
Appeal Decision

Site visit made on 16 January 2017

by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 9 February 2017

Appeal Ref: APP/G5180/W/16/3163116

Lillys Farm, Chelsfield Lane, Orpington BR6 6EP

- 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 T Pitham (T Pitham Business Ltd) against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/16/02901/RECON, dated 16 June 2016, was refused by notice dated 14 October 2016.
 - The application sought planning permission for change of use and demolition of existing commercial buildings and erection of 3 x four-bedroom houses, garage for plot 3, associated access road and parking without complying with a condition attached to planning permission Ref DC/15/010254/FULL2, dated 4 April 2016.
 - The condition in dispute is No 11 which states that: "*The development hereby permitted shall be carried out in accordance with the following approved plans: AJ38 00, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 4564/D-10, AJ38 A01, A02, A03 & A04.*"
 - The reason given for the condition is: "*For the avoidance of doubt and in the interests of good planning.*"
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Decision

1. The appeal is allowed and planning permission is granted for the change of use and demolition of existing commercial buildings and erection of 3 x four-bedroom houses, garage for plot 3, associated access road and parking at Lillys Farm, Chelsfield Lane, Orpington BR6 6EP in accordance with the application Ref DC/16/02901/RECON, without compliance with condition No 11 previously imposed on planning permission Ref DC/15/010254/FULL2 dated 4 April 2016, subject to the conditions set out in the attached schedule.

Application for costs

2. An application for costs was made by Mr T Pitham (T Pitham Business Ltd) against the Council of the London Borough of Bromley. This application is the subject of a separate Decision.

Procedural Matter

3. The application subject to this appeal was made under Section 73 of the Planning Act for minor material amendments. It seeks revised, but not substantially different designs to the three dwellings approved on 4 April 2016 (Ref DC/15/010254/FULL2) by the provision of basements. That original
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application was granted planning permission following an appeal against the decision of the Council to refuse to grant planning permission (Ref APP/G5180/W/15/3136998). This type of application is possible as a condition was imposed on the original permission specifying the approved plans. This appeal seeks the removal of condition No 11 imposed on the 2016 planning permission and its replacement with a condition specifying the plans that reflect the amended designs.

Main Issues

4. The main issues are:

- Whether the proposal is inappropriate development in the Green Belt.
- Whether the proposed development would preserve or enhance the character or appearance of the Chelsfield Village Conservation Area.

Reasons

Inappropriate development

5. The appeal site comprises a range of properties currently in commercial use together with a relative large surfaced car park. It is located within the Green Belt and the Chelsfield Village Conservation Area. As outlined above, planning permission was granted on 4 April 2016 for the demolition of the existing buildings and the redevelopment of the site with three detached dwellings following an appeal decision. Condition No 11 of that permission set out the plans that were approved pursuant to the permission.
6. This proposal seeks to vary condition No 11 of the original permission by the inclusion of additional plans to enable the construction of basements to each of the three dwellings. The basements would be used for domestic storage and constructed wholly below ground with no visible external openings. As such there would be no change in the external appearance of the proposed dwellings from that shown in the original permission.
7. My colleague Inspector considered the appropriateness of the proposed development in the Green Belt in his decision dated 4 April 2016. He concluded that the proposed development would not be inappropriate development within the Green Belt as the proposal would represent the redevelopment of previously developed land and would not harm the openness or be contrary to the purposes of the Green Belt as identified in the National Planning Policy Framework (the Framework). Therefore, the principle of the appropriateness of the redevelopment of the site with three detached dwellings has been firmly established.
8. The Council's concerns relate to the additional floor space that would be created by the provision of the proposed basements and suggest that this would result in a significant increase in the intensity of residential development. The additional floorspace that would be created by the inclusion of basements would amount to an approximately 25% increase above the originally approved floor area in the 2016 permission. However, the ground area that would be occupied by the proposed dwellings with basements would be unchanged from that shown in the original permission.

9. I concur with the appellant's view that the cumulative floor area of the proposed development, including the basements, would still be less (albeit marginally) than the existing floor area of the current buildings on the site. I also concur that as the proposed basements would not be used for habitable accommodation but for storage purposes only there would be no demonstrable increase in the intensity of residential development at the site and the need for future outdoor storage buildings would likely be reduced.
10. In having no impact on the external appearance of the dwellings from that previously approved; not increasing the ground area of the site proposed to be occupied by development and the proposed further increase in floorspace being marginally less than that occupied by the existing buildings, I do not consider that the proposed basements would cause any additional harm to the openness of the Green Belt. The proposed development would not result in any further encroachment into the countryside and would not be contrary to any of the five purposes of the Green Belt as identified in paragraph 80 of the Framework
11. In the consideration of the previous appeal the Inspector found that Saved Policy G1 of the Bromley Unitary Development Plan (UDP) was not consistent with the sixth exception of the Framework paragraph 89 and, in applying the requirements of the Framework paragraph 215, attached very limited weight to Saved Policy G1 in that respect. I concur with this view and similarly attach very limited weight to that saved policy.
12. Taking the above matters into consideration, I do not consider that the proposed basements would constitute inappropriate development within the Green Belt nor cause any additional harm to openness. Consequently, there would be no conflict with Policy 7.16 of the London Plan. This policy, amongst other things, states that inappropriate development within the Green Belt should be refused planning permission.

Character and appearance

13. The appeal site is situated in the Chelsfield Village Conservation Area. The proposed basements do not result in any visible changes to the external appearance of the dwellings or site layout of the development from that contained in the original permission. The proposed basements are intended to be used for domestic storage. I have no evidence submitted by the Council to conclusively demonstrate how their provision, in not changing the appearance of the dwellings, would result in a more intensive form of residential use that would cause harm to the character or appearance of the Conservation Area.
14. In the consideration of the previous appeal, my colleague Inspector found that the proposed dwellings would not be unduly prominent in the landscape and their semi-rural design, spacious layout and use of materials found elsewhere the local area would be in keeping with the predominantly residential character of development in the village. In being wholly below ground with no external openings or changes to the appearance or layout of the dwellings from that previously approved, I have no other reason to suggest that the proposed basements would result in any different conclusion to be reached regarding the impact of the dwellings on the character or appearance of the Conservation Area from that of the previous Inspector.
15. For these reasons, I find that the proposed basements would preserve the character and appearance of the Conservation Area as a whole in accordance

with section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and would accord with paragraphs 131 and 132 of the National Planning Policy Framework (the Framework). As a result there would be no conflict with Saved Policy BE11 of the UDP. This policy, amongst other things, require new development to preserve or enhance the character or appearance of the conservation areas, respect or complement the layout, scale, form and materials of existing buildings and ensure that the level of activity generated by the proposal will not detract from the character or appearance of the area.

Conditions

16. The guidance in the Governments' Planning Practice Guidance makes it clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission. In allowing this appeal and granting planning permission I have considered and imposed the conditions set out on the original 2016 (Ref DC/15/010254/FULL2) planning permission. However, Section 73(5) advises that planning permission granted under this section must not extend the time limit within which development must be started. Therefore, the development to which this decision relates must be begun no later than 4 April 2019.
17. The 2016 planning permission was subject to a number of pre-commencement conditions. As I have no information before me about the status of the conditions imposed on the original planning permission and whether any of them have been discharged I shall impose all those that I consider remain relevant and meet the advice contained within paragraph 206 of the Framework and the guidance contained in the section on 'Use of Planning Conditions' in the PPG. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
18. In addition to those conditions imposed on the 2016 planning permission the Officer Report suggested an additional condition was required that would restrict permitted development rights in the interests of safeguarding the character and openness of the Green Belt.
19. However, the Framework advises that planning conditions should not be used to restrict national permitted development rights unless there is clear justification for doing so. I am not satisfied that the Council's suggested condition No 12 that would remove many householder rights is necessary in this case taking into account the advice provided in the Framework. The Council suggested a similar condition during the consideration of the previous appeal. I also agree with my colleague Inspector who considered that matter and concluded that such condition was also unnecessary as the site is within the village it would be normal for householders to be able to exercise permitted development rights. In addition, the Conservation Area status of the site imposes significant controls on new development.

Conclusion

20. For the above reasons and taking all other matters raised into account, I conclude that the appeal should be allowed.

Stephen Normington

INSPECTOR

CONDITIONS SCHEDULE

- 1) The development hereby permitted shall be begun no later than 4 April 2019.
- 2) No development shall commence until details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include: means of enclosure and retaining structures; boundary treatments; materials of paved areas, vehicle parking and turning layouts and other hard surfaces.
- 3) The landscaping works shall be carried out in accordance with the approved details before any part of the development is first occupied or in accordance with the agreed implementation programme and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 4) No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837:2012 Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) shall have been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees shall be carried out as approved.
- 5) No development shall commence until details of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 6) No development shall commence until details of the arrangements for the storage of refuse and recyclable materials, including means of enclosure, shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 7) No building hereby permitted shall be occupied until foul and surface drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
 - i) Provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - ii) Include a timetable for its implementation; and,

- iii) Provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 8) No development shall commence until details of slab levels of the approved buildings have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 9) No development shall commence until an assessment of the risks posed by any contamination shall have been submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175:2011+A1:2013 Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site.
- 10) No development shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority before any part of the development is occupied.
- 11) The development hereby permitted shall be carried out in accordance with the following approved plans: AJ38 00, 02, 03, 04, 05, 06, 07, 08, 09, 10B, 10.1B, 11B, 12B, 13, 14B, 14.1B, 15B, 16B, 17, 18B, 18.1B, 19, 20B, 21B, 22, 23B, 24B, 25B, 26, 4564/D-10, AJ38 A01, A02, A03 & A04.