

**APPLICATION REPORT - VAR/348019/21  
Planning Committee 9 March 2022**

Registration Date: 22 November 2021  
Ward: Saddleworth North

Application Reference: VAR/348019/21  
Type of Application: Variation/Removal of condition

Proposal: Removal of condition no 4 relating to HH/343092/19 (restrictions of permitted development rights)

Location: Running Hill Cottage, Running Hill Lane, Dobcross, Oldham, OL3 5JS,

Case Officer: Brian Smith  
Applicant: Clay  
Agent: Mr Martin Gaine

## **INTRODUCTION**

The application is referred to Planning Committee for determination on the basis that it seeks to remove a condition attached to a planning permission approved by the Committee. The condition was specifically added by the Committee given the approval of the application was against the advice and recommendations of officers at the time. As such, and in accordance with the Council's Constitution, a committee decision is required for this application.

## **RECOMMENDATION**

It is recommended that the application be approved subject to the conditions set out in this report.

## **THE SITE**

Running Hill Cottage comprises a former Grade II listed building (now de-listed) dating from the mid-late 18th century which forms part of a small nucleus of farms and cottages forming the wider hamlet of Running Hill Head. The site curtilage, which features a wooded area extending an appreciable distance in a westerly direction, is designated as Green Belt within the Local Plan.

When a planning application (HH/343092/19), proposing a two-storey side/rear extension and a single storey side extension was approved by the planning committee in May 2020, a condition was attached restricting 'permitted development rights'. Condition 4 states:

*"Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, (or any Order revoking or re-enacting that Order with or without modification), no development within Classes A, B, D and E of Part 1 of Schedule 2 shall be carried out unless permission is granted by the Local Planning Authority.*

*Reason – The excluded types of development would not be appropriate due to the additional impact on the purposes of the Green Belt having regard to Policy 22 of the Oldham Local Plan.”*

This condition was attached on the basis that the excluded types of development would not be appropriate in this setting due to the additional impact on the purposes of the Green Belt having regard to Policy 22 of the Local Plan.

## **THE PROPOSAL**

This application proposes the removal of condition 4 in its entirety which would have the effect of restoring the provisions made by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). The application is made on the basis that there was no justification for its imposition simply based on the Green Belt designation of the site.

## **RELEVANT HISTORY OF SITE**

HH/343092/19 – Erection of a two-storey side and rear extension and a single storey side extension – Approved 22nd May 2020

PREX/342132/18 - Single storey rear extension - Length: 8.0m maximum height: 4.0m Height to eaves: 2.5m' Prior Approval Required and Granted 05 Sep 2018. This permission expired on 30th May 2019.

CL/342211/18 - Certificate of lawfulness for a proposed detached garage and a single storey garden building forming gymnasium/games room. Granted 09th October 2018.

CL/342121/18 - Certificate of Lawfulness for 1) Reduce width of existing side / rear cat slide roof 2) demolish existing single storey side extension 3) erection of single storey side extension 3) Two storey rear extension. Granted 13th September 2018

## **RELEVANT PLANNING POLICIES**

In this case the 'Development Plan' is the Joint Development Plan Document (DPD) which forms part of the Local Plan for Oldham. Of particular relevance to this application

Joint Development Plan Document:

Policy 22 - Protecting Open Land

National Planning Policy Framework and Planning Practice Guidance Notes

## **CONSULTATIONS**

Saddleworth Parish Council	Recommend refusal on the grounds that additional buildings would be inappropriate owing to the additional impact insofar as the openness of the Green Belt is concerned in this location.
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## REPRESENTATIONS

In accordance with the requirements of the Town and Country Planning (Development Management Procedure) Order 2015, and the Council's own Statement of Community Involvement, given the absence of any immediate neighbours the application has been publicised solely by means of a site notice. In response, no representations have been received in response to such publicity.

## PLANNING CONSIDERATIONS

The main issue in this instance is whether the condition in question was necessary and reasonable to make the prior approved development subject of HH/343092/19 acceptable in planning terms, having regard to the site's location in the Green Belt and the effect on the character and appearance of the area.

### *Policy and Legislative Framework:*

Paragraph 56 of the National Planning Policy Framework (hereinafter referred to as the NPPF) states that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. The Planning Practice Guidance (PPG) provides further advice in this respect, confirming that these six tests must all be satisfied each time a decision to grant planning permission subject to conditions is made.

Paragraph 54 of the NPPF further states that planning conditions should not be used to restrict national PD rights unless there is clear justification to do so. In fact, the PPG adds that conditions restricting the future use of PD rights may not pass the test of reasonableness or necessity.

Schedule 2, Part 1 of the GDPO sets out the permitted development rights for development within the curtilage of a dwelling, which, with specific exception of some classes insofar as Article 2(3) land is concerned, apply generally to all dwellings. Interestingly, such exceptions do not include land falling within the Green Belt such as that subject of this application.

### *Whether disputed condition is necessary:*

Of particular interest is an earlier appeal concerning the same subject matter at Edge End Farm, White Brook Lane, Greenfield, which was allowed in September last year (reference APP/W4223/W/21/3271910).

The appointed Inspector remarked that it could be surmised that the omission of land within the Green Belt from the specific areas of land included under Article 2(3) was intentional on the Government's part, and as a result, should be regarded as no different in terms of the application of PD rights as land outside of it. Furthermore, it was emphasised that the requirement of the NPPF is that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. Therefore, the starting point is that PD rights should remain in place, even in the Green Belt, unless clear justification is advanced which is precisely defined and specific to the site.

In the absence of such justification, insofar as the officer's report is concerned, it is assumed that the condition in question was imposed owing to the size and scale of the permitted scheme over and above the size of the original building. The concern being that extensions under PD would result in further disproportionate additions to the dwelling and consequent adverse effect on the openness of the Green Belt and its purposes.

However, in the absence of any policy or guidance which stipulates a maximum permissible size of extension within the Green Belt, notwithstanding the fact that disproportionate extensions are in themselves inappropriate development, the reasoning that development has reached a maximum in this instance is unclear. Further, most dwellings within the Green Belt retain and may exercise PD rights without reference to the effect on openness, even where extensions are proposed which, under a planning application, may be regarded as disproportionate. Many will also have been subject to previous extensions such as in this instance. It therefore follows that such circumstances are not unique to the application site.

Moreover, an earlier appeal decision, referenced APP/W4223/W/15/3100603, suggests that the fact that PD rights have not been removed for land in the Green Belt means that the Government's fundamental Green Belt aims of preventing urban sprawl by keeping land permanently open do not extend to preventing permitted development within a domestic curtilage. Given this position, and bearing in mind the limitations of the GDPO in terms of size and position of development permitted, the circumstances of the site are not exceptional in this instance. It therefore follows that further extensions to the dwelling and addition of outbuildings would not have such an effect on the openness of the Green Belt or its purposes that removal of PD rights is justified in this instance.

To conclude, for the reasons set out, and with reference to the NPPF and the guidance of the PPG, the condition in question is not considered to be reasonable and necessary to make the development acceptable in the context of the site's location within the Green Belt or in terms of protecting the character and appearance of the area. As such, the removal of the condition is supported.

## **RECOMMENDATION:**

Approve, subject to the following conditions:

1. The development must be begun not later than 22 May 2023 representing the expiry of THREE years from the date in which the original planning permission was approved.

Reason: To comply with the provisions of the Town & Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. The development hereby approved shall be fully implemented in accordance with the approved amended plans and specifications, received on 6th March 2020 which are referenced as:

- 1693/3c - Proposed Floor Plans;
- 1693/4b - Proposed Elevations; and,
- 1693/5b - Site and Roof Plan

Reason: For the avoidance of doubt and to ensure that the development is carried out in accordance with the approved plans and specifications.

3. No development comprising the erection of any external walls shall take place until samples of the materials to be used in the construction of the external surfaces of the development, including the roof, have been submitted to and approved in writing by the Local Planning Authority. The Development shall be carried out in accordance with the approved details. The materials to be used throughout the development shall be consistent in terms of colour, size and texture with the approved details.

Reason: To ensure that the appearance of the development is acceptable in the interests of the visual amenity of the area having regard to Policy 20 of the Oldham Local Plan.

LOCATION PLAN (NOT TO SCALE):

