

APPEAL BY MR G EMERY AGAINST THE DECISION OF THE BOROUGH COUNCIL TO REFUSE THE GRANT OF PLANNING PERMISSION FOR THE REMOVAL OF CONDITION 4 (REMOVAL OF PERMITTED DEVELOPMENT RIGHTS) OF APPLICATION 16/00485/FUL – REPLACEMENT DWELLING AND ERECTION OF A DETACHED GARAGE AT BROOK FARM, 4, OAKWOOD LANE, ACTON

<u>Application Number</u>	17/00877/FUL
<u>LPA's Decision</u>	Refused by delegated powers on the 3rd January 2018
<u>Appeal Decision</u>	Appeal allowed
<u>Date of Appeal Decision</u>	28th August 2018

The Appeal Decision

The Inspector identified the main issue in the assessment of the appeal as being whether the condition is necessary and reasonable having regard to local and national policy concerning development within the Green Belt.

In allowing the appeal the Inspector made the following comments:-

- The initial replacement dwelling was materially larger than the original dwelling, and therefore it represented inappropriate development in the Green Belt. However, the Council considered that very special circumstances could be demonstrated because the overall proposed built form on the site would be less than the existing and consequently there would be a net gain in terms of the openness and visual appearance of the Green Belt.
- The appellant referred to case law concerning the interpretation of the term 'replacement building' and stated that the Council could have assessed the original proposal as not representing inappropriate development within the Green Belt on the basis that it was partial or complete redevelopment of previously developed land.
- The Inspector stated that this was not a matter which he needed to take a view on and that his sole consideration was whether the disputed condition is necessary, reasonable and fully justified.
- Paragraph 55 of the revised Framework states that planning conditions should be kept to a minimum and only be imposed where, amongst other matters, they are necessary and reasonable.
- Paragraph 004 within the Planning Practice Guidance (PPG) sets out the 6 tests for conditions. They must be necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise, and reasonable in all other respects. Paragraph 017 says conditions restricting the future use of permitted development rights will rarely pass the test of necessity, and should only be used in exceptional circumstances.
- The Council stated that if permitted development rights were exercised in the future, then the special circumstances it says existed to justify the proposed dwelling would be undermined, leading to a reduction in openness. If the proposed replacement dwelling had not been materially larger than the existing dwelling, then permitted development rights would not have been removed by condition. In any event it stated that the removal of permitted development rights would not result in the loss of the ability to extend the dwelling, but simply ensures that the local planning authority retains control over development which it wouldn't otherwise have.
- The Council has not set out what the potential for further development within the specified classes of the GPDO could amount to and as the appellant has not set out what his intentions would be if the appeal were allowed, any harm caused in terms of loss of openness is largely conjectural.
- The Inspector noted that quite substantial additions over and above the size of the existing replacement dwelling could be constructed, but no evidence had been

provided to demonstrate that permitted development rights are likely to be used to their maximum. Whilst it is possible that a future occupier may seek to cover up to 50% of the curtilage with ancillary buildings, this is unlikely to occur, particularly as the extant permission already allows for the erection of a detached double garage.

- The Inspector noted that the appeal site is well-contained and that Acton contains a number of substantial dwellings in large plots within the Green Belt and that these dwellings have their permitted development rights.
- As Policy S3 of the Local Plan pre-dates the Framework, greater weight was given by the Inspector to the wording of the NPPF.
- The Inspector concluded that there are no exceptional circumstances to justify the removal of permitted development rights and as such condition No. 4 is not necessary or reasonable. As such the appeal should be allowed.

Recommendation

That the appeal decision be noted.