



Appeal Decision

Site visit made on 8 May 2024

by R Gee BA (Hons) Dip TP PGCert UD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th May 2024

Appeal Ref: APP/K2230/W/23/3333358

Nutfield Farm, Priestwood Road, Meopham, Gravesend, Kent DA13 0DA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a grant of planning permission subject to conditions.
 - The appeal is made by Mr & Mrs Stephen Church against the decision of Gravesham Borough Council.
 - The application Ref 20230974 was approved on 14 November 2023 and planning permission was granted subject to conditions.
 - The development permitted is demolition of the existing detached 4-bedroom dwelling, together with associated outbuildings and erection of detached 3-bedroom bungalow.
 - The conditions in dispute are Nos 4 and 5 which state that:
Condition 4 - Prior to the first occupation of the dwelling hereby approved, a scheme detailing the proposed hard and soft landscaping associated with the development shall be submitted to and approved, in writing, by the Local Planning Authority. The details shall include:
 - (i) the type and species of planting to be carried out to include their quantity and size;
 - (ii) measures to promote biodiversity enhancement to include the planting of native and wildlife attracting species;
 - (iii) a timetable for implementation;
 - (iv) details of initial aftercare, long term maintenance and details for monitoring and remedial measures; and
 - (v) the materials for all areas of hardstanding (to not include loose gravel) and retaining walls.The approved landscaping scheme shall thereafter be implemented in accordance with the approved timetable and maintained in accordance with the approved details. Any trees or plants that die, are damaged, removed or become diseased within five years from the date of planting shall be replaced with a species of a similar size and species during the next available planting season.
Condition 5 - Notwithstanding the provisions of Article 3, Part 1, Classes A, AA, B, C, D and E of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) or any provision equivalent to those classes in any statutory instrument revoking and re-enacting that Order, with or without modification, no enlargement, improvement or other alteration (including construction of any additional storeys, dormers, rooflights or other roof alterations and any porch constructed or erected outside any external door) or outbuilding shall be carried out, other than expressly authorised by this permission.
 - The reasons given for the conditions are:
Condition 4 - To ensure an acceptable standard of development upon completion through provision and long term management of soft landscaping and to enhance local provisions for wildlife and biodiversity, in accordance with Policies CS12 and CS19 of the Gravesham Local Plan Core Strategy (September 2014); and
Condition 5 - To safeguard against the future extension of the dwelling that would be inappropriate on this site, in accordance with Policies CS02 and CS19 of the Gravesham Local Plan Core Strategy (2014).
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Decision

1. The appeal is allowed and the planning permission Ref 20230974 for demolition of the existing detached 4-bedroom dwelling, together with associated outbuildings and erection of detached 3-bedroom bungalow at Nutfield Farm, Priestwood Road, Gravesend, Kent DA13 0DA granted on 14 November 2023 by Gravesham Borough Council, is varied by deleting condition Nos 4 and 5 and substituting it with a revised Condition No 4, as set out in the schedule at the end of this decision.

Preliminary Matters

2. On 22 November 2023, all designated Areas of Outstanding Natural Beauty (AONBs) in England and Wales became 'National Landscapes' (NL). The legal designation and policy status of AONBs are unchanged.
3. Since the submission of the appeal a revised National Planning Policy Framework (the Framework) was published in December 2023. Those parts of the Framework most relevant to this appeal have not been amended. As a result, I have not sought further submissions on the revised Framework, and I am satisfied that no party's interests have been prejudiced by taking this approach.

Background and Main Issues

4. The Council has granted planning permission for a replacement dwelling. That permission included condition No 4 that requires the submission of details of hard and soft landscaping for approval and condition No 5 restricts the exercise of Class A, AA, B, C, D and E¹ Permitted Development (PD) Rights.
5. The justification given by the Council for these conditions is to ensure an acceptable standard of development upon completion, to enhance local wildlife and biodiversity and to safeguard against the future extension of the dwelling that would be inappropriate in accordance with Policies of the Gravesham Local Plan Core Strategy 2014 (Core Strategy). However, in their statement of case the Council cites a different reason for Condition No 4.
6. Taking the above into account, the main issues are:
 - i) whether Condition No 4 is reasonable and necessary having regard to highway safety; and
 - ii) whether condition No 5 is reasonable and necessary having regard to the impact on the Green Belt and landscape.

Reasons

Condition 4

7. The disputed element of the condition is in regard to clause v) which seeks to avoid the use of loose gravel for areas of hardstanding. The Council's statement indicates that the condition is necessary in the interests of highway

¹ Class A – enlargement, improvement or other alteration of a dwellinghouse, Class B – additions etc to the roof of a dwellinghouse, Class C – other alterations to the roof of a dwellinghouse, Class AA – enlargement of a dwellinghouse by construction of additional storeys, Class E – buildings etc incidental to the enjoyment of a dwellinghouse, Part 1, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO)

safety. This reason differs to that given on the decision notice. The Council's concern for the use of gravel for the surfacing of the driveway is due to the potential for it to be deposited on the highway and its resultant impact on highway safety.

8. Policy CS12 of the Gravesham Local Plan Core Strategy 2014 (Core Strategy) sets out criteria for replacement dwellings, which amongst others refers to the scale and mass of the existing and proposed dwelling and that the proposed means of access must be satisfactory. Policy CS19 of the Core Strategy refers to design principles for new development. Although not cited in the Council's reason for the condition Policies CS11 of the Core Strategy and Policies T1 and P3 of the Gravesham Local Plan First Review 1994 (Local Plan) relate to access and parking requirements.
9. A detailed hard landscaping proposal is shown on the application plans and existing soft landscaping is to remain. The appellant wishes to retain gravel surfacing to the driveway. I am satisfied that the gravel would be retained by granite sett edging together with tarmacadam surfacing on the apron at the site entrance. Accordingly, I have no highway safety concerns in this regard.
10. From the evidence before me, and as observed at my site visit, gravel drives are commonplace in the locality. Accordingly, such surface material would not be incongruous in the local landscape.
11. The submitted plans detail hard and soft landscaping. In their statement of case the Council has suggested a variation to the wording of Condition No 4 for compliance with drawing number 539/PL31. The appellant is agreeable to the amended condition. I am satisfied that the variation to the wording of Condition 4 would secure an appropriate scheme of hard and soft landscaping for reasons of highway safety.
12. Accordingly, I will replace the condition the subject to the appeal with one that refers to compliance with drawing number 539/PL31, which I consider to be reasonable and necessary. The variation would ensure compliance with the Policies of the Core Strategy and Local Plan insofar as that they seek, amongst other things, to provide an appropriate means of access.

Condition 5

13. The appeal site lies outside of a designated settlement within the Metropolitan Green Belt, the Harvel Wooded Downs Designated Landscape Character Area (HWDDLCA) and within the Kent Downs NL. The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) does not distinguish between land within or outside these designations.
14. Amongst others, Policy CS02 of the Core Strategy supports new development in the Green Belt, where it is compatible with national policies for protecting the Green Belt and policies in the local plan. Policy CS19 of the Core Strategy refers to design principles for new development.
15. The Framework seeks to ensure that extensions and alterations to dwellings do not result in disproportionate additions or inappropriate development in the Green Belt. The Framework confirms that new buildings are inappropriate in the Green Belt with a number of exceptions, including the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the 'original building'. Buildings etc.

incidental to the enjoyment of a dwellinghouse are not contained within the list of exceptions, although the courts have held that some buildings may be considered as extensions if they are 'normal domestic adjuncts.' Whether a particular building would be inappropriate development in the Green Belt would turn on the particular facts of the case.

16. Having regard to the Framework I give great weight to the requirement for development to conserve and enhance landscape and scenic beauty in the NL.
17. The GPDO limits the size of enlargements and buildings etc permitted within the curtilage of the dwellings. I acknowledge that Class A, AA, B, C and E PD rights are normally available to householders in areas designated as Green Belt, NL and landscape character areas.
18. The Framework states that planning conditions should not be used to restrict national PD rights unless there is a clear justification to do so. Planning Practice Guidance (PPG)² advises that conditions restricting the future exercise of PD rights, and blanket removal of freedoms to carry out small scale domestic alterations that would otherwise not require an application for planning permission, are unlikely to meet the tests of reasonableness and necessity.
19. From the evidence before me the approved scheme would consolidate and reduce built form within the appeal site, in comparison to the existing dwelling and outbuildings where PD Rights remain unfettered.
20. Since the submission of the appeal before me, planning permission has been allowed on appeal³ at the site for a similar form of development. In this circumstance, conditions were not imposed to exercise control over PD rights with my Inspector colleague stating there is no clear justification for removing such rights and accordingly to do so would be both unnecessary and unreasonable. Given the similarities to the appeal scheme before, and that there is a real prospect of the fallback development being implemented, this is a significant material planning consideration. Nevertheless, I have determined the appeal on its own merits.
21. I am mindful that condition No 5 would not prevent the appellants (or a future owner) from applying for planning permission for further enlargement, improvement or other alteration of the resulting house. Any larger development would be subject to assessment under planning policy through the submission of a planning application that would allow the Council to consider a proposal on its planning merits. Nevertheless, based on the evidence before me, and having regard to the Framework and the PPG, in this circumstance I am not persuaded that the removal of the specified PD rights is reasonable or necessary.
22. I therefore conclude that Condition No 5 is not reasonable or necessary having regard to the location of the appeal site in the Green Belt and landscape and the aims of the Framework in this regard.

Other Matters

23. Any concerns regarding due process during the processing of the planning application fall outside of the remit of this decision.

² Paragraph: 017 Reference ID: 21a-017-20190723

³ APP/K2230/W/23/3323850 DATED 22 January 2024

24. Notwithstanding my findings in respect of whether the disputed conditions are reasonable or necessary, I find that they are drafted in a precise manner and would be enforceable.

Conditions

25. The guidance in the PPG makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect.
26. Based on the information before me, work has not commenced on site. The PPG states that a grant of planning permission under section 73 of the Act should not extend the time period for implementation. Therefore, I shall vary the standard time condition in order to ensure the commencement of development is three years from the date the original permission was granted.
27. A condition specifying the plans that are approved and that the development shall be undertaken in accordance with them is required in the interests of certainty. To protect the character and appearance of the area, it is also necessary to impose a condition requiring details of the external surfaces of the development to be approved by the Council.

Conclusion

28. For the reasons given above, I conclude that the appeal should be allowed. The planning permission is varied by deleting condition No 4 and substituting it with a revised condition and Condition 5 should be removed.

R Gee

INSPECTOR

Schedule of Conditions

1. The development hereby approved shall be begun not later than 3 years from 14 November 2023.
2. The development hereby permitted shall be carried out in accordance with the following schedule of approved plans:
 - Application form
 - Design and Access Statement
 - Drawing no. 539/PL37 (comparison drawings)
 - Drawing no. 539/PL36 (overlay of existing and proposed dwelling plans and outbuildings)
 - Drawing no. 539/PL35 (proposed site section and cross section)
 - Drawing no. 539/PL34 (proposed roof plan)
 - Drawing no. 539/PL33 (proposed elevations)
 - Drawing no. 539/PL32 (proposed plan)
 - Drawing no. 539/05 (existing outbuildings)
 - Drawing no. 539/04 (existing elevations)
 - Drawing no. 539/03 (existing plan)
 - Drawing no. 539/PL31 (proposed site plan)
 - Drawing no. 539/02 (existing site plan)
 - Drawing no. 539/01 (site location plan)

3. All materials used externally shall match those listed on plan number 539/PL33.
4. The proposed soft and hard landscaping shown on drawing no. 539/PL31 shall be implemented during the first planting season following occupation of the building or completion of the development, whichever is the earlier. Any trees or plants which within 5 years of planting are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless the Local Planning Authority gives written consent to any variation.

*****End of Schedule*****