

Development of Land at Broadlands, Heath Rise, Whitmore Heath Without Complying With Conditions of Planning Permission reference 09/00455/FUL. Mr N Rafferty

Application Number: 12/00174/FUL

LPA's Decision: Refused under delegated powers on 3 April 2012

Appeal Decision: Appeal allowed

Date of Appeal Decision: 5 December 2012

The full text of the appeal decision is available to view on the Council's website (as an associated document to application 12/00174/FUL) and the following is only a brief summary.

The appeal related to the LPA's refusal of an application to vary a condition on planning permission reference 09/00455/FUL. The condition removed permitted development rights for extensions and alterations within the curtilage of the dwellinghouse as may otherwise be permitted by Classes A, B, C and E of Part 1, Schedule 2 of the General Permitted Development Order (GPDO). The application related to the omission of Class E from the condition, relating to the construction of buildings or enclosures within the curtilage.

The Inspector considered the main issue to be whether the disputed condition is reasonable and necessary in the light of the tests of Circular 11/95, having regard to the location of the site in the Green Belt.

In **allowing** the appeal, the Inspector made the following comments:

- Circular 11/95 advises that the GPDO is designed to give a freedom from detailed control which will be acceptable in the great majority of cases. Paragraphs 86 and 87 of the Circular make it clear that such restrictions should only be imposed in exceptional circumstances. The reason given for imposing the condition is that the site is within the Green Belt. Whilst the GPDO does provide special regimes for certain sensitive areas, there are no such provisions relating to the Green Belt.
- The Council considers that the exceptional circumstances in this case, which justify the removal of permitted development rights, are solely that the original dwelling contained an integral garage and that the replacement dwelling does not. The Inspector considered that this does not mean that the erection of outbuildings within the residential curtilage would have a serious effect on amenity or the environment. Moreover, the examples given within the Circular in which such conditions may be justified do not include the maintenance of openness in the Green Belt.
- The Inspector noted that in approving the application for the replacement dwelling the Council considered that it was 'appropriate development' in the Green Belt and that it would therefore not cause harm to the openness of the Green Belt. Taking into account that the original dwelling benefitted from permitted development rights and given that the replacement dwelling was determined not to be materially larger than the original the Inspector considered that the removal of permitted development rights for outbuildings was not justified.
- The Inspector disagreed with the Council's argument that due to the nature of the development permitted the condition as worded was necessary to safeguard the form and character of the area. The Council found the dwelling to be 'appropriate development' in the Green Belt by way of "size, location and massing". The Inspector considered that the replacement dwelling has a positive impact on the character and appearance of the area, given the high quality of the design and materials used.
- The Inspector considered that the characteristics of the site, including the location and extent of the access, driveway, courtyard, terrace and the group TPO, are such that the extent, form and position of development that could result is severely restricted.
- The Inspector considered that the detached garage that the appellant wishes to provide would be entirely in keeping with the established character and appearance of the area. Overall the reinstatement of Class E of the GPDO to allow an outbuilding under permitted developments rights would not have a material impact on the amenity or the environment.
- The Inspector disagreed with the Council's view that there are no other forms of control in this case, considering the TPO to be such a control.
- The removal of permitted development rights under Class E would not be justified and would not serve a clear planning purpose as there would be no detrimental impact on the form and character of

the area if they were re-instated in the Inspector's opinion. Outbuildings for uses incidental to the enjoyment of the dwellinghouse are commonplace in this location.

- The Inspector concluded that the condition was unreasonable and unnecessary as currently drafted insofar as it relates to the removal of Class E permitted development rights. However as both parties agree that the other restrictions on permitted development rights set out in the condition should remain the Inspector imposed a new condition to that effect.

RECOMMENDATION

That the decision be noted.