



Appeal Decision

Site Visit made on 3 September 2024

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 December 2024

Appeal Ref: APP/C3620/W/23/3334416

The Walled Garden, Downs Lane, Leatherhead KT22 8JW

- 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 R Hall against the decision of Mole Valley District Council.
 - The application reference is MO/2023/0447/CC.
 - The application sought planning permission for erection of a single storey replacement dwelling, without complying with conditions attached to planning permission Ref MO/2022/1647/PLA, dated 23 December 2022.
 - The conditions in dispute are Nos 6 and 7.
 - Condition No 6 states that: 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 further extensions within Schedule 2, Part 1, Classes A, B, or C to the dwelling shall be erected.
 - The reason given for the condition is: *To restrict the enlargement of dwellings in this rural area and to ensure the design quality of the dwelling (the most significant of a number of 'very special circumstances' which cumulatively outweigh the Green Belt inappropriateness) is not adversely impacted, in accordance with Mole Valley Core Strategy Policy CS14 and Mole Valley Local Plan Policies ENV22, ENV23 and RUD8 and National Planning Policy Framework.*
 - Condition No 7 states that: 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 building or enclosure, swimming or other pool, within Schedule 2, Part 1 Class E, shall be carried out on the land the subject of this planning permission.
 - The reason given for the condition is: *To protect the character and amenities of this rural area and also ensure the 'very special circumstances' which have been identified (including in respect of design quality) to outweigh the Green Belt inappropriateness are not compromised, in accordance with Mole Valley Core Strategy Policy CS14 and Mole Valley Local Plan Policies ENV22, ENV23 and RUD8 and National Planning Policy Framework.*
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Decision

1. The appeal is allowed and planning permission is granted for erection of a single storey replacement dwelling at The Walled Garden, Downs Lane, Leatherhead KT22 8JW in accordance with the application Ref MO/2023/0447/CC, without compliance with conditions Nos 1 and 6 previously imposed on planning permission Ref MO/2022/1647/PLA dated 23 December 2022 and subject to the conditions set out in the attached schedule.

Application for Costs

2. An application for an award of costs has been made by Mr R Hall against Mole Valley District Council. This is the subject of a separate decision.

Preliminary Matters

3. The application was originally determined under the Mole Valley Local Plan (2000) and Mole Valley Core Strategy (2009). On 15 October 2024, the Council adopted the Local Plan (2020-2039) (the LP). I have been provided with the new policies considered relevant to the appeal and afforded the parties an opportunity to comment on this change to the development plan.
4. On 30 July 2024, the Government published a consultation on "Proposed reforms to the National Planning Policy Framework and other changes to the planning system" and the "National Planning Policy Framework: draft text for consultation", alongside a Written Ministerial Statement (WMS) entitled "Building the homes we need". I have had regard to these as material considerations, albeit noting the Framework text is in draft and subject to change, which limits the weight to be afforded to it at this stage.

Background and Main Issue

5. The appeal site lies within the Green Belt. Planning permission was granted in December 2022¹ for a replacement dwelling on the site. This was to replace a dwelling which itself was a replacement of an earlier dwelling granted under a 2009 permission.
6. The approved development involves replacement of an existing dwelling and a number of outbuildings on the land. Officers recommended refusal of that application on the basis that the proposed dwelling was materially larger than the dwelling it would replace and so amounted to inappropriate development in the Green Belt. Officers considered that very special circumstances (VSCs) did not exist to justify inappropriate development in the Green Belt.
7. However, the Council's planning committee voted to approve the application on the basis of VSCs existing to justify inappropriate development in the Green Belt. The basis for VSCs, as set out in the available minutes of the meeting, were the design quality of the building and ecological enhancements.
8. The disputed conditions remove permitted development (PD) rights to construct extensions to the building under Classes A, B and C of Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO), and outbuildings under Class E of the same schedule. The appellant seeks the removal of these conditions.
9. 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) adds that 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.²
10. The main issue, therefore, is whether the disputed conditions are reasonable and necessary, having particular regard to the site's location in the Green Belt and the design quality of the building.

¹ Council Ref MO/2022/1647/PLA

² Paragraph: 017 Reference ID: 21a-017-20190723

Reasons

11. Schedule 2, Part 1 of the GPDO sets out the permitted development rights for development within the curtilage of a dwellinghouse. The GPDO does not place any further restriction on extending dwellings or erecting outbuildings within the Green Belt. Therefore, the starting point is that PD rights should remain in place, even in the Green Belt, unless clear justification is advanced which is precisely defined and specific to the site circumstances.
12. The assessment of officers under the original application was that the volume of buildings to be demolished was 618m³ and the proposed volume of the dwelling was 964m³, an increase of some 346m³ or just under 56%. The brief minutes of the committee meeting record that that the committee concurred with officers that the replacement dwelling was materially larger than the one it would replace. The committee went on to debate whether there were VSCs to justify inappropriate development in the Green Belt, and found that there were. The conditions to be attached to the permission are listed in the minutes.
13. The appellant argues that there was no discussion of conditions by members of the committee at the meeting and thus that there was not clear justification given for their imposition. The appellant further argues that the Council's reasons for now retaining the conditions differ from those expressed on the decision notice.
14. The Council sets out that the conditions removing PD rights were imposed because the proposal involved a significant increase in the size of buildings on site and thus amounted to inappropriate development in the Green Belt. The Council argues that further development under PD, whether extensions or outbuildings, would add to the overall quantum of development on site. The Council's concerns are that this would further reduce the openness of the site and extensions to the building would risk undermining the design quality of the building which formed a significant aspect of the case for VSCs.
15. I have had regard to the available evidence of events leading to the original permission. The minutes do not specify a discussion on conditions, though the Council indicates one took place. What is set out is that the committee voted to approve the application "*subject to the below conditions and informatives as agreed by officers in consultation with the Chairman.*" This indicates that the committee was content for the details of the conditions to be agreed outside of the meeting.
16. The particulars of the committee's actions aside, as allowing the appeal would result in a new planning permission standing alongside the original, it is necessary for me to be satisfied that the proposal, which is still for a replacement dwellinghouse in the Green Belt, is acceptable in overall planning terms without the disputed conditions. In doing so, I have had regard to the original reasons for the conditions alongside the other evidence advanced.
17. The reasons for Conditions Nos 6 and 7 do not refer explicitly to Green Belt openness, but they make clear that the restriction is to retain the design quality of the building and character/amenity of the area. Both reasons also refer to the Green Belt balance (i.e. VSCs which cumulatively clearly outweigh the Green Belt inappropriateness) and cite development plan policies related to

design.³ In this respect, I consider that the Council's reasons for the conditions implicitly refer to the effect of a change in design quality (through PD development) on the overall Green Belt balance, a balance which also inherently includes the effect on openness of the Green Belt.

18. I accept that PD rights are not withdrawn in principle for dwellings located in the Green Belt, and that they should not be withdrawn solely due to the site being within the Green Belt. However, in this case, the removal of the disputed conditions would potentially enable large extensions to the dwelling and the addition of outbuildings around the site which, given the size of the plot, could amount to significant additional volume and spread of development. Moreover, given the recent planning history of the site where permission was sought for a pool house, I consider such an outcome is likely.
19. Although the applicant argues that the demolition of existing structures on site was not part of the VSCs, it is clear from the evidence before me that demolition formed part of the case made in support of the application. The appellant's initial position was that demolition was largely equivalent to the amount of proposed build form, such that the proposal would not be materially larger and thus would form an exception to inappropriate development. However, once the volume of the cottages on the southern boundary was excluded from the calculations, the resulting increase in development volume of just under 56% was determined to be materially larger. Demolition is not explicitly referred to in the minutes available to me, but the committee was aware of the overall level of demolition proposed, as implied by comments that the proposal 'would clean up the existing site.'
20. Notably, Condition No 5 of the original decision requires the existing outbuildings on the site to be demolished. The reason for the condition makes it clear that demolition of the existing buildings was part of the overall consideration of VSCs, both in terms of decluttering the site and ensuring the design quality of the proposal. The reasoning goes on to state that demolition is required to ensure that the VSCs are not undermined either by the retention of existing buildings or the construction of further buildings using PD rights, and reference is made to the removal of those rights under the disputed Condition No 7. From this I glean that the Council was concerned about the implications of retained or reconstructed outbuildings on the openness of the Green Belt and the overall design quality of the development.
21. Given this context, the removal of the disputed conditions, namely those relating to Classes A and E would enable enlargement of the dwelling and construction of sizable outbuildings without planning permission. This would have an adverse effect on Green Belt openness both in spatial and visual terms. The construction of further Class A extensions or Class E outbuildings under PD would also undermine the original proposal for a larger, single building that consolidated development and removed scattered outbuildings around the site. Moreover, there would be no means of controlling the design quality or sustainability credentials of additional buildings that were determinative factors in the VSCs existing under the original proposal.
22. The appellant argues that it is unreasonable to remove PD rights if the harm to Green Belt has already been overcome by the demonstrated VSCs. However, on my reading of the evidence, a factor in the design quality of the building

³ Those policies have been replaced by a similar design related policy – EN4 of the LP.

contributing to VSCs was that it involved clearance of the site of existing outbuildings and the resulting consolidated built form and improved spatial relationship between the dwelling and its site would be retained thereafter. As such, the removal of PD rights is necessary to ensure that this acceptable balance of high quality built form and retained openness would not be undermined by the reconstruction of extensions and/or outbuildings under PD.

23. My findings above relate only to the restrictions under Part 1, Classes A and E. Given the particular flat-roofed design of the dwelling, there is limited scope for substantial extension or alteration of the roof under the provisions of Part 1, Classes B and C, as development under these classes respectively cannot exceed the height of the highest part of the existing or original roof. Although there is a slight step in the roof level, any additional volume would have very limited impact on the overall form or massing of the dwelling. As such, the removal of these PD rights is not necessary to preserve the openness of the Green Belt or the design quality of the dwelling.

Other Considerations

24. Reference is made to the proposal not having an adverse effect on the character and appearance of the area. I acknowledge that the site is contained by walls on all sides, with public views at the time of my visit limited to the main entrance. However, the concern expressed above is that the design quality of the dwelling, a principal part of the VSCs originally identified, would be diminished were PD extensions and outbuildings permitted, which would have an adverse effect on the character and appearance of the area. Even if this effect is localised, it would be a factor weighing against the proposal that does not exist with the disputed conditions in place.
25. It is argued that PD rights were not removed under the 2009 permission. However, that dwelling is now demolished, and it is no longer possible to exercise the PD rights associated with it. I otherwise have little evidence pertaining to this decision to assess whether the circumstances of the case were comparable to the present appeal. However, my assessment above necessarily draws on considerations specific to the site and present context. Therefore, I am not persuaded that there is an obvious inconsistency of approach by the Council in respect of the two cases.
26. It is also argued that no development plan policy sets out the circumstances where PD rights should be removed. There is no requirement in the Framework for such policies, rather that the removal of PD rights is justified. In this case, that has been done by reference to the specific circumstances of the case and referred to policies relating to design and the Green Belt.
27. The appellant argues that the dwelling could otherwise be enlarged under PD via Class AA, which permits additional storeys on dwellinghouses. However, this right does not apply to dwellinghouses constructed after 28 October 2018⁴. Therefore, this does not represent a fall-back position for the appellant and does not weigh in favour of the proposal.
28. Removal of the disputed conditions would enable additional living space to be developed on the site, but this would be a modest, private benefit for the

⁴ Part 1, Class AA, Paragraph AA.1.(c)

appellant. Similarly, any economic benefits deriving from construction under PD would be limited in scale.

Conclusion

29. For the reasons set out, in the absence of the disputed conditions so far as they relate to development under Classes A and E, the proposal would facilitate inappropriate development in the Green Belt with no planning control. It would also adversely alter the original Green Belt balance by increasing the harm to openness and conversely reducing the design quality and sustainability credentials of the development, thus failing to demonstrate the VSCs necessary to justify inappropriate development in the Green Belt.
30. This would be contrary to Policies EN1 of the LP which reflects the approach of the Framework to development in the Green Belt, and Policy EN4 which requires development of high-quality design that makes a positive contribution to local character. The restriction on PD under Classes A and E is necessary to ensure the development remains acceptable in planning terms.
31. Therefore, I shall allow the appeal and grant a new planning permission without the original Condition No 6, but with an amended version of it restricting development under Class A only, and retaining Condition No 7. In amending Condition No 6, I have omitted the word 'further' before extensions in the interests of precision, as it inaccurately implies some extensions have already been permitted or developed in respect of the dwelling.
32. I have no details as to the status of other non-disputed conditions from the previous permission, so I shall re-impose all those that appear still to be relevant. One exception is the original time limit condition which I have amended to reflect the original implementation period. In the event that some of the other conditions have in fact been discharged, that is a matter which can be addressed by the parties.

K. Savage

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be begun before the expiration of three years from 22 December 2022.
- 2) The development hereby permitted shall be carried out and completed in all respects strictly in accordance with the submitted documents and plan numbers 12D, 13 Rev E, 08 Rev D, 17 Rev A, 15 E, contained within the application and no variations shall take place.
- 3) Before any above ground works take place, details of the materials to be used in the construction of the external surfaces of the development hereby permitted shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 4) Any new or altered hard surfacing to be provided within the site shall be constructed from either porous materials or shall make adequate provision for the direction run-off from the hard surface to a permeable or porous area.
- 5) Within one month of the first occupation of the dwelling hereby permitted all existing buildings at that point in time on the site (save for any granted in this planning permission or any subsequent planning permission after the date of this permission), whether partially constructed or complete, shall be removed in their entirety and all resultant materials removed from the site.
- 6) 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 extensions to the dwelling within Schedule 2, Part 1, Class A shall be erected.
- 7) 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 building or enclosure, swimming or other pool, within Schedule 2, Part 1 Class E, shall be carried out on the land the subject of this planning permission.
- 8) Prior to the commencement of the development hereby permitted, surface water drainage details shall be submitted for the approval in writing by the Local Planning Authority. Such details shall include an assessment of the potential for the disposal of surface water by means of a sustainable drainage system in accordance with the principles set out in the National Planning Policy Framework. The assessment shall provide information of the design storm period and intensity (typically a 1 in 100 year storm of 30 minutes duration with an allowance for climate change), the method employed to delay and control the surface water discharged from the site and the means to prevent pollution of the receiving groundwater and/or surface water. Where applicable, the details shall include infiltration tests, calculations and controlled discharge rates. If the development is to discharge water into the ground in any form, then a full BRE Digest 365 infiltration test (or falling head test for deep bore soakaways) will have to be

submitted to the Local Planning Authority prior to commencement of any works on site. The suitability of infiltration methods should be verified (i.e. possible contaminated ground). The approved drainage scheme shall be implemented prior to the first occupation of the development.

- 9) Before any above ground works take place, details to reduce the carbon emissions of the predicted energy use of the development hereby permitted by at least 10% through the on-site installation and implementation of decentralised and renewable or low-carbon energy sources shall be submitted and approved by the Local Planning Authority and be implemented prior to the first occupation of the development.
 - 10) The development hereby approved shall not be occupied unless and until at least 1 of the proposed parking spaces is provided with a fast charge socket (current minimum requirements - 7kw Mode 3 with Type 2 connector - 230v AC 32 Amp single phase dedicated supply) in accordance with a scheme to be submitted and approved in writing by the Local Planning Authority and thereafter retained and maintained to the satisfaction of the Local Planning Authority.
 - 11) No development shall take place until details of the existing ground levels of the site, the proposed finished levels of the ground, the ground floor slab level of the new dwelling, and the finished levels of any access road and driveway showing their relationship with the existing levels of the immediately adjoining land and buildings, have been submitted to and approved, in writing, by the Local Planning Authority. The development shall be carried out in accordance with the approved levels.
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