

SECTION '2' – Applications meriting special consideration

Application No : 10/01434/FULL4

Ward:
Darwin

Address : Speedwell Jail Lane Biggin Hill TN16
3AX

OS Grid Ref: E: 543432 N: 159324

Applicant : Mr And Mrs Clark

Objections : YES

Description of Development:

Application to modify legal agreement attached to planning permission 98/00210 to retain the original bungalow.

Proposal

- This application seeks to modify a Section 106 legal agreement from this site which was agreed and signed in February 2001 as part of planning permission ref. 98/00210 granted for a replacement dwelling. The agreement required the existing dwelling to be demolished within one month of the first occupation of the dwelling and this application seeks to retain the bungalow.
- The applicant's agent has submitted a supporting case which explains that although the planning permission for the new house on the site was subject to an agreed requirement to demolish the majority of other buildings, and that the gain to openness was achieved by the deed, that no condition was imposed to remove permitted development rights for the land.
- Permitted development rights could be used to construct outbuildings and extend the new dwelling, and it is offered as part of this application that the owners will relinquish any rights to extend the dwelling or construct outbuildings without planning permission, which will allow the Council to control the contribution to openness that the land provides.

Location

The site is located in a rural area on Jail Lane, opposite the Old Jail public house. Two further residential dwellings are located to the east on the same side of Jail Lane. The new larger dwelling on the site is located further back into the site than the bungalow, which is sited towards the front behind a vegetation screen with its own garden. There

currently exist two clear residential curtilages within this site, although they share an entrance from Jail Lane.

Comments from Local Residents

One letter has been received from a neighbour which objects to the proposal on the basis that the bungalow should have been demolished as part of the proposal to construct a new dwelling and the existing bungalow overlooks the neighbour's land and is in a poor state of repair.

Comments from Consultees

There are no comments from consultees to report.

Planning Considerations

The proposal to vary the legal agreement to allow the bungalow to remain needs to be considered with primary regard to Policy G1 (Green Belt) and Policy G5 (Replacement dwellings in the Green Belt), and national guidance in PPG2 – Green Belts

Planning History

Outline planning permission was granted subject to a Section 106 legal agreement in 2001 under ref. 98/00210 for a replacement dwelling at the site. The circumstances of this application, essentially that the demolition of the existing dwelling and a number of outbuildings would result in a reduction in built development in the Green Belt, were considered sufficiently compelling to make an exception to the normal policy regarding replacement dwellings and result in an improvement to the openness of the Green Belt.

Details pursuant to the outline permission showing design and external appearance were subsequently refused in 2001 under ref.01/00537 as the details submitted did not comply with the principles of the outline permission, showing a larger dwelling (floor area of 350sqm plus basement) than anticipated (floor area 320sqm) which would result in harm rather than improvement to the openness of the Green Belt, therefore contrary to policy. Details were finally approved for a more modest dwelling under ref. 01/01534 for a dwelling of 335sqm.

Conclusions

It is clear that the Council went to considerable lengths to ensure that the proposal for a replacement dwelling at this site resulted in an overall improvement to the openness and character of the Green Belt, indeed this was the very factor that led the Council to grant outline planning permission subject to the legal agreement it is sought to vary, since the construction of a dwelling is by definition inappropriate development. The demolition of the bungalow, and other outbuildings, were a significant and persuasive

element of the decision and constituted the very special circumstances necessary to allow inappropriate development in the Green Belt.

It is undoubtedly contrary to Policy G1 and Policy G5 and the terms of the previous permission that the bungalow remains in situ. The removal of built development to justify the new house is totally undermined by the failure to comply with the terms of the S106 agreement, and harm is caused to the openness of the Green Belt by the retention of the bungalow, both in principle and in actual terms, since the dwelling is visible from public vantage points, particularly in the winter months when vegetation is less dense, and being close to the road frontage.

Since it is clear that it is not appropriate and harmful in policy terms for the dwelling to remain, the only other consideration is the arguments put forward in support of this application. The agent has made a case in the submission that the new dwelling still benefits from permitted development rights both for extensions and outbuildings. These rights, it is argued could result in considerable extensions and / or large outbuildings being constructed within the site which could have a far greater impact upon the openness of the Green Belt than the retained bungalow. It is suggested that the applicants would give up their permitted development rights in exchange for retaining the bungalow, thus enabling the Council to have greater control over the openness of the Green Belt within the site.

The significant point with regard to this offer is that permitted development rights would not permit the construction of a self contained two floored dwelling with its own residential curtilage, which the bungalow currently comprises. Class E of residential permitted development allows no development in front of the original dwellinghouse (i.e. between the road and the new dwelling where the bungalow is located), and is subject to other size and height restrictions which the bungalow would not comply with, including a limit to a single storey, the bungalow clearly having a second floor in the roofspace also served by a dormer window. It is considered unlikely that the harm caused by this separate two storey residence to the openness of the Green Belt would be exceeded by the limited size and nature extensions and outbuildings allowed under permitted development.

Members will need to consider this proposal carefully, however it is recommended that the benefits of the offer being made do not outweigh the harm caused to the Green Belt and area by the self contained dwelling located in front of the new house in a prominent location set in its own curtilage. The principles of the original decision ought to be adhered to in this case for the reasons set out above, and it is recommended that the legal agreement should not be varied or discharged. Further Members should consider whether to enforce the terms of the legal agreement and require the demolition of the bungalow.

Background papers referred to during production of this report comprise all correspondence on files refs. 10/01434, 98/00210, 01/00537 and 01/01534, excluding exempt information.

RECOMMENDATION: PERMISSION BE REFUSED

The reasons for refusal are:

- 1 The retention of the bungalow would be inappropriate in the Green Belt result in ongoing harm to the openness and character of the Green Belt and the area in general, undermining the principles upon which the replacement dwelling at the house was granted planning permission and contrary to Policies G1 and G5 of the Unitary Development Plan and PPG2 - Green Belts.

Further recommendation - legal action be authorised to ensure compliance with the terms of the s106 legal agreement attached to permission 98/00210

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