



Appeal Decision

Site visit made on 1 October 2024

by D Wilson BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd October 2024

Appeal Ref: APP/A1910/W/23/3334039

Gable End, 1 Threefields, Sheethanger Lane, Hertfordshire, Felden HP3 0BJ

- 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 73A 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 Craig Pitblado against the decision of Dacorum Borough Council.
 - The application Ref is 23/01342/ROC.
 - The application sought planning permission for use and extend the original walls, and use the original foundation slab, of the former garage and car port to create on the same site a two storey hipped roofed end of terrace dwelling; change of use from agriculture to front hardstanding and rear garden without complying with a condition attached to planning permission Ref 21/00090/RET, dated 3 March 2021.
 - The condition in dispute is No 1 which states that: The current gable end roof to Gable End shall be hipped in accordance with Drawing 9407-L-00-03 Rev.C within eighteen months of the date of this decision.
 - The reason given for the condition is: In the interest of the openness of the Green Belt in accordance with Policy CS5 of the Dacorum Borough Core Strategy and also in the context of the extant Enforcement Notice at the site.
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Decision

1. The appeal is dismissed.

Background and Procedural Matters

2. At the time of my visit the works required to comply with the original planning permission appear to have been completed apart from the works to the roof to create a hipped roof, from the gable end that current exists on site. The appeal before me seeks to remove condition 1 which set out a timescale of eighteen months for the roof to be altered. The time to comply has passed and as such, this appeal is retrospective.
3. The Planning Practice Guidance (PPG) states that S73 cannot be used to change the description of the development. This is supported by several decisions made by the Court of Appeal Judgments including that of *Finney v Welsh Ministers & Ors* (Rev 1) [2019] EWCA CIV 1868 (the Finney judgement).
4. The Courts established that an application under s73 may not be used to obtain a permission that would require a variation to the terms of the 'operative' part of the planning permission, that is, the description of the development for which the original permission was granted. This also applies to s73 appeals involving retrospective development. If amending a condition

would result in a conflict between it and the description of development, then that particular amendment is beyond the powers under s73 and cannot be made. Instead, a fresh planning application would be required.

5. The wording of the original description of development is not a matter which is before me to consider as part of this appeal.
6. The removal of this condition would not affect the extant permission for those works or mean that the description was in any way altered. It would also be passing no judgement on the merits or otherwise of the existing gable. Rather, it would only mean that that the works would have no timeframe in which they need to be completed, beyond starting within 3 years from the date of the permission.
7. Consequently, having regard to the facts of the case, I find that in principle, condition 1 can be removed without having an effect on the description of development and would not be contrary to the Finney judgement.

Main Issue

8. The main issue is whether the condition is reasonable and necessary in the interests of protecting the openness of the Green Belt.

Reasons

9. Paragraph 143 of the Framework sets out the purposes of the Green Belt which are; to check the unrestricted sprawl of large built-up areas; to prevent neighbouring towns merging into one another; to assist in safeguarding the countryside from encroachment; to preserve the setting and special character of historic towns; and to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.
10. Paragraph 154 of the Framework sets out the categories of development which may be regarded as not inappropriate in the Green Belt, subject to certain conditions. New buildings within the Green Belt are inappropriate unless, amongst other things, they relate to the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building.
11. The Framework does not provide a definition of 'disproportionate additions' and therefore an assessment of whether a proposal would amount to disproportionate additions over and above the size of the original building is a matter of planning judgement.
12. In considering the original permission the Council found that the proposed development would be disproportionate due to amount of built form proposed. The original permission was granted on the basis of very special circumstances including the fact that the volume of the roof would be reduced through the hipped roof. I have not been provided with precise details of the very special circumstances and none are before me to assess as part of this appeal.
13. The appellant states that the hipped roof results in a reduction in overall volume of the building of 4.7%. However, this is still a reduction in volume and overall bulk and mass of the building which reduces its prominence. Therefore, the proposal to retain the gable end roof would have a greater negative effect on the openness of the Green Belt.

14. I am mindful of the planning history of the appeal site and the original planning permission. In this regard, without the additional control through condition 1, the removal of this element would not be ensured. As such, the harm that the existing roof causes to the openness of the Green Belt could remain for longer than necessary.
15. The eighteen months allowed through the condition was a generous period of time to carry out the required works and I therefore consider that the condition was reasonable, and necessary in order for the Council to have additional control over the works.
16. Overall, and having considered all other matters raised, I consider the condition is therefore reasonable and necessary in order to protect the openness of the Green Belt.

Other Matters

17. The appellant has referred to examples of other developments in an attempt to justify the appeal proposal. I do not have the full details in respect of such examples so I cannot be sure of the circumstances of these. In any case, I have determined the appeal on its own merits, based on the evidence before me.
18. In regard to Woodside, located on the other end of the terrace, and the properties between, while these does not have a hipped roofs, they are located in less prominent positions when compared to the appeal proposal and are not readily visible from public vantage points.
19. I note that the appeal site has been subject to lengthy enforcement action, including an enforcement notice which could mean that the building may be difficult to sell or mortgage, however, this is not a planning matter that is before me to consider as part of this appeal.

Conclusion

20. For the reasons given above the appeal should be dismissed.

D Wilson

INSPECTOR