natural beauty, a National Park, and a World Heritage Site. However, Article 2(3) land does not include land falling within the Green Belt.
7. Given the specific areas of land included under Article 2(3), it can be surmised that the omission of land within the Green Belt from the list was intentional on the Government's part, and as a result, land within the Green Belt is regarded as no different in terms of the application of PD rights as land outside of it.
8. Furthermore, paragraph 56 of the Framework states that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Additionally, paragraph 54 states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so, and Planning Practice Guidance (PPG) also advises that conditions restricting the future exercise of permitted development rights may not pass the test of reasonableness or necessity.
9. I recognise the detailed planning history at the site and that the dwelling was originally permitted as the development was for the redevelopment of previously developed land which would not have a greater impact on the openness of the Green Belt. However, the starting point is that PD rights should remain in place, even in the Green Belt, unless clear justification is advanced which is specific to the site.
10. Caselaw and the PPG confirm that openness is capable of having both spatial and visual aspects. I acknowledge that potential PD alterations could involve a large outbuilding. However, the now established domestic character of the site means outbuildings and limited extensions to the dwelling would not be unexpected sights. I am mindful that PD rights are limited to the curtilage of the dwellinghouse, and are subject to restrictions in terms of size and location which would still provide a level of protection that would prevent uncontrolled development beyond the extent of the dwellinghouse. I am not persuaded that the site circumstances are such, that extensions to the dwelling would have such an effect on the openness of the Green Belt or its purposes that the removal of PD rights is justified.

11. The fact that the appeal site is located within the Green Belt and there may be a potential for further extensions and outbuildings, is a situation that would be equally applicable to a significant proportion of other dwellings and residential curtilages across the Green Belt and would not, on this basis, represent an exceptional circumstance.
12. The Council reference an appeal decision¹ which they suggest highlights that a site specific planning condition removing PD rights can meet all of the necessary tests, including the tests of reasonableness and necessity. However, as previously noted, the reason, from the original planning permission, given for the condition being imposed was to safeguard the privacy and amenity of adjoining and future occupiers, rather than the protection of the openness of the Green Belt. Notwithstanding this, whilst I agree that the removal of PD rights should be considered on a case-by-case basis, for the reasons set out in this appeal, I do not find that there is clear justification for their removal in this instance.
13. The appeal property is located to the rear of properties fronting Leatherhead Road. The Council indicate that the removal of the condition is unlikely to affect the living conditions of neighbouring occupiers. I have no substantive evidence which would prompt me to disagree with the Council's conclusions on these matters. Given the generous size of the rear garden, any extension or alterations utilising PD rights would retain sufficient amenity space for the occupiers of the appeal property.
14. For the above reasons, it has not been shown that there is 'clear justification' for the removal of PD rights as set out in the Framework. Consequently, for the reasons set out, and with reference to paragraphs 54 and 56 of the Framework and being mindful of the PPG, I find the condition to be neither reasonable nor necessary to make the development acceptable in the context of the site's location within the Green Belt.
15. Subsequently, I conclude that condition 8 is unnecessary and unreasonable in this particular instance as it is not required to protect the openness. Its removal would not conflict with Policy DM5 of the Kingston Core Strategy (2012) and Policy G2 of the London Plan (2021). These policies seek to ensure the protection of the Green Belt.

Other Matters

16. Interested parties have raised concerns in relation to construction traffic and noise. I have sympathy for existing occupiers as any future development would inevitably give rise to some disruption. However, the removal of the condition would enable the construction of limited extensions or outbuildings which comply with the property's PD rights. These works would not be significant in scale, and would be time limited and it would not be reasonable to withhold consent on this basis alone.
17. The Council indicate that a number of pre-commencement conditions have not been discharged. However, I have restricted my considerations to the proposal before me.

Conditions

¹ APP/Z5630/W/22/3300875

18. 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, and with the exception of the time limit.
19. As the Reserved Matters application referred to within Conditions 1 and 2 has been submitted and approved, I have removed these conditions. I have re-imposed a condition identifying the approved drawings in the interest of clarity. As the development has been constructed I have removed the condition relating to the provision of a Construction Management Plan.
20. I have modified the conditions relating to cycle parking, refuse and recycling storage, the ecological survey, measures for carbon dioxide reduction and details for parking provision for 414 Heath Cottage. These modifications reflect that the necessary information has been submitted to the Council to discharge the conditions.
21. The appellant states that, in determining the Reserved Matters approval the Council's officer report indicated that the proposed external materials identified on the submitted drawings were acceptable. However, it seems to me, that this factor would not remove the requirement to discharge the relevant condition related to external materials on the Outline planning permission. For this reason, I have retained the original condition relating to the submission of details of materials.
22. I have retained all other conditions for the avoidance of doubt and in order to enable compliance to be reviewed if necessary. Hence all the remaining conditions are to be retained, for the reasons that were originally stated on the Decision Notice. In the event that the conditions have previously been discharged, that is a matter which can be addressed by the parties.

Conclusion

23. For the reasons given above I conclude that the appeal should succeed. I will vary the planning permission by deleting the disputed condition.

B Pattison

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans:
2147L1 Site Location Plan 23/03/2015
2147 P1 Site Plan as Existing 23/03/2015
2147 P2 Block Plan 23/03/2015
2147 P3 Plans and Elevations 23/03/2015
Design & Access Statement 23/03/2015
2147 P4 Detailed Site Layout as Proposed 21/05/2015
A1.03 Site Plan - Proposed 09/11/2023
- 2) The car parking accommodation shown upon the approved drawings shall be provided with a hard bound dust free surface, adequately drained before the development to which it relates is occupied and thereafter it shall be kept free from obstruction at all times for use by the occupier of the development and shall not thereafter be used for any purposes other than parking of vehicles for the occupiers of the development and visitors to it.
- 3) Full details of the materials, colour and texture of the external finish of the building shall be submitted to and approved in writing by the Local Planning Authority before development commences and the development shall be constructed in accordance with the approved finishes.
- 4) The secure cycle parking facilities for residents of, and visitors to, the development approved under application ref: 18/10404/COND shall be fully implemented within 3 months of the date of this decision and made available and thereafter retained for use at all times.
- 5) The refuse and recycling storage facilities and management plan shall be retained for use at all times as approved under application ref: 18/10404/COND.
- 6) No development shall commence until a landscaping scheme including where applicable the retention of the existing trees shall have been submitted to an approved in writing by the Local Planning Authority. The approved scheme shall be implemented within the first planting season following completion of the development and the tree planting and landscaping shall thereafter be maintained for five years to the satisfaction of the Local Planning Authority. Any trees or shrubs which die during this period shall be replaced in the first available planting season, and the area shown to be landscaped shall be permanently retained for that purpose only.
- 7) All planting, seeding or turfing detailed in the approved landscape scheme shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation. The

area shown to be landscaped shall be permanently retained for that purpose only.

- 8) The development hereby permitted shall be retained in accordance with the details of the ecological survey approved under application ref: 18/10404/CON.
- 9) The development hereby permitted shall be retained in accordance with the details of the CO2 reductions and internal water usage approved under application ref: 20/00630/CLC.
- 10) The development hereby permitted shall be no more than 3.5 metres in height and shall be a single storey building only.
- 11) The parking provision for the sole use of 414 Heath Cottage shall be retained for the life of the development as approved under application ref: 18/10404/COND.

END OF SCHEDULE