



Appeal Decision

Site visit made on 12 May 2021

by **H Miles BA(hons), MA, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 4 June 2021

Appeal Ref: **APP/H2265/W/20/3264915**

Southfields, St Vincents Lane, Addington, West Malling ME19 5BW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant 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 & Mrs M Cox against the decision of Tonbridge & Malling Borough Council.
 - The application Ref TM/20/02069/FL, dated 02 October 2020, was refused by notice dated 30 November 2020.
 - The application sought planning permission for basement to replacement dwelling approved under planning permission ref. TM/06/01606/FL without complying with a condition attached to planning permission Ref TM/06/02896/FL, dated 25 October 2006.
 - The condition in dispute is No 4 which states that: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order amending, revoking and re-enacting that Order) no development shall be carried out within Classes A ,B, C, D and E of Part 1 of Schedule 2 of that Order unless planning permission has been granted on an application relating thereto
 - The reason given for the condition is: To enable the Local Planning Authority to regulate and control any such further development in the interests of Green Belt policy.
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Decision

1. The appeal is allowed and planning permission is granted for basement to replacement dwelling approved under planning permission ref. TM/06/01606/FL at Southfields, St Vincents Lane, Addington, West Malling ME19 5BW in accordance with the application Ref TM/20/02069/FL dated 02 October 2020, without compliance with condition numbers 1, 2, 4, 6, 7 and 8 previously imposed on planning permission Ref TM/06/02896/FL dated 25 October 2006 and subject to the following conditions:
 - 1) The area shown on the submitted layout under application TM/06/02896/FL as vehicle parking space shall be kept available for such use at all times and no permanent development whether or not permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order amending, revoking or re-enacting that Order) shall be carried out on the land so shown or in such a position as to preclude vehicular access to this reserved parking space.
 - 2) The storage and screening of refuse shall be retained at all times.

Main Issue

2. The main issue in this appeal is the effect of the removal of the condition on the openness and visual amenities of the Green Belt.

Reasons

3. Planning Practice Guidance (PPG) states that conditions restricting the future use of permitted development rights may not pass the test of reasonableness or necessity.
4. The Local Planning Authority has determined that the existing dwelling is not inappropriate in the Green Belt. It was granted permission on the basis that it would not be materially larger than the original dwelling and its outbuildings combined. Such an arrangement is typical of the exception set out in paragraph 145 d) of the National Planning Policy Framework February 2019 (the Framework). This applies whether or not any outbuildings to be replaced were constructed under permitted development rights.
5. The Town and Country Planning (General Permitted Development) (England) Order 2015 does not restrict permitted development rights relating to development within the curtilage of a dwellinghouse for Classes A-E in the Green Belt. Therefore, the small scale development that falls in these categories, including outbuildings, does not conflict with the purposes of the Green Belt or its essential characteristics of openness and permanence. Therefore, such developments do not need to be considered on a case by case basis.
6. Consequently, it is not necessary or reasonable to restrict the future use of permitted development rights in this case.
7. The appellant requests the condition be amended to remove the reference to Class E rights. However, it can be seen above that the restriction of Class A, B, C, D and E rights would not pass the tests. Consequently, the Council's original condition 4 should be removed in its entirety.
8. Therefore, a condition restricting permitted development rights is not reasonable or necessary in the interests of the openness and visual amenities of the Green Belt. Consequently, in this respect, its removal would be in accordance with Policy CP3 of the Tonbridge and Malling Borough Council Local Development Framework Core Strategy 25 September 2007 and paragraphs 143 and 145 of the Framework. These set out that inappropriate development in the Green Belt should not be approved except in very special circumstances and set out a list of exceptions to development that is inappropriate.

Conditions

9. I have considered the conditions attached to the original permission against the tests in the Framework and the advice in the PPG. I have made such amendments as necessary to comply with those documents.
10. The replacement dwelling has been constructed. Therefore, I have removed the time limit for commencement. I have amended conditions requiring the submission and implementation of details of car parking and refuse stores to refer to the retention of these details only. I have also removed the requirement to demolish the outbuildings, and for materials to be in accordance with the plans as these have taken place.
11. Planning application TM/06/01606/FL was granted in July 2006 with a time limit of commencement within 3 years. As this time limit has now lapsed, the

works could not commence. As such the Council's original condition 8 is not necessary and is not attached here.

Reasons

12. For the reasons given above I conclude that the appeal should be allowed.

H Miles

INSPECTOR