The Planning Inspectorate

Appeal Decision

Site visit made on 18 June 2024

by N Bromley BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd July 2024

Appeal Ref: APP/B3438/W/24/3341281
Pleasant View, Hulme Lane, Werrington, Staffordshire ST3 5BH

- 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 J McGowan against the decision of Staffordshire Moorlands District Council.
- The application Ref is SMD/2023/0385.
- The application sought planning permission for Replacement dwelling without complying with a condition attached to planning permission Ref SMD/2014/0100, dated 30 June 2014.
- The condition in dispute is No 3 which states that: "Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that order with or without modification), no development as specified in Part 1 Class(es) <A><B><C><D><E><F><G> and <H> and/or Part 2 Class(es) <A><B> and <C>, other than those expressly authorised by this permission, shall be carried out without express planning permission first being obtained from the Local Planning Authority."
- The reason given for the condition is: "To enable the Local Planning Authority to control the development and so safeguard the character and visual amenities of the area, and to ensure that adequate private open space is retained within the curtilage of the building."

Decision

1. The appeal is allowed and planning permission is granted for a replacement dwelling at Pleasant View, Hulme Lane, Werrington, Staffordshire ST3 5BH in accordance with the terms of the application, Ref SMD/2023/0385, without compliance with condition No 3 previously imposed on planning permission Ref SMD/2014/0100, dated 30 June 2014, subject to the conditions set out in the attached schedule to this decision.

Background

2. Planning permission was originally granted in 2014[1] (the original permission) for a replacement dwelling on the appeal site, which has subsequently been constructed.

3. Condition 3 of the original permission removed a wide range of permitted development rights (PD rights) under Part 1 and Part 2 of Schedule 2 of The Town and Country Planning (General Permitted Development) Order 1995, now superseded by the Town and Country Planning (General Permitted Development) Order 2015, as amended (the Order).

[1] SMD/2014/0100

4. Part 1 of Schedule 2 of the Order sets out that development under Classes A, B, C, D, E, F, G and H, allow for extensions, additions, alterations, alterations to the roof, porches, outbuildings, hard surfaces, a chimney, microwave antenna, without needing to seek planning permission from the local planning authority, subject to specified limitations and conditions. Likewise, Part 2 of Schedule 2 of the Order also sets out under Classes A, B and C that planning permission for gates, fences, walls or other means of enclosure, a means of access, and exterior painting, is granted, also subject to specified limitations and conditions being met.

5. The reason for the original condition was to enable the Local Planning Authority to control the development and so safeguard the character and visual amenities of the area, and to ensure that adequate private open space is retained within the curtilage of the building.

6. The appeal site is located within the Green Belt and the Council's reason for refusal now also sets out that the condition is necessary and reasonable having regard to local and national policy concerning development in the Green Belt.

7. The appellant is seeking the removal of the condition on the grounds that it is not reasonable or necessary.

Main issue

8. Taking into account the above background, the main issue is whether the condition is reasonable or necessary in the interests of preserving the openness of the Green Belt, protecting the character and appearance of the area, and the amount of amenity space for occupiers of the dwelling.

Reasons

9. The appeal site lies within the Green Belt and comprises an attractive detached dwelling set within a modest plot of land, surrounded by open countryside. The property occupies a prominent position on Hulme Lane in the rural area. The site is visible from the road and from within the wider area.

10. The dwelling is built up close to the rear boundary. It has a parking area to the front, that also extends to one side, a lawned garden with outbuilding on the other side and a narrow patio area at the rear.

11. The condition removes a wide range of PD rights for the property and the Council has set out that this was done in exceptional circumstances of the case. This was on the basis that the proposed dwelling was materially larger than the building it replaced, and the design benefits of the scheme outweighed the harm to the Green Belt. Thus, a condition removing PD rights was considered justified by the Council to control future development and any subsequent harm to the openness of the Green Belt and on the design and appearance of the original dwelling.

12. As set out in paragraph 142 of the Framework, the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.

13. The Framework also sets out the tests for planning conditions and, at paragraph 54 states that planning conditions should not be used to restrict

national permitted development rights unless there is clear justification to do so. The Planning Practice Guidance (the PPG) states 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 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.

14. The Order does not restrict PD rights in the Green Belt. Consequently, permitted development rights for dwelling houses within the Green Belt are no different to those in other locations. In view of the above, the location of the appeal site within the Green Belt is not in itself adequate justification to remove PD rights. Therefore, in accordance with the Framework and PPG, clear justification for removing PD rights, based on the circumstances and individual merits of the particular case, is necessary.

15. From my observations during my site visit and the evidence provided, the appeal property has not had any subsequent extensions, but a modest shed has been erected in the side garden. The Council suggest that the shed, fencing and the provision of additional hardstanding's have been carried out without consent. However, there is no suggestion that they consider that these are unacceptable or that they are seeking the removal of these.

16. Furthermore, the size constraints of the site would limit the number of extensions possible to the original building. In particular, extensions and outbuildings to the rear would be limited due to the proximity of the rear elevation to the rear boundary. The Order also restricts extensions and alterations to the front of the property.

17. However, I am mindful that PD rights would allow side extensions and outbuildings of a reasonable size, particularly within the side garden. Nevertheless, development carried out under the specified classes of the Order is subject to certain limitations and conditions, which would also control the size and appearance of development carried out.

18. These factors would all combine to significantly limit any material effects upon the spatial and visual openness of the Green Belt, should those works be carried out.

19. The dwelling has an attractive appearance, sympathetic to its rural setting. Extensions and alterations to the original dwelling would alter its appearance. The side garden is also visible from the road and the wider surrounding area. As such, there would be some effect of future development on the character and appearance of the building and surrounding landscape. However, my attention has not been drawn to any site specific landscape designations. I am also mindful that the Order provides some control over the size and appearance of development. In addition, development would be viewed within the context of the site as a residential dwelling and the magnitude of harm to the character and appearance of the original building and the area would be minimised.

20. For similar reasons, while I acknowledge that development to the side of the dwelling would reduce the level of private garden enjoyed by the occupiers, the specified limitations, and conditions of the GPDO would provide some control of the level of garden land.

21. Based on the evidence before me and taking all of the above matters into consideration, I do not consider that there are circumstances particular to this site to justify a stricter approach to PD rights for extensions or alterations to the property that exist on other properties within the Green Belt or other rural locations under Part 1, Classes A, B, C, D, E, F, G or H or Part 2, Classes A, B and C.

22. The fact that neighbouring dwellings have also had their PD rights removed neither weighs for or against whether the removal of the condition is justified in this instance.

23. For the above reasons, I conclude that it has not been demonstrated that there is clear justification for the removal of PD rights and condition 3 of the original permission is not reasonable or necessary, in the interests of preserving the openness of the Green Belt, protecting the character and appearance of the area, and the amount of amenity space for occupiers of the dwelling. Therefore, it would not conflict with the Framework or Policy SS10 of the Staffordshire Moorlands Local Plan 2020.

Conditions

24. The guidance in the PPG makes clear that decision notices for the grant of planning permission under section 73 of the Town and Country Planning Act 1990 should also restate the conditions imposed on earlier permissions that continue to have effect. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.

25. In this case, the development has been constructed and is occupied as a dwellinghouse. As such, the standard commencement condition is no longer necessary, but I have repeated the approved plans condition for the avoidance of doubt and in the interests of certainty.

26. Conditions that ensure that the vehicle access and parking area is safe and free from obstruction are necessary in the interests of highway safety. As such, I have reimposed these conditions but amended the wording to reflect the current status of the land.

Conclusion

27. For the above reasons, and having regard to all other matters raised, I conclude that the appeal is allowed, and a new planning permission is granted, excluding the previous restriction on permitted development rights.

N Bromley

INSPECTOR

Schedule of Conditions

1) The vehicular access for the site shall be ungated.

2) Nothing shall be placed or allowed to remain on the site frontage which is within 2.0m of the carriageway edge and which exceeds 1000mm in height above the adjacent carriageway.

3) The parking and turning facility within the site curtilage shall be maintained free from obstruction and shall be used only for those purposes.

4) Any soakaways/septic tank shall be located a minimum of 5.0m and 10.0m respectively rear of the highway boundary.

5) The development hereby permitted shall be carried out in accordance with the following approved plans, numbered: 001; 002; 003 and 004.