



Appeal Decision

Site visit made on 5 June 2024

by Stewart Glassar BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd July 2024

Appeal Ref: APP/R3650/D/23/3330620

Royal Farm House, Milford Road, Elstead, Godalming GU8 6LA

- 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 & Mrs Negus against the decision of Waverley Borough Council.
 - The application Ref is WA/2023/0001.
 - The application sought planning permission for erection of extensions and alterations without complying with conditions attached to planning permission Ref WA/2022/00797, dated 22 November 2022.
 - The conditions in dispute are Nos 4 & 5 which state that:
Condition 4: The development hereby permitted shall not be exercised or implemented in addition to or in combination with the development subject of Waverley planning application reference WA/2014/1280, granted on 02/09/2014.
Condition 5: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any other Order revoking or re-enacting that Order with or without modification), no enlargements to the dwellinghouse or outbuildings as defined within Part 1 of Schedule 2, Class A and Class E inclusive of that order, shall be erected on the site without the written permission of the Local Planning Authority.
 - The reasons given for the conditions are:
Condition 4: In order to protect the Green Belt from inappropriate development in accordance with Policy RE2 of the Local Plan (Part 1) 2018 and retained Policy RD2 of the Local Plan 2002.
Condition 5: In order to protect the Green Belt from inappropriate development in accordance with Policy RE2 of the Local Plan (Part 1) 2018 and retained Policy RD2 of the Local Plan 2002.
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Decision

1. The appeal is allowed and planning permission is granted for erection of extensions and alterations at Royal Farm House, Milford Road, Elstead, Godalming GU8 6LA in accordance with the terms of the application, Ref WA/2023/0001, without compliance with condition number 4 previously imposed on planning permission Ref WA/2022/00797 dated 22 November 2022 and subject to the conditions in the attached schedule.

Application for costs

2. An application for costs was made by Mr Simon Negus against Waverley Borough Council. That application is the subject of a separate decision.

Background and Main Issue

3. In May 2014, planning permission was granted for two storey extensions to Royal Farm House. This permission was not implemented and has expired. In September 2014, the Council granted a Certificate of Lawful Development, confirming that certain other works and extensions to the dwelling were lawful. A subsequent Certificate confirmed that these works had been lawfully commenced. I refer to this in my decision as the 'certificated development'.
4. In November 2022, a planning application for extensions and alterations on the building was approved, subject to a number of conditions. This scheme was similar to the expired, 2014 planning permission. Condition 4 purports to ensure that the dwelling was only extended by either the 2022 permission or the certificated development. Condition 5 removed permitted development rights for Classes A and E of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015. Condition 5 has since been revised through a non-material amendment to refer to Classes A and D.
5. A subsequent planning application for the removal of conditions 4 and 5 was refused by the Council and is now the subject of this appeal. Therefore, the main issue is whether the conditions are necessary and reasonable in relation to limiting extensions to the dwelling.

Reasons

Condition 4

6. The site is within the Green Belt and this was the reason for imposing this condition. Having regard to Green Belt policy, it appears that the Council considered the 2014 certificated development and the 2022 approved extensions to be individually acceptable. However, cumulatively they were considered to result in disproportionate additions over and above the size of the original building and therefore unacceptable.
7. Condition 4 says that the 2022 permission shall not be 'exercised or implemented in addition to or in combination with' the certificated development. It is not clear exactly what 'exercised' means in this context, as there is no definitive start or end points associated with this term. If the permission cannot be implemented, which would be the initial trigger, then the reference to 'exercised' seems superfluous.
8. Furthermore, as worded, the condition only provides a definite trigger for the development approved by the 2022 permission, not the certificated development. The question then arises as to what is the trigger in relation to the certificated development? It has been lawfully implemented and this condition cannot prevent it from being built out. The actual wording is unclear as to what point the certificated development could reach before the new extensions could not be implemented (or exercised). However, the inference from the wording is that the certificated development can similarly only be implemented or exercised.
9. Therefore, putting to one side any concerns over imprecision and indeed whether a condition can lawfully achieve what was intended, when condition 4 is read as a whole, a reasonable interpretation is that it renders the permission for the 2022 extensions unimplementable. Whilst it may not have been the Council's intention, by virtue of the certificated development having been

implemented, this seems the logical outcome given how the condition is worded.

10. It is not clear if the Council considered refusing the 2022 application or contemplated some form of legal agreement to address the issue. However, having granted the permission, the appellant now has the right of an appeal against this condition. Whilst I acknowledge the Council's wider policy concerns, I am required to only consider the question of what conditions a grant of planning permission should be subject to.
11. The National Planning Policy Framework (the Framework) makes clear at Paragraph 56, that planning conditions should, amongst other things, be precise and reasonable. I find the wording imprecise and a condition which prevents the implementation of the permission to be unreasonable.
12. Given all of the above circumstances, I have no option but to remove this condition. I am not able to revise it such that it would meet the necessary tests and achieve the Council's intended objective.

Condition 5

13. Planning Practice Guidance (PPG) states at Paragraph 017 Reference ID: 21a-017-20190723, that conditions restricting the future use of permitted development rights or changes of use may not pass the test of reasonableness or necessity. The scope of such conditions needs to be precisely defined, by reference to the relevant provisions in the Order, so that it is clear exactly which rights have been limited or withdrawn. Moreover, area-wide or blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity.
14. The Order does not restrict permitted development rights relating to development within the curtilage of a dwellinghouse in the Green Belt. Therefore, the development that falls in these categories would not generally conflict with the purposes of the Green Belt or its essential characteristics of openness and permanence. As such the appeal site's location within the Green Belt would not, in itself, represent justification to warrant removal of permitted development rights.
15. I appreciate the appellant's position regarding consistency in decision making given that permitted development rights were not removed in 2014 and the policy context has not materially changed in the interim. However, in 2014 the development for which planning permission was granted fell below the Council's 40% threshold and at that time any extension under permitted development would only have been a theoretical possibility. A restriction of such rights at that stage could have fallen foul of the need to avoid blanket restrictions.
16. Given that the certificated development has now been implemented and given the way in which the appellant has pursued the issue, it seems to me that the prospect of this development being built out is now more than just a theoretical possibility. This, in tandem with my findings on condition 4, presents a very different context from that which existed when the Council made its decision in 2014.

17. The development which is now permitted would significantly increase the size of the dwelling. Given the need to prevent harm to the Green Belt I find that there is a justification in seeking to control further potential expansion of the dwelling.
18. I note the appellant's comments in relation to Class D. Whilst this allowance is not large, I am mindful that any small addition can incrementally result in disproportionate additions over and above the size of an original building or add to the scale of any existing disproportionate additions. Furthermore, the removal of permitted development rights does not seek to prevent development. It simply gives the Council control over the further expansion of the dwellinghouse. In the circumstances, I do not see this as an undue burden to the appellant.
19. The disputed condition is sufficiently defined and there is appropriate justification to find it both reasonable and necessary to ensure that the proposal complies with the development plan and the Framework. Whilst there is a need for some minor revision to the condition's wording there is no need to remove it.

Conditions

20. By allowing this appeal a new planning permission is created. The PPG advises that, for clarity, decision notices for the grant of planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) should restate the conditions imposed on earlier permissions that continue to have effect, unless they have already been discharged.
21. As applications under section 73 cannot be used to vary the time limit for implementation of the development, specification of the date by which the permission shall be begun is necessary.
22. A condition in the planning permission specifying the relevant plans is necessary as this provides certainty. For similar reasons, the condition limiting the external materials to those stated in the approved drawings is also necessary and reasonable.
23. Condition 3 of the original permission requires compliance with the Ecological Impact Assessment report by Darwin Ecology, dated November 2022, and so remains necessary and reasonable. The instruction to obtain a licence from Natural England is not necessary. I shall make the appropriate amendments to the wording, including the deletion of the reference to 'applicant' as the permission runs with the land.
24. Given my findings, I shall omit previous condition 4, but it is appropriate that I impose a revised condition 5, which is reasonable and necessary in order to protect the Green Belt.

Conclusion

25. I conclude that the appeal should be allowed in the terms set out above.

Stewart Glassar

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall not commence later than the expiration of 3 years beginning with the date of the planning permission ref. WA/2022/00797 dated 22 November 2022.
2. The development hereby permitted shall be carried out in accordance with the following drawing numbers:
HA/1590/1 'Existing & Proposed Plans'
HA/1590/3 'Proposed Elevations'
HA/1590/5 'Existing Elevations'
HA/1590/6 'Existing Site & Location Plans'
HA/1590/7 'Proposed Site & Location Plans'
3. No variation of the type and colour of the external materials to be used in the construction of the development as shown on the approved plans shall be made without the prior written consent of the Local Planning Authority.
4. The development hereby permitted shall be carried out in accordance with the mitigation, compensation and enhancement actions set out in the Ecological Impact Assessment report by Darwin Ecology, dated November 2022.
5. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development permitted by virtue of Classes A and D of Part 1 of Schedule 2 to the Order shall be undertaken.

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