



Appeal Decision

Site visit made on 5 November 2024

by U P Han BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 December 2024

Appeal Ref: APP/C3430/W/24/3345522

Springhill Farm, 70 Springhill Lane, Lower Penn, Staffordshire WV4 4TJ

- 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 Ranbir Lally against the decision of South Staffordshire District Council.
 - The application Ref is 24/00208/VAR.
 - The application sought planning permission for proposed 1 no 5 bedroom replacement dwelling without complying with a condition attached to planning permission Ref 21/00869/FUL, dated 16 March 2022.
 - The condition in dispute is No 12 which state[s] that: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (as amended), or any other subsequent equivalent order, no development within the following classes of development shall be carried out to the dwelling, the subject of this approval, without the prior approval of the Local Planning Authority:
 - a. Schedule 2, Part 1, Class A - enlargement, improvement or other alteration
 - b. Schedule 2, Part 1, Class B - addition or alteration to the roof
 - c. Schedule 2, Part 1, Class C - any other alteration to the roof
 - d. Schedule 2 Class AA - enlargement of a dwellinghouse by construction of additional storeys
 - e. Class AC - new dwellinghouses on terrace buildings in use as dwellinghouses
 - f. Class AD - new dwellinghouses on detached buildings in use as dwellinghouses.
 - The reason given for the condition is: The site is within the Green Belt within which, in accordance with the planning policies in the adopted Core Strategy, there is a presumption against inappropriate development.
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Decision

1. The appeal is allowed and planning permission is granted for proposed 1 no 5 bedroom replacement dwelling at Springhill Farm, 70 Springhill Lane, Lower Penn, Staffordshire WV4 4TJ in accordance with the application Ref 24/00208/VAR, without compliance with condition 12 imposed on planning permission Ref 21/00869/FUL dated 16 March 2022 but subject to the conditions attached in the schedule.

Preliminary Matters

2. Contrary to the appellant's appeal statement, condition 12 does not remove permitted development for garden buildings, enclosures, pool, oil or gas storage container under Part 1 Class E, or gate, wall, fence or other means of enclosure under Part 2 Class A. I have, therefore, determined the appeal on the basis of the classes of development listed in condition 12.

Background and Main Issues

3. Planning permission¹ has been granted for the replacement of a 4 bed detached farmhouse with a 5 bed detached dwelling (the approved scheme) which includes a condition removing certain permitted development rights.
4. The appellant seeks removal of that condition on the grounds that it is not reasonable or necessary. Furthermore, the appellant contends that permitted development is not inappropriate development, and exceptional circumstances have not been demonstrated to justify the condition.
5. The Decision Notice and Officer Report indicate that removing the condition would likely have a harmful impact on the openness of the Green Belt. Given this background, the effect of the proposal on the Green Belt is a relevant matter for consideration. Comments were sought from the main parties in terms of the effect on the Green Belt.
6. Taking into account the background, the main issues are, the effect of the development, without the condition in place, on:
 - the Green Belt, including, (i) whether or not the proposal would be inappropriate development in the Green Belt and if relevant (ii) the effect upon the openness of the Green Belt, and
 - if the development is inappropriate, whether any harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

Green Belt

7. The appeal site is in the Green Belt where Policy GB1 of the Core Strategy (the CS) seeks to restrict inappropriate development in accordance with National Planning Policy Framework (the Framework). The Framework sets out that inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances. The Framework indicates that the construction of new buildings in the Green Belt should be regarded as inappropriate, subject to a number of exceptions. One of these exceptions includes the replacement of a building, provided the new building is in the same use and are not materially larger than the one it replaces.
8. The approved scheme was found by the Council to result in a replacement building that would be materially larger than the one it would replace, equating to a 68% increase. The Council, therefore, found the approved scheme to constitute inappropriate development in the Green Belt, for which very special circumstances were required in order for the development to be approved. I can see no reason to disagree.
9. There were a number of other considerations which were found to clearly outweigh the harm to the Green Belt. These included a permitted development fallback confirmed through a lawful development certificate for an 8 metre single storey extension², an earlier extant permission for extensions to the

¹ 21/00869/FUL.

² 20/00570/LHSHLD.

property³ and the imposition of a condition to restrict permitted development rights. The imposition of condition 12, in these particular circumstances, formed part of the very special circumstances that justified the inappropriate development.

10. Class A Part 1 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (the GPDO) limits the size and height of extensions or alterations that are permitted. Nevertheless, permitted development rights can in some circumstances permit sizeable extensions. Extensive enlargement of the new dwelling would be possible under permitted development as the new dwelling would be classed as an 'original' building. The approved scheme would already result in a dwelling that would be 68% larger than original dwelling it replaces. Permitted development under Class A Part 1 would lead to the building being materially even larger than the one it replaces, thus failing to accord with paragraph 154(d) of the Framework. Consequently, it would undermine the acceptability of the approved scheme by virtue of further enlargement to its footprint and bulk.
11. The existing building sits immediately adjacent to the highway within the southeast corner of the appeal site. The site contains a large amount of open land to the north and west. The ground level of the site falls gently in a south to north direction, with an open aspect of the countryside to the north. The new dwelling would be set back about 10 metres from the highway in a northerly direction, encroaching into the open and previously undeveloped areas of the site. Due to the topography of the site and the siting of the new dwelling further into the open land, permitted development under the Class A Part 1 would also have a greater impact on the openness of the Green Belt than the approved scheme and lead to unacceptable reduction in visual and spatial openness.
12. Class B Part 1 of the GPDO permits additions or alterations to a roof to enlarge a house. While the specific limitations and conditions set out in the GPDO mean that no part of the house once enlarged is permitted to exceed the height of the highest part of the roof of the existing house, it would, nevertheless, result in enlargement of the dwelling. Such permitted enlargement would result in the building being materially even larger than the one it replaces, thus failing to accord with paragraph 154(d) of the Framework.
13. Class C Part 1 of the GPDO provides for other alterations to the roof of a house, such as rooflights. Such alterations would not involve any enlargement of the dwelling due to the small-scale nature. As such permitted development would not increase the overall height or mass of the building, it would be unlikely to impact on the openness of the Green Belt.
14. Class AA of the GPDO permits the enlargement of a dwellinghouse consisting of the construction of up to two additional storeys, where the existing dwellinghouse consists of two or more storeys. However, development is not permitted if the building was constructed before 1 July 1948 or after 5 March 2018. Given that the approved scheme was granted permission on 16 March 2022, Class AA of the GPDO would not apply.

³ 20/00937/FUL.

15. Class AC of the GPDO permits the development consisting of works for the construction of new dwellinghouses immediately above the topmost storey on a terrace building in use as a single dwellinghouse where the development comprises up to two additional storeys. However, development is not permitted if the building was constructed before 1 July 1948 or after 5 March 2018. Given that the approved scheme was granted permission on 16 March 2022, Class AC of the GPDO would not apply.
16. Class AD of the GPDO permits the development consisting of works for the construction of new dwellinghouses immediately above the topmost storey on a detached building in use as a dwellinghouse where the development comprises up to two additional storeys, in the case of an existing dwellinghouse consisting of two or more storeys. However, development is not permitted if the building was constructed before 1 July 1948 or after 5 March 2018. Given that the approved scheme was granted permission on 16 March 2022, Class AD of the GPDO would not apply.
17. The appellant refers to a version of the Planning Practice Guidance (PPG) where it states that "conditions restricting the future use of permitted development rights will rarely pass the test of necessity and should only be used in exceptional circumstances." The Framework states that planning conditions should not be used to restrict national permitted development rights unless there is a clear justification to do so. The latest version of the PPG states that "conditions restricting the future use of permitted development rights may not pass the test of reasonableness or necessity. The scope of such conditions needs to be precisely defined, by reference to the relevant provisions in the Town and Country Planning (General Permitted Development) (England) Order 2015, so that it is clear exactly which rights have been limited or withdrawn." Condition 12 is precisely defined by reference to the relevant provisions in the GPDO and confined to a small area.
18. Notwithstanding the fact that permitted development rights have not been withdrawn in total or in part in the Green Belt in the GPDO, I have found that there is clear justification for removing permitted development rights under Class A Part 1 and Class B Part 1 of the GPDO due to the potential for enlargement of the approved scheme which would result in it being materially even larger than the one it replaces, thus failing to accord with paragraph 154(d) of the Framework. In addition, due to the topography of the site and the siting of the new building, development under Class A Part 1 and Class B Part 1 of the GPDO, would cause significant harm to the visual and spatial openness of the Green Belt. Hence, the proposal, in this respect, would conflict with Policy GB1 of the CS which seeks to protect the Green Belt from inappropriate development. It would also not comply with paragraph 154(d) of the Framework.
19. On the other hand, I have found that development under Class C Part 1 of the GPDO would not lead to any enlargement of the approved scheme and would be unlikely to impact on the openness of the Green Belt. Accordingly, in this respect, the proposal would comply with Policy GB1 of the CS and paragraph 154(d) of the Framework.
20. Classes AA, AC and AD of the GPDO would not apply as development is not permitted if the building was constructed before 1 July 1948 or after 5 March 2018. The approved scheme was only granted permission on 16 March 2022.

As such, the removal of these specific permitted development rights is unnecessary and would not meet the tests in the PPG and the Framework which make clear that planning conditions should be kept to a minimum, and only be used where they are necessary.

Other Considerations and Very Special Circumstances

21. Development under Class A Part 1 and Class B Part 1 of the GPDO would lead to further enlargement of the approved scheme which would already be materially larger than the one it replaces. It would also unacceptably reduce the visual and spatial openness of the Green Belt. In accordance with the Framework, substantial weight is given to the harm to the Green Belt and development should not be approved except in very special circumstances. Very special circumstances will not exist unless the harm to the Green Belt and any other harm are clearly outweighed by other considerations.
22. The appellant has drawn my attention to an appeal decision⁴ relating to a site in Warrington, in the Green Belt. However, that site was described by the Inspector as being well-contained and physically restricted so is not directly comparable to the appeal site.
23. The other considerations before me do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify development under Class A Part 1 Class B of the GPDO do not exist.

Conditions

24. Where planning permission is granted under section 73, it is not automatically subject to the conditions which were attached to the original permission. The PPG therefore advises that the conditions which continue to have effect should be restated in the interests of clarity. I have considered the conditions suggested by the Council and shall impose those conditions from the original planning permission that remain relevant, alongside replacing condition 12. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.

Conclusion

25. For the reasons given, condition 12 is not reasonable or necessary to prevent harm to the openness of the Green Belt by way of development under Class C Part 1, Class AA, Class AC and Class AD of the GPDO. Nevertheless, condition 12 is necessary and reasonable to ensure that development by way of Class A Part 1 and Class B Part 1 does not harm the openness of the Green Belt.
26. In conclusion, for the reasons given above, and taking into account all other matters raised, the appeal should succeed. I will grant a new planning permission substituting condition 12 with a replacement and restating those undisputed conditions that are still subsisting and capable of taking effect.

U P Han

INSPECTOR

⁴ APP/M0655/W/20/3260646.

Schedule of Conditions

- 1) The development to which this permission relates must be begun not later than the expiration of 3 years beginning with the date on which permission 21/00869/FUL was issued, 16/3/22.
- 2) The development authorised by this permission shall be carried out in complete accordance with the approved plans and specification, as listed on this decision notice, except insofar as may be otherwise required by other conditions to which this permission is subject.

Proposed Site Plan Ref 20 50 07

Proposed Plans and Elevations Ref 20 50 08B

Location Plan Ref 20 50 01

Existing Plans and Elevations Ref 20 50 02

Topographical Survey Ref 20 50 06

- 3) Prior to the commencement of development, details of all external materials to be used in the construction of the dwelling hereby approved, shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be undertaken in accordance with the approved details.
- 4) Prior to the commencement of the development, details of biodiversity enhancement measures, including 2 integrated bat tubes or bat boxes to be installed within the new dwelling, shall be submitted to and approved in writing by the Local Planning Authority. The approved measures shall be incorporated into the scheme and be fully constructed prior to the first occupation of the dwelling and thereafter be retained for the life of the development.
- 5) Prior to the commencement of development details of a site-specific hedgerow protection method statement and protection plan shall be submitted to and approved in writing by the Local Planning Authority. The details so approved, shall be implemented prior to the commencement of any development and retained thereafter throughout all construction activities.
- 6) Before development commences details of the finished floor levels of the buildings shall be submitted to the Local Planning Authority for approval. The development shall be carried out to the approved levels.
- 7) The approved means of access, turning and parking areas identified on plan reference 20 50 05 D shall be provided in a bound material, prior to the first occupation of the dwelling hereby approved. The parking and turning area shall thereafter be maintained for the life of the development.
- 8) Prior to the first occupation of the dwelling hereby approved, a sign-off report by a licensed bat worker shall be submitted to and approved in writing by the Local Planning Authority. The report must confirm that the demolition work proceeded according to the method statement set out on pages 12-13 of the Preliminary Roost Assessment (Greenscape Environmental, May 2021).

- 9) Before the development commences details of all boundary treatment around and within the site shall be submitted to the Local Planning Authority for approval. The approved boundary treatment shall be built/erected concurrently with the development and shall thereafter be retained in the approved form and position throughout the life of the development.
- 10) All site works, including demolition must comply with the measures outlined in paragraph 6.2.2 Mitigation and Enhancements of the Preliminary Roost Assessment (Update) (Greenscape, January 2022). Failure to do so may result in an offence being committed.
- 11) Before the installation of any external lighting scheme, details of such shall be submitted to and approved in writing by the Local Planning Authority. The lighting scheme shall be designed in accordance with Bat Conservation Trust / Institution of Lighting Professionals Guidance Note 08/18 Bats and artificial lighting in the UK and shall include a lighting contour plan that demonstrates there will be minimal impact on receptor habitats such as hedges and bat boxes / bat access points.
- 12) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (as amended), or any other subsequent equivalent order, no development within the following classes of development shall be carried out to the dwellings hereby approved without the prior approval of the Local Planning Authority:
 - a. Schedule 2, Part 1, Class A - enlargement, improvement or other alteration
 - b. Schedule 2, Part 1, Class B - addition or alteration to the roof