



Appeal Decision

Site visit made 29 January 2013

by M A Champion BSc CEng FICE FISTructE FCIHT FHKIE

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 8 February 2013

Appeal Ref: APP/V1505/A/12/2185169

Damer, Meadow Way, Wickford, SS12 9HA.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Alan Boddy against Basildon Borough Council.
 - The application, ref: 12/00502/FULL, is dated 23 May 2012.
 - The application sought planning permission for the retention of a garden shed without complying with a condition attached to planning permission ref: BAS1441/92, dated 25 January 1993.
 - The condition in dispute is No 2 which states that: Notwithstanding the provisions of Article 3 of the Town and Country Planning General Development Order 1988, or any Order revoking and re-enacting that Order, no development within Part One, Classes A, B, C and E of Schedule 2 to the Order shall be carried out within the site of this application except with the express permission granted under Part III of the Town and Country Planning Act 1990 or any re-enactment thereof.
 - The reason given for the condition is: To ensure proper control is maintained over the construction of extensions and ancillary buildings within this Green Belt area.
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Decision

1. The appeal is allowed and planning permission is granted for a garden shed at Damer, Meadow Way, Wickford, SS12 9HA, in accordance with the application ref: 12/00502/FULL, dated 23 May 2012, without compliance with Condition number 2 attached to planning permission ref: BAS1441/92, dated 25 January 1993, but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect.

Main issue

2. I consider that the main issue in this appeal is whether Condition 2 is reasonable and necessary for controlling the construction of extensions and ancillary buildings within this Green Belt area.

Reasons

3. The appeal site lies in a plotland area within the Green Belt where Policy BAS GB4 of the Basildon District Local Plan Saved Policies 2007 (LP) deals with
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extensions to dwellings in the Green Belt. Also relevant to this appeal is Circular 11/95 *The Use of Conditions in Planning Permission*.

4. This adopted policy is generally consistent with the aims of the National Planning Policy Framework (NPPF), policies from which have also been considered. The NPPF reinforces the local plan as the main consideration in planning decisions. It requires development not to undermine the quality of life, emphasising the importance of sustainable development, high quality design, attractive places and a good standard of amenity for residents. It expects developments to contribute to the overall quality of the area.
5. The site comprises a detached dwelling and garden in an area of similar properties. A large detached outbuilding was granted retrospective planning permission in 1993, subject to the disputed condition. This outbuilding was subsequently extended without planning permission, but would appear now not to be unlawful by reason of the passage of time. Having regard to its proximity to the main dwelling it is reasonable to consider it as an extension.
6. The proposed development seeks the removal of Condition 2.
7. Circular 11/95 regards conditions removing permitted development rights as exceptional, and which need to be justified by clear evidence of adverse effects on amenity or environment. Although the disputed condition predates the issue of the Circular, no evidence has been presented to suggest that the condition was not validly imposed.
8. While it is reasonable to seek to control the spread of development in the Green Belt, there is no general restriction on permitted development rights within such areas, as there is in certain other specified areas such as National Parks. If such a restriction were considered necessary over a defined area it could be introduced by means of an Article 4 Direction. Conditions apply to individual development sites and must be justified as required by the Circular.
9. The appeal site is in an area of similar properties, and no evidence has been presented to justify the imposition of this condition on the appeal property alone. I have not been made aware of any circumstances that apply to this site that would not apply to surrounding properties within the same area.
10. I acknowledge that LP policy imposes limitations on extensions in the Green Belt. The Council states, and the appellant does not dispute, that the development on site is currently at the limit of such permitted extensions. Any further extensions would thus be controlled by LP policy, and removal of permitted development rights in respect of Classes A and B would not be necessary. No evidence has been submitted to justify the removal of permitted development rights under Classes C and E.
11. Furthermore the site is in a plotlands area. Although the former relevant LP policy has not been saved, the Council is considering the future of the plotlands in its emerging Core Strategy. Until this is adopted one cannot be certain of the new policy, but it is possible that the plotlands could form the basis for additional housing as the NPPF (paragraph 89) supports limited infilling in the Green Belt.

Conclusion

12. I conclude, therefore, that in the absence of any convincing evidence to the contrary Condition 2 is neither reasonable nor necessary for controlling the construction of extensions and ancillary buildings within this Green Belt area. The appeal succeeds.

Conditions

13. In the light of Circular 11/95 and the NPPF paragraph 206 I do not consider that additional conditions are necessary.

M A Champion

INSPECTOR