



Appeal Decision

Site visit made on 11 February 2009

by **P A Goodman** BA(Hons) DMS MRTPI

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

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Decision date:
27 February 2009

Appeal Ref: APP/A1910/A/08/2083993

High Ridges, Shothanger Way, Bovingdon, Herts HP3 0DW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr and Mrs W J Hughes against the decision of Dacorum Borough Council.
- The application Ref 4/00772/08/FUL, dated 7 April 2008, was refused by notice dated 9 June 2008.
- The development proposed is "revised proposals for erection of new dwelling following town planning approval no (*missing*) to form conservatory and retention of permitted development rights for structures in the grounds of the property".

Decision

1. The appeal is allowed and planning permission is granted as set out in Annex A.

Procedural Matters

2. The Council's description of the development in its formal decision is: "New Dwelling (Revised scheme)". However, the application and appeal forms indicate that the application consisted of two elements:

(A) the refusal of planning permission for the revision of planning permission Ref 4/00695/07/FUL dated 28 June 2007 for the demolition of two detached houses and construction of one detached dwelling by the additional erection of a conservatory;

(B) refusal of an application against the imposition of condition 3 of the 2007 planning permission. The disputed condition is as follows:

*Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking or re-enacting that Order) (with or without modification) no development falling within the following Classes shall be carried out without the prior approval of the local planning authority: Schedule 2 Part 1 Classes A, B, C, D, E, F, G and H
Part 2 Classes A, B and C.*

The Reason stated for imposing the condition was:

To enable the local planning authority to retain control over the development in the interests of safeguarding the residential and visual amenity of the locality.

3. The Council has not commented on the application's second element but I am not aware of it having agreed with the applicants any change in the description of the development. The appellants have been transparent about their

intention in this regard and accordingly, it seems to me that they can reasonably expect that element to be considered herein. Hence I treat the application as one for the demolition of two detached houses and erection of a detached dwelling and the construction of a conservatory as shown in the submitted drawings, and as an application under Section 73 of the 1990 Act to develop land without complying with a condition subject to which a previous planning permission was granted.

Main issues

4. The main issues are: firstly, whether the conservatory is appropriate development within the Green Belt and, related to this, its impact on the openness and character of the green belt in this locality; and secondly whether condition 3 of planning permission 4/00695/07/FUL is reasonable and necessary in the interests of safeguarding the residential and visual amenity of the locality.

Reasons

5. National policy guidance in PPG2 makes clear that the general policies controlling development in the countryside apply with equal force in Green Belts but that there is, in addition, a general presumption against inappropriate development within them... (which) ...should not be approved, except in very special circumstances. Inappropriate development is, by definition, harmful to the Green Belt. It is for the applicant to show why permission should be granted. Also paragraph 3.4 clarifies that "The construction of new buildings inside a Green Belt is inappropriate unless it is for.....limited extension, alteration or replacement of existing dwellings (subject to paragraph 3.6). The latter states that: "provided it does not result in disproportionate additions over and above the size of the **original** building, the extensions or alteration of dwellings is not inappropriate in Green Belts. The replacement of existing dwellings need not be inappropriate, providing the new dwelling is not materially larger than the dwelling it replaces. Development plans should make clear the approach local planning authorities will take, including the circumstances (if any) under which replacement dwellings are acceptable."

First Issue - The conservatory's impact on the Green Belt

6. The first step is to establish whether the proposal is appropriate development in Green Belt terms. The application concerns a rurally located large detached house already granted planning permission by the Council as a replacement for two houses, subject to Condition 8 requiring demolition of those dwellings. The construction of the replacement house was nearing completion at the time of my site inspection. This had required prior demolition of the former 'Ashdown' but the two storey dwelling at 'High Ridges' remained to be demolished.
7. Adopted local plan policy 4 reiterates the national approach to new development in the Green Belt, as set out in PPG2, while policies 22 and 23 outline the intended approach to proposals for extensions and replacement dwellings. The latter is permissive of replacement dwellings in the Green Belt subject to the satisfaction of various criteria. In particular it states that rebuilding a dwelling in a different position on the site may be possible provided that its impact on the openness and character and appearance of the Green Belt is no worse than the dwelling it replaces, and if possible much less.

It states specifically: *“Any new dwelling should not be larger than: the dwelling which it replaces; or (my emphasis) the original dwelling on the site plus an allowance for any extension that would have been permitted under Policy 22. Permitted development rights will normally be withdrawn by planning condition to ensure there is control over future extensions.”*

8. I note that the Council's decision in June 2007 to grant planning permission for the replacement of the two on-site houses with one larger one was based on a balancing of the proposal's reduced impact on the openness of the Green Belt and the policy harm caused to the aims of local plan policy 15 arising from the loss of a dwelling. The latter aims to retain houses except in prescribed circumstances which exceptions are not applicable here. Consequently, I consider that the Council negotiated in good faith to reduce the size of the scheme eventually granted planning permission on the basis that this represented an effective balancing of competing planning aims.
9. However, local plan policy 23 clearly allows for the possibility of dwellings in the Green Belt not larger than the dwelling they replace. This is in line with national guidance in PPG2. In the absence within the development plan policy of any requirement to demonstrate very special circumstances, in my view it follows logically that in such cases, if a proposal complies with the terms of the policy, then it would be appropriate development in green belt terms.
10. The submitted drawings show that 'High Ridges' is about 26m in width and 'Ashdown' was about 19m wide, giving an aggregate original width, as seen in the main public views of the site from Shothanger Way, of about 45m. The proposed revised proposal, including the 7m wide conservatory and the garage on the far side, would lead to a combined width of 34m, some 11m or 24% less than the pre-existing combined house widths. In terms of footprint the appellant's submitted drawings and calculations indicate that with the conservatory included the total footprint of the new house would be about 25% smaller than the aggregate footprint of 'High Ridges' and 'Ashdown'. Even allowing for some differences in measurement and interpretation by the Council I consider that with the conservatory in place, the new house can reasonably be considered to be smaller than the aggregate size of the two houses it would replace and hence would be appropriate development. As such, provided that the demolition of both of the pre-existing houses, as described in the application and shown on the submitted drawings, takes place (and this could be secured by the enforcement of Condition 8 of the 2007 permission) then the Green Belt would be more open after the revised development than before.
11. In my view the Council's approach to the question of the original size(s) of the houses as not including any subsequent extensions, carries little weight in the circumstances of this particular case. It is clear that historically planning permissions for extensions were granted, some by the Council and some on appeal. A judgment must have been reached on each occasion in which planning permission was required that the purposes of including the land hereabouts within the Green Belt were not materially harmed by those proposals. By contrast the current proposal would lead to a reduction in what was actually on the land prior to the present proposals and hence greater openness. In such circumstances I do not see that the inclusion of the conservatory in a modified scheme would materially prejudice the aims of

Green Belt policy to check the sprawl of large built-up areas, prevent urban coalescence and safeguard the countryside from encroachment.

12. In terms of its visual impact the house is some 90m from Shothanger Way and the conservatory would be set back from the front wall of the house by a further 4.5m. Although it could be glimpsed in nearer views from the public footpath running along the site's southern boundary, I agree with the Council's assessment that the conservatory would integrate visually with the already approved scheme and that it would not harm the character and appearance of the locality. Neither would there be any harm to the outlook and amenity of the nearest neighbouring dwelling at High Barn to the south west, in my view.
13. On balance, I conclude that the revised proposal would accord with the underlying aims of adopted development plan policies to safeguard the openness of the Green Belt policy in the long term, and that the overall planning balance lies in favour of granting permission for the revised scheme.

Second issue – Is Condition 3 reasonable or necessary?

14. Advice in Circular 11/95 'The use of conditions in planning permissions' at paragraph 86 states that it is possible, exceptionally, to impose conditions to restrict further development which would normally be permitted by a development order. However, paragraph 87 advises that development orders are designed to give or confirm a freedom from detailed control which will be acceptable in the great majority of cases. Save in exceptional circumstances conditions should not be imposed which restrict permitted development rights granted by development orders.
15. In principle the withdrawal of certain permitted development rights could serve a clear planning purpose within the Green Belt. For instance in the light of national policy in PPG2 discouraging disproportionately large extensions (see above) greater control over extensions to dwellings could be considered necessary and reasonable in order to help safeguard the openness of the Green Belt from the cumulative effect of unconsidered and overlarge extensions.
16. However, in my judgment withdrawal of Schedule 2, Part 1 Class E rights for qualifying buildings within the curtilage of a dwellinghouse by reference solely to a development plan policy and no other supporting evidence would not accord with the Secretary of State's policy approach. A 1999 appeal decision relating to High Ridges confirmed that residential permitted development rights are applied no differently to properties within the Green Belt than to those outside of it. No firm evidence has been put to indicate why the extended curtilage now requires a different approach. In these circumstances I conclude that the withdrawal of Class E rights is neither reasonable nor necessary. I therefore allow this part of the appeal by substituting the disputed condition with one excluding Class E development.
17. I have considered all other matters raised by the Council but find nothing to alter my conclusions that both elements of the appeal should be allowed

Philip A Goodman

Inspector

Annex A

Formal decision

The appeal is allowed and planning permission is granted for the demolition of two detached houses and construction of one detached dwelling and erection of a conservatory at High Ridges, Shothanger Way, Bovingdon, Herts HP3 0DW in accordance with the application No 4/00772/08/FUL, made on 7 April 2008 without complying with condition No 3 set out in planning permission No 4/00695/07/FUL granted on 28 June 2007 by the Dacorum Borough Council, but otherwise subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect, and subject to the following replacement condition:

3A Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking or re-enacting that Order) (with or without modification) no development falling within the following Classes shall be carried out:

Schedule 2 Part 1 Classes A, B, C, D, F, G and H
Part 2 Classes A, B and C.