



Appeal Decision

Site visit made on 29 October 2024

by David Murray BA (Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 November 2024

Appeal Ref: APP/D3640/W/24/3345130

Greenacre, Broadway Road, WINDLESHAM, GU20 6DA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Graham Bullen against the decision of Surrey Heath Borough Council.
 - The application Ref 24/0137/FFU was approved on 4 April 2024 and planning permission was granted subject to conditions.
 - The development permitted is the erection of a detached car port.
 - The condition in dispute is No.5 which removes some 'permitted development rights' as shown in full in Schedule A attached.
 - The reason given for the condition is "To enable the Local Planning Authority to retain control over the enlargement, improvement, or other alterations to the property and / or within its curtilage, in the interest of protecting the Green Belt and its openness in accordance with Chapter 13 of the National Planning Policy Framework."
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a detached car port at Greenacre, Broadway Road, Windlesham GU20 6DA without compliance with the condition No.5 previously imposed on the planning permission Ref 24/0137/FFU dated 4 April 2024.

Application for costs

2. An application for costs is made by the appellant against the Council. This is the subject of a separate decision.

Main Issue

3. The main issue is whether condition No.5 reasonably meets the tests of conditions and is necessary and appropriate to protect the Green Belt.

Reasons

Background

4. The appeal site contains a detached two storey house which is set back from Broadway Road in well landscaped gardens. The site lies within Windlesham which is included in the Metropolitan Green Belt. At the site visit I noted that the car port permitted under the above reference number had been erected and completed.

5. Condition No. 5 takes away 'permitted development' (PD)¹ rights for the enlargement of the dwellinghouse by the erection of extensions and additions (Class A); the erection of buildings within the curtilage – such as outbuildings (Class E); and the construction of additional storeys (Class AA). The appellant agrees that Class E rights should be removed in this instance and says this part of the condition may be retained.
6. I note that a Certificate of Lawfulness was granted under ref. 23/1177CES for a Class E Car port which was behind the building line of the host dwelling. From this the appellant submits that the host dwelling benefitted from all the relevant PD rights.
7. The Parties refer to paragraph 56 of the National Planning Policy Framework (the Framework) which sets out that planning conditions should be kept to a minimum and only used when six specified tests are met. Further, guidance in paragraph 54 of the Framework indicates that conditions should not be used to restrict national permitted development rights unless there is clear justification to do so.

Whether tests are met and condition appropriate to protect the Green Belt.

8. The Officer Report indicates that the original dwelling has already been extended by the addition of a single storey side extension and that the PD carport should also be taken into account as an 'adjunct' to the dwelling given the caselaw established in *Sevenoaks DC v SSE and Dawes [1997]*. The Council took the view that in combination with these, the proposed car port would have resulted in a 'disproportionate addition' to the property and so result in 'inappropriate development' in the Green Belt as set out in paragraph 154(c) of the Framework. The Council suggests that if all Class A rights were maximised on the site it could result in an enlarged dwelling with a floorspace some 132% greater than the original dwelling.
9. However, it is clear that it has not been the government's intention to generally remove PD rights from properties situated in a Green Belt. Green Belts are not listed as a sensitive area or landscape as defined in Articles 2(3) and 2(4) of the GPDO. Therefore, while a PD addition or an adjunct outbuilding to a property may add to the extent where it may be inconsistent with the policy aim of the Framework to protect Green Belts from 'disproportionate additions', the application of the Statutory Instrument of the GPDO takes precedent as a separate approval. As recognised by the inspector in the appeal decision² relating to the adjacent property 'Longfield', paragraphs 147-149 (now 152-157) of the Framework are only applicable to development that requires a specific grant of planning permission.
10. The Council does not suggest in the reasons for imposing the condition that it is necessary for any other purpose and so I do not need to consider the more general effect on the character and appearance of the area or the living conditions of neighbours.
11. I conclude that the imposition of condition no. 5 is not reasonably *necessary* to protect the Green Belt, nor is it *relevant* to the development to be permitted. Therefore it fails the tests sets out in the Framework and there are not clear

¹ As set out in the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (GPDO).

² APP/D3640/W/21/3286743

and exceptional grounds to impose it. I acknowledge that the appellant accepts that the condition could be revised and retained to control Class E development but this would still be inappropriate for the reasons given above.

Conclusion

12. I conclude that the appeal should succeed. I will vary the planning permission by deleting condition No.5.

David Murray

INSPECTOR

Schedule A

Condition no. 5

Notwithstanding the provisions of Class A, E and AA of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (or any Order revoking and re-enacting that Order) no further extensions or outbuildings (including the outbuilding agreed under 23/1177/CES) shall be erected or undertaken on the site.

Any development under the Classes stated above undertaken or implemented between the date of this decision and the commencement of the development hereby approved shall be demolished and all material debris resulting permanently removed from the land within one month of the development hereby approved coming into first use.

Reason for the condition

To enable the Local Planning Authority to retain control over the enlargement, improvement, or other alterations to the property and / or within its curtilage, in the interest of protecting the Green Belt and its openness in accordance with Chapter 13 of the National Planning Policy Framework.