



Appeal Decision

Site visit made on 18 November 2024

by H Marriott MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 December 2024

Appeal Ref: APP/X4725/W/24/3348121

Pavilion, Old Cricket Ground, Chevet Hall, Chevet Lane, Sandal, Wakefield WF2 6PT

- 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 M Ridgway against the decision of Wakefield Metropolitan District Council.
 - The application Ref is 20/00489/S7301.
 - The application sought planning permission for detailed application for 1 no. dwelling (to replace implemented permission 12/00753/FUL) without complying with a condition attached to planning permission Ref 20/00489/FUL, dated 2 August 2023.
 - The condition in dispute is No 11 which states that: Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking or re-enacting that Order) no development included within classes A to H of Part 1 and classes A and B of Part 2 of Schedule 2 to that Order shall be carried out at the approved dwelling without the prior written consent of the Local Planning Authority.
 - The reason given for the condition is: In the interests of amenity and openness of the Green Belt given the substantial increase in volume over and above the existing building which this consent has permitted and the very special circumstances required to justify the development and in accordance with Policy D9 of the Council's Local Development Framework and the NPPF.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since issuing its decision notice in relation to 20/00489/FUL, the Wakefield District Local Plan 2036 Planning Growth and Protecting Places (2024) (WDLP) has been adopted. The reason given for the condition in dispute refers to Policy D9 of the Council's Local Development Framework which has now been replaced by policies in the WDLP. Nevertheless, the Council's reason for imposing this condition is clear and the main issue has been defined on this basis.
3. A revised National Planning Policy Framework (the Framework) was published on 12 December 2024, which I have had regard to as a material consideration in my decision making. In this instance, the main parties have been provided with an opportunity to provide comments on this matter which have been taken into consideration.

Background and Main Issue

4. Planning permission was originally granted for the conversion of the existing pavilion to one dwelling in May 1996 (Council Ref 95/99/32936/B) (original 1996 permission). In August 2012, planning permission was granted for the conversion of the existing pavilion to one dwelling including extensions and alterations (Council Ref 12/00753/FUL) (2012 permission). I saw on my site visit that the conversion works have not yet been fully undertaken and the former pavilion building is currently unused and in a poor state of repair. There is no dispute between the main parties that the 2012 conversion permission was part implemented by the laying of foundations to an approved garage.
5. Planning permission was subsequently granted for a revised scheme for one dwelling (Council Ref 20/00489/FUL) (2023 permission) consisting of a building identical to the building approved in the 2012 permission, but with a different siting and orientation.
6. The appellant seeks permission to implement the 2023 permission without complying with Condition 11 which seeks to remove permitted development rights (PD rights) under Part 1 and Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015, as amended (the Order) (GPDO).
7. Part 1 of Schedule 2 of the Order sets out that development under Classes A, B, C, D, E, F, G and H which allow for the enlargement, improvement or other alteration of the dwelling, the enlargement or alterations to the roof, porches, outbuildings, hard surfaces, chimneys/flues, microwave antennas, can be undertaken without the need to apply for planning permission, subject to specified limitations and conditions. Part 2 of Schedule 2 of the Order also sets out under Classes A and B that planning permission for gates, fences, walls or other means of enclosure and means of access can be undertaken without the need to apply for planning permission, also subject to specified limitations and conditions being met.
8. The appellant contends that this condition is not reasonable or necessary and therefore seeks to remove it.
9. The main issue is whether Condition 11 is reasonable and necessary in the interests of protecting the openness of the Green Belt.

Reasons

10. The appeal site is located in the Green Belt and comprises part of a large field which contains a former pavilion building. The wider field contains a belt of mature trees around its boundaries. The pavilion is located partially within this tree belt, screening it from view on initial entry into the site, off the existing narrow access road which leads off Chevet Lane. The wider area is characterised by large arable fields with mature verdant boundaries broken up by small pockets of development including various rural farmsteads and isolated dwellings. The appeal site blends in with the verdant and rural character and appearance of the locality.
11. Even though a condition removing PD rights was not attached to the 'original 1996 permission', the evidence before me indicates that this scheme was primarily for the conversion of the existing building as opposed to the

construction of a new building, and the circumstances of this permission were therefore entirely different to 'the 2023 permission'.

12. A condition removing a range of PD rights was attached to the '2012 permission'. In the absence of copies of the approved plans for the 'original 1996 permission', it is not clear whether or not these two schemes differed. Even so, the Council's report is clear that they considered that the proposal would not result in disproportionate additions to the original building, having regard to the Framework¹ subject to a condition removing PD rights. Whilst the reason for this condition relates to the broad term 'amenity', the accompanying Officer report is clear and indicates that this condition was necessary as the footprint and floorspace of the extended building would normally be considered a disproportionate addition. Whether or not this condition should have been imposed is not a matter for this appeal.
13. Rather this appeal relates to the '2023 permission' which was regarded as inappropriate development in the Green Belt, as it did not fall within an exception to the construction of new buildings listed within the Framework². Specifically, it was not regarded as the replacement of a building in the same use and would have been materially larger than the pavilion building it would have replaced, having regard to the status of the 2012 permission. That decision was not made on the basis of whether the proposal met one of the exceptions. From the evidence before me, it would still not meet the exceptions under paragraph 154 of the Framework including exception g) which relates to limited infilling or complete redevelopment of previously developed land, particularly as the glossary to the Framework states that it should not be assumed that the whole of the curtilage of a permanent structure should be developed.
14. The circumstances of the 2023 permission were entirely different to the previous schemes and the Council in granting planning permission considered that the Green Belt harm was outweighed by other considerations and therefore, very special circumstances existed to justify the dwelling. These very special circumstances included regard given to the extant '2012 permission' and the revised siting of the proposed dwelling further away from mature trees protected by a Tree Preservation Order reducing risk of harm to them. A condition removing a range of PD rights was attached to the 2023 permission and the Council has set out that this was done taking into account the larger size of the new dwelling and the exceptional circumstances of the case.
15. The location of the appeal site within the Green Belt is not in itself adequate justification to remove permitted development rights. The Framework and Planning Practice Guidance (PPG) clearly indicate that conditions restricting the future use of permitted development rights or changes of use may not pass the test of reasonableness or necessity and that such conditions should not be used unless there is clear justification for doing so. This is because the GPDO does not restrict PD rights in the Green Belt. Consequently, permitted development rights for dwellinghouses within the Green Belt are no different to those in other locations and some loss of openness is therefore anticipated, limited to the scale permitted by the GPDO.

¹ National Planning Policy Framework (March 2012)

² National Planning Policy Framework (July 2021)

16. As such, it is reasonable to assume that permitted development rights should not be removed, unless there is clear justification for such an approach to be taken based on the circumstances and individual merits of the particular case.
17. The essential characteristics of Green Belts are their openness and their permanence, and the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Openness is epitomised by the lack of buildings or development and can have a spatial aspect as well as a visual aspect.
18. Given the large size of the appeal site, there is a realistic prospect that the removal of Condition 11 could result in additional built development on the site, over and above that approved in the 2023 permission, should development utilising PD rights be constructed in the future. The altered siting further away from the appeal site boundary compared to the 2012 permission may also result in greater opportunity for additional development to be constructed under PD rights in the future, since its revised siting is surrounded by undeveloped land on all sides and is less likely to be constrained by the root protections zones of trees.
19. Whilst views from outside of the appeal site or from land outside of the appellant's control are limited, an increased spatial and visual harmful effect on the openness of the Green Belt could result from the utilisation of the full extent of enlargement and/or the erection of outbuildings that could be constructed under PD rights. Cumulatively, such buildings combined with the addition of chimneys/flues, microwave antennas and means of enclosure could result in increased visual harm to openness. Whilst the creation of new hard surfaces / access would potentially be less harmful from a spatial perspective, visually they could accommodate vehicles and domestic paraphernalia which could add to visual effects on the openness of the Green Belt. The potential for such effects to result in substantial harm to the openness of the Green Belt would be exacerbated by the proposed dwelling's location within an open clearing on the appeal site.
20. The Council have suggested that without the condition the development would have been refused. As already set out, the larger scale of the replacement building in a different siting was inappropriate by definition and was only justified on the basis of very special circumstances. It is therefore my view that the condition still serves a necessary and reasonable purpose. There is therefore a clear justification for the retention of this condition.
21. Condition 11 does not necessarily prevent future development but allows the Council to control it through the planning application process. This is not therefore an unreasonable approach given my findings above. Having regard to the above and the evidence provided, the specific circumstances of the case, including the appeal site context and characteristics, the condition is reasonable and necessary in the interests of protecting the openness of the Green Belt.
22. I conclude that condition 11 is reasonable and necessary in the interests of protecting the openness of the Green Belt. The removal of the condition would conflict with Policy LP62 of the WDLPP which requires proposals for redeveloping existing uses within the Green Belt to only be permitted if very special circumstances can be demonstrated or the proposal meets the criteria set out in national planning policy. Furthermore, there is clear justification for the

imposition of Condition 11 which is considered to be necessary, relevant to planning and to the development, enforceable, precise and reasonable in all other respects in accordance with the Framework.

23. Since the reason for the condition is primarily due to the appeal site's location in the Green Belt, I find no particular conflict with Policy LP56 of the WDLP which relates to the design of new development. Since the appeal proposal does not relate specifically to a proposed extension or alteration to an existing dwelling, I also find no particular conflict with Policy LP57 of the WDLP or the guidance contained within the Wakefield Residential Design Guide Supplementary Planning Document (2018). However, this does not alter the harm identified above.

Other Matters

24. A unilateral undertaking has been submitted to ensure that the appeal proposal and the 2012 conversion permission cannot both be implemented. However, this does not justify the removal of the condition for the reasons specified.
25. I have had regard to the examples of appeal decisions and Council decisions provided by the appellant in respect of development within the Green Belt, where the removal of PD rights for dwellings have been reinstated on appeal.
26. The appeal decision at Sunrising³ and the Council's decisions at The Briars⁴, Two Acres⁵ and 180A Hollin Lane⁶ relate to householder developments and not new build dwellings. The Council's decision on Land at Smithy Lane⁷, related to the demolition of stables and the erection of a dwelling on a site where the Council considered there would be limited scope to extend or build outbuildings. The appeal decisions at The Paddocks⁸ Orchard Cottage⁹, Sutton Orchard Cottage¹⁰, Brambleberry Farmhouse¹¹, Honey Lane Farm¹² and Elmtrees¹³ also relate to different types of developments, including the redevelopment of an equestrian site, a horticultural worker's bungalow, a replacement bungalow, a new house to replace a mobile home, a single storey rear extension and a replacement dwelling.
27. Whilst I do not know the full planning circumstances behind these decisions, they differ from the appeal which relates to the replacement of a former pavilion building in a different siting and site-specific circumstances that the Council considered would result in inappropriate development in the Green Belt. As a consequence, these examples are not directly comparable to the proposed development. Even if similar conditions have been deemed not to be reasonable or necessary elsewhere, this does not alter my observations in respect of the site-specific circumstances of the appeal proposal.

³ Appeal ref: APP/X4725/D/18/3201609

⁴ Council ref: 13/01131/S7301

⁵ Council ref: 19/02856/S7301

⁶ Council ref: 17/03153/S7301

⁷ Council ref: 20/01536/S7301

⁸ Appeal ref: APP/N4720/W/22/3297628 and 23/01429/FU

⁹ APP/H1515/W/16/3165798

¹⁰ APP/TO355/A/01/1071185

¹¹ APP/Q5300/A/14/2217664

¹² APP/TO355/W/16/3156065

¹³ APP/M2270/W/15/3137428

28. The appellant has expressed concern regarding the time it took for the Council to determine the application alongside the lack of engagement and whether their application was dealt with in a fair and open manner. They further suggest that the Council has a history of blanket removal of permitted development rights on Green Belt related planning decisions and evidence in the form of case law to support their reasoning. These are not matters that lie within the scope of the appeal and furthermore, my decision in any event is based on the individual merits of the proposal, the most relevant local and national planning policy and my own planning judgement.

Conclusion

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

H Marriott

INSPECTOR