



Appeal Decision

Site visit made on 30 July 2024

by Hannah Ellison BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 August 2024

Appeal Ref: APP/R0660/W/24/3338749

Mill Lodge, Mill Lane, Mottram St. Andrew SK10 4LW

- 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 Ms Rebecca Moore against the decision of Cheshire East Council.
 - The application Ref is 23/4151M.
 - The application sought planning permission for demolition of the existing home and replaced with a new built 2 storey, 5 bedroom family home without complying with a condition attached to planning permission Ref 22/3536M, dated 23 August 2023.
 - The condition in dispute is No 17 which states that:
Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking or re-enacting that order), no development (as defined by Section 55 of the Town and Country Planning Act 1990) as may otherwise be permitted by virtue of Class(es) AA, A, B, C, D, E of Part 1 Schedule 2 of the Order shall be carried out.
 - The reason given for the condition is:
To ensure continued control over the extent of further building on the site noting the Green Belt location of the site and the justification for the grant of planning permission.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of the existing home and replaced with a new built 2 storey, 5 bedroom family home at Mill Lodge, Mill Lane, Mottram St. Andrew SK10 4LW in accordance with the application Ref 23/4151M, without compliance with condition number 17 previously imposed on planning permission Ref 22/3536M dated 23 August 2023 and subject to the conditions set out in the attached schedule.

Background and Main Issue

2. The appeal site falls within the Green Belt. Planning permission has been granted for the demolition and replacement of the existing dwelling¹ (the original permission). This was subject to a condition (No 17) which removed permitted development (PD) rights within Classes AA to E of Part 1, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the Order).
3. The appellant wishes to amend condition 17 of the original permission so as it only removes Class A, thus reinstating the PD rights in Classes AA and B-E of Part 1, Schedule 2 of the Order, on the grounds that it is not reasonable or necessary.

¹ Council ref: 22/3536M

4. The main issue is therefore whether the condition is reasonable or necessary in the interests of preserving the openness of the Green Belt.

Reasons

5. The appeal site includes a large, detached dwelling and detached outbuilding. The original permission granted approval for the demolition and replacement of the existing dwelling. The replacement dwelling was assessed against Policy PG3 of the Cheshire East Local Plan Strategy 2010-2030 (July 2017) (the CELPS), Policy RUR13 of the Site Allocations and Development Policies Document (December 2022) (the SADPD) and The National Planning Policy Framework (the Framework).
6. These policies regard the construction of new buildings as inappropriate development in the Green Belt, which should not be approved except in very special circumstances. Together they allow for the replacement of dwellings which are not materially larger than the dwelling they seek to replace as an exception to inappropriate development in the Green Belt.
7. The evidence before me indicates that the replacement dwelling proposed in the original permission was deemed to be materially larger than the dwelling it sought to replace thus was determined to be inappropriate development in the Green Belt.
8. The Council did however consider the existence of fallback positions in the form of approved extensions to the existing dwelling, consisting of single and two storey (with dormer) extensions. It found that the proposed replacement dwelling would reduce the spread of built form throughout the site through its more compact footprint and was therefore less harmful to the openness of the Green Belt than the fallback position. As such, this amounted to the very special circumstances necessary to justify the proposed inappropriate development.
9. On the basis that the replacement dwelling was materially larger than the dwelling it replaced, the Council's reason for imposing condition 17 on the original permission, and thus restricting certain PD rights, was to ensure continued control over the extent of further building on the site, noting the Green Belt location and the justification for the grant of planning permission.
10. Paragraph 54 of the Framework states that planning conditions should not be used to restrict national PD rights unless there is clear justification to do so. The Planning Practice Guidance (PPG) also advises that conditions restricting the future use of PD rights or changes of use may not pass the test of reasonableness or necessity. Furthermore, the Order does not restrict PD rights relating to development within the curtilage of a dwellinghouse for Classes A-E in the Green Belt. Therefore, the location of the appeal site within the Green Belt is not in itself justification to remove PD rights.
11. As above however, the Council has set out the particular circumstances around the approval of the original permission. As demonstrated through the fallback positions in the original permission, the enlargement, improvement or other alteration of a dwellinghouse allowed for in Class A of the Order could result in various single and two storey extensions. This would subsequently increase the footprint, volume and overall massing of the replacement dwelling even further than that which was granted permission and deemed to be materially larger

than the dwelling it replaces. This could result in substantial harm to the openness of the Green Belt. As such, the removal of PD rights falling under Class A is justified in this instance.

12. The Council has however not demonstrated how the small-scale development permitted under the remaining aforementioned classes of the Order would lead to harm to openness.
13. 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.
14. Taking all the above into consideration, a condition restricting PD rights in Classes AA and B-E of Part 1, Schedule 2 of the Order is not reasonable or necessary in the interests of the Green Belt. Consequently, in this respect, its variation would be in accordance with Policy PG3 of the CELPS, Policy RUR13 of the SADPD and the Framework. I shall therefore vary the condition as requested and as set out below.

Conditions

15. The PPG makes clear that decision notices for the grant of planning permission under section 73 should restate the conditions imposed on earlier permissions that continue to have effect. As I have no information before me about the status of the other conditions imposed on the original planning permission I shall impose all those that I consider remain relevant. If some have in fact been discharged, that is a matter which can be addressed by the parties.
16. It also seems that work has not commenced on site. The PPG states that a grant of planning permission under section 73 of the Act should not extend the time period for implementation. Accordingly, a condition is attached to clarify that development must commence within the time limit of the original permission i.e. 23 August 2026.

Conclusion

17. For the reasons outlined above, I find that condition 17 as worded is not reasonable or necessary. Consequently, I conclude that the appeal should be allowed, with condition 17 varied and a new planning permission granted.

H Ellison

INSPECTOR

Schedule of Conditions

1. The development hereby approved shall begin within three years of the date of approval of application ref 22/3536M.
2. The development hereby approved shall be carried out in total accordance with the approved plans:
Drawing No. 14,065/OS C (Site Location Plan), received by the Local Planning Authority on 23rd August 2023
Drawing No. 53 B (Proposed Plans and Elevations)
Drawing No. 30 G (Proposed Site Plan)
Drawing No. 52 C (Proposed Site Sections), received by the Local Planning Authority on 11th August 2023 except where varied by other conditions of this permission.
3. The materials to be used shall be in strict accordance with those specified in the application unless different materials are first agreed in writing with the Local Planning Authority. Development shall be carried out in accordance with the approved details.
4. The first floor windows in the northernmost facing elevation of the development hereby permitted shall be installed with obscure glazing with a minimum Pilkington Level 3 of obscuration and fixed shut below an internal height of 1.7 metres as measured from the internal floor level. The fenestration shall be installed in accordance with the approved details prior to the first use / occupation of the development hereby permitted.
5. The approved development shall not be occupied until space has been laid out within the site for the parking of 3 cars in accordance with Drawing No. 30 G. Parking so provided, including the approved number of spaces for disabled persons (if applicable), shall be retained at all times thereafter, unless otherwise approved by the Local Planning Authority.
6. No removal of any vegetation or the demolition or conversion of buildings shall take place between 1st March and 31st August in any year, unless a detailed survey has been carried out to check for nesting birds. Where nests are found in any building, hedgerow, tree or scrub or other habitat to be removed (or converted or demolished in the case of buildings), a 4m exclusion zone shall be left around the nest until breeding is complete. Completion of nesting shall be confirmed by a suitably qualified person and a report submitted to and approved in writing by the Local Planning Authority before any further works within the exclusion zone taking place.
7. The proposed development to proceed in accordance with the recommendation made by section 5 of the submitted Bat Emergence Surveys report (Rachel Hacking Ecology, 2023) unless varied by a European Protected Species licence subsequently issued by Natural England. Agreed features for roosting bats shall be permanently installed in accordance with the approved details.
8. Prior to the use of any building materials in the new development the applicant to submit a strategy for the incorporation of features to enhance the biodiversity value of the proposed development. The submitted strategy should include proposals for the provision of features for nesting birds including house

sparrow and roosting bats (any external lighting should avoid direct light spill upon bat roost features). The proposals shall be permanently installed in accordance with approved details.

9. Prior to the commencement of development (excluding demolition), a scheme for the landscaping of the site, including boundary treatments, shall be submitted to and approved in writing by the Local Planning Authority. The landscaping scheme shall include details of hard landscaping, planting plans, written specifications (including cultivation and other operations associated with tree, shrub, hedge or grass establishment), schedules of plants noting species, plant sizes, the proposed numbers and densities and an implementation programme.
10. The approved landscaping plan shall be completed in accordance with the following:- a) All hard and soft landscaping works shall be completed in full accordance with the approved scheme, within the first planting season following completion of the development hereby approved, or in accordance with a programme agreed with the Local Planning Authority. b) All trees, shrubs and hedge plants supplied shall comply with the requirements of British Standard 3936, Specification -for Nursery Stock. All pre-planting site preparation, planting and post-planting maintenance works shall be carried out in accordance with the requirements of British Standard 4428(1989) Code of Practice for General Landscape Operations (excluding hard surfaces). c) All new tree plantings shall be positioned in accordance with the requirements of Table A.1 of BS5837:2012 Trees in Relation to Design, Demolition and Construction (Recommendations) d) Any trees, shrubs or hedges planted in accordance with this condition which are removed, die, become severely damaged or become seriously diseased within five years of planting shall be replaced within the next planting season by trees, shrubs or hedging plants of similar size and species to those originally required to be planted.
11. No development shall take place (excluding demolition) until a detailed drainage strategy / appropriate boundary treatment design / associated management & maintenance plan for the site has been submitted to and approved in writing by the Local Planning Authority. The drainage design must also include: (a) Percolation testing conducted in line with BRE 365 Guidance. (b) Surface water run-off rates limited to green field run off rates. (c) Proposed surface water drainage layout, including levels of the proposed drainage systems including proposed ground and finished floor levels in AOD. (d) The strategy shall account for 1 in 100-year rainfall event plus 45% allowance for climate change, with the appropriate drainage calculations to support the chosen method of surface water drainage. (e) Management and Maintenance plan.
12. Details of the existing ground levels, proposed ground levels and the level of proposed floor slabs shall be submitted before any development on the site first commences (excluding demolition). Details which receive the written approval of the Local Planning Authority shall be implemented in full, unless alternative details are otherwise approved in writing by the Local Planning Authority. No levels should be raised on site that may result in flooding offsite. If the levels need to be raised, then the site boundary will need to be adequately protected to ensure that any flood risk is contained and managed onsite and not transferred off site.

13. Prior to first occupation of the property, an Electric Vehicle Infrastructure plan shall be submitted to and agreed in writing by the LPA. The Infrastructure plan shall aim to meet the following specification:
- Residential:
 - A single Mode 3 compliant Electric Vehicle Charging Point per property with off road parking. The charging point shall be independently wired to a 30A spur to enable minimum 7kW Fast charging or the best available given the electrical infrastructure.
 - Should the infrastructure not be available, written confirmation of such from the electrical supplier shall be submitted to this office prior to discharge.
 - Where there is insufficient infrastructure, Mode 2 compliant charging may be deemed acceptable subject to the previous being submitted.
- The infrastructure shall be implemented and maintained throughout the use of the development.
14. In the interests of aviation safety, measures to minimise and manage the creation of dust and smoke shall be implemented for the full duration of all demolition and construction works, in accordance with the advice of Manchester Airport and the Civil Aviation Authority.
15. During construction and in perpetuity, robust measures shall be taken to prevent birds being attracted to the site. No pools or ponds of water shall occur/be created without the permission of the Local Planning Authority in consultation with Manchester Airport's aerodrome safeguarding authority.
16. Notwithstanding the provision of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or reenacting that Order), all exterior lighting shall be capped at horizontal with no upward light spill.
17. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking or re-enacting that order with or without modification), no development permitted by virtue of Class A of Part 1 of Schedule 2 to the Order shall be undertaken.
18. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking or re-enacting that order), no development (as defined by Section 55 of the Town and Country Planning Act 1990) as may otherwise be permitted by virtue of Class A, of Part 2 Schedule 2 of the Order shall be carried out.

End of Schedule