

Removal of Condition 9 on Planning Permission 07/00604 at Greenfields, Dingle Lane, Rushton Spencer.

GROUND'S OF APPEAL

I. The site

The site lies on the north side of Dingle Lane at Rushton Spencer. Greenfields is a replacement dwelling which was constructed following the grant of planning permission under application 07/00604. The development was completed in 2009, (albeit with some variations to the scale of the house and its fenestration).

2. Proposed Development of the Site

Condition 9 of permission 07/00604 withdraws the rights granted by Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (GPD0). This application seeks to re-instate those rights by obtaining a new permission without the inclusion of condition 9.

3. Reason for Refusal

The single reason for refusal identifies the following concerns:

- i. That the removal of the condition would result in potentially disproportionate additions to the property.
- ii. That such additions would be inappropriate development in the Green Belt.
- iii. That such additions would affect the character of the property and the landscape.
- iv. That such additions may lead to unsympathetic designs of extensions.
- v. That the proposed extension is contrary to the aims of the NPPF and Local Plan Policies R2, DC1, DC2, DC3, SD1 and SS6c.

Each element of the refusal reason will be dealt with in turn below.

4. Response to the Reasons for Refusal

i) Potentially disproportionate additions

The Officer's Delegated Report (ODR) asserts that "permitted development rights could more than double the size of the house". This is factually incorrect. Two storey extensions at the rear would be limited to 3 metres in depth. Only single storey extensions would be permitted at the side and no extensions would be permitted at the front. Even if all these permitted development rights were utilised (and this is a most unlikely scenario which forms no part of the appellant's plans) the existing house could not be doubled in size.

Notwithstanding the fact that no substantial extensions are proposed in this application, the government has determined through legislation, the scale of extensions which should be permitted without the need for the permission of the LPA. If the government had intended that permitted development rights should be more severely restricted in Green Belt locations, additional restrictions would have been incorporated into the GDPO, just as they have been in Conservation Areas, National Parks and some other designated areas.

ii Inappropriate development in the Green Belt

Paragraph 89 of the NPPF establishes that the extension or alteration of a building is not inappropriate development in the Green Belt "provided that it does not result in disproportionate additions over and above the size of the original building." As the government has made legislation which gives householders, even in the Green Belt, the right to extend their dwellings within the limitations set out in the GDPO, it must follow that extensions falling within the GDPO limits cannot be regarded as inappropriate development in the Green Belt.

Paragraph 89 of the NPPF sets out 5 reasons which are served by the designation of Green Belts. None of those reasons can be applied to this development.

It should also be noted that this application contains no proposals for development in the Green Belt.

iii Harm to the character of the property and the landscape.

The character of the site is that of a relatively modern, substantial residential property in a well established garden with a substantial outbuilding. There is no basis for the assertion that the character of the property would be adversely affected by possible future extensions.

As to the wider landscape, in views from the countryside surrounding the site, extensions permitted by the GDPO, to the limited extent that they would be visible from the public domain, would be seen against the backdrop of the existing dwelling. The impact on the character of the landscape will thus be negligible.

Again, it is surely clear that if the government had intended that permitted development rights should be more severely restricted in Green Belt locations, additional controls would have been incorporated into the GDPO.

vi May lead to unsympathetic designs of extensions

This is pure invention on the part of the LPA. There is no basis for suggesting that the restoration of rights granted to householders by the government would result in unsympathetic designs. The controls embodied in the GDPO are clearly designed to provide a sufficient level of control. On the basis of this concern, the LPA would have to impose a similar condition on every permission for a new dwellinghouse.

vii That the proposed extension is contrary to the NPPF and Local plan policies

This reasoning is misconceived; the application does not propose an extension. Thus this element of the refusal reason can be afforded no weight.

Neither the NPPF nor any policies of the Local Plan advocate, or seek to justify, the removal of householder's permitted development rights in any circumstances. The policies do not contain anything which suggests that restrictions on permitted development rights should be imposed in Green Belt locations. It has not been the practice of the LPA to take such action in other Green Belt locations.

There is nothing in any of the stated policies which explains why it is necessary to selectively restrict permitted development rights in some cases and not in others. The guidance and policies provide no justification in support of the LPA's decision.

Applying this interpretation of national and local planning policy a consistent manner would mean imposing a condition restricting permitted development rights on every permission for a new dwellinghouse.

5. Closing comments

In dealing specifically with the issue of whether it is appropriate for planning authorities to use conditions to restrict permitted development rights, the government's recently published Planning Practice Guidance (PPG) says

“Conditions restricting the future use of permitted development rights or changes of use will rarely pass the test of necessity and should only be used in exceptional circumstances. 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) Order 1995 (as amended), so that it is clear exactly which rights have been limited or withdrawn. Area wide or 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.”

On the basis of that advice, the subject condition cannot possibly be justified and should not have been imposed.

Furthermore, paragraph 206 of the National Planning Policy Framework (NPPF) sets 6 tests which must be met if conditions are to be imposed on a planning permission. The first of those tests is that a condition must be necessary.

In this regard PPG states that the key test is “will it be appropriate to refuse planning permission without the requirements imposed by the condition?” Clearly the answer to this question must be “no” and thus the condition fails this test. There is no reason to suppose that refusal of the application to replace the original dwelling on this site (which retained full permitted development rights) would have been justified but for the inclusion of the condition.

Further advice in PPG says “if a condition is wider in scope than is necessary to achieve the desired objective it will fail the test of necessity.” Insofar as any “objective” is offered by the reason for the condition, it is to retain control over such development in order to safeguard the visual amenities of the area and ensure sufficient open space is retained within the curtilage. This reason offers no justification for the condition as no such restrictions affected the dwelling which was to be replaced and permitted development rights already provide controls to ensure that adequate open space is retained within the curtilage.

Government legislation, has determined the scope to be given for householders to alter and extend dwellinghouses without the need for permission. The fact that this proposal is

within a Green Belt offers no justification for the condition. Unless the NPA can show that this is one of those “rare” cases where it can identify the “exceptional” circumstances which justify subjecting this development to a more stringent range of controls than would normally apply in a Green Belt, the imposition of this condition cannot be shown to be necessary.

I draw attention to the attached appeal decision APP/M9496/A/14/2219276 which deals with a similar situation in an even more sensitive location. In allowing that appeal and removing a similar condition, the Inspector set out compelling reasons which apply equally to this case.

Finally, it should be noted That the ODR provides no evidence of any exceptional circumstances to demonstrate that the condition is necessary.

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