

Appeal Decision

Site visit made on 13 August 2024

by L Reid BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 September 2024

Appeal Ref: APP/G2245/D/24/3339047

Milena Cottage, Burlings Lane, Knockholt, Kent TN14 7PE

- 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 A. Cheeseman against the decision of Sevenoaks District Council.
 - The application Ref is 23/03173/CONVAR.
 - The application sought planning permission for erection of part two storey, part single storey rear extension without complying with a condition attached to planning permission Ref 23/01931/HOUSE, dated 14 September 2023.
 - The condition in dispute is No 4 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 or amending those Orders with or without modification), planning permission shall be required in respect of development falling within Schedule 2, Part 1, Classes A, B, C, D, E, F and G of that Order.
 - The reason given for the condition is: To ensure that development within the permitted Classes in question is not carried out in such a way as to materially impact the openness of the Green Belt and to ensure that such development is assessed against the policies of the Sevenoaks Allocations and Development Management Plan and the National Planning Policy Framework.
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Decision

1. The appeal is allowed and planning permission is granted for erection of part two storey, part single storey rear extension at Milena Cottage, Burlings Lane, Knockholt, Kent TN14 7PE in accordance with application Ref: 23/03173/CONVAR without compliance with condition number 4, previously imposed on planning permission Ref: 23/01931/HOUSE dated 14 September 2023, and subject to the conditions in the attached schedule.

Background and Main Issue

2. The original permission was granted for the erection of a part two storey, part single storey rear extension at the appeal property which is in the Green Belt. The extension was considered to be a disproportionate addition over and above the size of the original building. This was because the previous

extensions and the proposed extension would exceed the 50% limit on residential extensions in the Green Belt, as set out in Policy GB1 of the Sevenoaks Allocations and Development Management Plan 2015.

3. The extension was therefore considered to constitute inappropriate development in the Green Belt. However, permission was granted because of very special circumstances in the form of a fall-back position. This fall-back position related to a two storey rear extension granted under a lawful development certificate (LDC) which determined that the extension would be permitted development. The fall-back scheme was considered to be more harmful to the openness of the Green Belt and amounted to very special circumstances to outweigh the harm to the Green Belt from the proposed extension.
4. Condition 4 of the original permission removed a wide range of permitted development rights under Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("the GPDO"). The appellant seeks to vary the condition to remove reference specifically to Classes E, F and G.
5. The main issue is therefore whether reference to Classes E, F and G in Condition 4 is necessary and reasonable in all other aspects in protecting the openness of the Green Belt.

Reasons

6. The Planning Practice Guidance (PPG) advises that conditions restricting the future use of permitted development rights may not pass the test of reasonableness or necessity. In addition, the National Planning Policy Framework (the Framework) is clear that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so.
7. In accordance with the Framework and PPG, clear justification for removing permitted development rights based on the circumstances and individual merits of the particular case is necessary. The location of the appeal site within the Green Belt is not in itself adequate justification to remove permitted development rights. As the GPDO does not restrict permitted development rights in the Green Belt, this suggests that development carried out under permitted development would not be inappropriate development or harmful to the openness of the Green Belt.
8. Class E allows for any building or enclosure, swimming or other pool, and a container for domestic heating purposes. The Council's concerns primarily relate to the erection of outbuildings. The construction of buildings under Class E would need to satisfy the criteria within the GPDO. Class E limits the total area of ground that can be covered by development permitted under this Class to 50% of the total area of the curtilage, excluding the original house. The calculation of the 50% limit covers all buildings, including any existing extensions to the original house, as well as existing and proposed outbuildings, whether part of the original house or not. I have insufficient evidence to suggest that harm to openness would occur when considering the conditions and limitations of Class E.

9. Class F allows for the installation of hardsurfacing and the replacement in whole or in part of such surfaces. It is very unlikely that the implementation of this permitted development right which relates to works at ground level, would harm the openness of the Green Belt given the limitations and conditions of Class F.
10. Class G allows for the installation, alteration or replacement of a chimney, flue or soil and vent pipe. The conditions of the GPDO restrict the height of such works. The Council has not provided any clear justification for why this permitted development right has been removed. I am therefore not convinced that such additions to the appeal property would cause harm to the openness of the Green Belt.
11. The Council are concerned about the cumulative impact of the approved development together with that which could be built under Classes E, F and G. However, the limitations and conditions of the GPDO would still provide a level of protection that would prevent uncontrolled development. Furthermore, prior to the granting of the original permission, development permitted under Classes E, F and G could have been built in accordance with the conditions and limitations set by the GPDO. These rights could still be exercised, together with the fall-back position of the two storey extension established by the LDC, if the original permission is not implemented. The potential cumulative impact is not, therefore, a clear justification for including Classes E, F and G in the disputed condition.
12. Whilst I recognise the importance of protecting the openness of the Green Belt, the fall-back position advanced under the original permission related to a two storey extension and the permission granted consent was for a similar extension. It did not relate to any development permitted under Classes E, F and G. These classes did therefore not form the fall-back position. This reasoning is consistent with the Inspector in the Argovia¹ case.
13. I accept that in the Argovia case, the additions approved by the Council amounted to a 51.7% increase in floor area. This is less than the floor area increase in the original permission which is more than 200%. However, the floor area increase in the Argovia case was also substantially above the Council's policy restriction. Consequently, both cases result in extensions which exceed the policy percentage and were allowed on account of a fall-back position. This case is, therefore, not dissimilar to the original permission in this regard.
14. Given that the original permission granted consent for a rear extension, removing permitted development rights for Classes E, F and G is not relevant to the development that was permitted, and would therefore not be reasonable.
15. For these reasons, I conclude that reference to Classes E, F and G in Condition 4 is not necessary and is unreasonable in all other aspects in protecting the openness of the Green Belt. The condition as worded is therefore not necessary to meet the aims of Policies GB1 and GB3 of the Allocations and Development Management Plan 2015 and the provisions of the Framework,

¹ Appeal Ref: APP/G5180/D/18/3218571

which amongst other things, seek to avoid harm to the openness of the Green Belt.

Conditions

16. The guidance in the PPG makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. I shall impose all those that I consider to remain relevant.
17. I have amended Condition 1 relating to the time to implement the permission to accord with the original planning permission. I have reimposed Conditions 2 and 3 in the interests of certainty and to protect the character and appearance of the area.
18. I have substituted Condition 4 with a new condition removing permitted development rights for Classes A, B, C and D as this is necessary to protect the openness of the Green Belt.
19. While not listed in the Council's suggested conditions, no reasoning has been provided for why Condition 5 would no longer be relevant. I have therefore reimposed this condition as it remains necessary in the interests of biodiversity.

Conclusion

20. For the reasons given above, I conclude that the appeal should be allowed. I will grant a new planning permission deleting Condition 4, substituting it with a new condition and restating those undisputed conditions.

L Reid

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from 14 September 2023.
- 2) The materials to be used in the construction of the development shall be those indicated on the approved plan 3555-PC-03.
- 3) The development hereby permitted shall be carried out in accordance with the following approved plans and details: 3555-PC-03; 3555-PC-02 Rev A.
- 4) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking or re-enacting or amending those Orders with or without modification), planning permission shall be required in respect of

development falling within Schedule 2, Part 1, Classes A, B, C and D of that Order.

- 5) Prior to completion, details of how the development will enhance biodiversity shall be submitted to, and approved in writing by, the local planning authority. This shall include integrated/ wall-mounted Woodstone/woodcrete bird and/or bat boxes for red or amber listed species. The approved measures shall be implemented and retained thereafter.

END OF SCHEDULE