



Appeal Decision

Site visit made on 14 January 2020

by F Cullen BA(Hons) MSc DipTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 10 February 2020

Appeal Ref: APP/G5180/D/19/3238936

2 Hangrove Cottages, Cudham Road, Downe, Orpington BR6 7LE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr A Brackstone against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/19/02360/FULL6, dated 30 May 2019, was refused by notice dated 26 July 2019.
 - The development proposed is a two storey side and rear extension.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. As part of the appeal the appellant has submitted an Ecological Survey and Assessment report by ECOSA Ltd¹ which was not submitted to the Council as part of the planning application. I am mindful that the appeal process should not be used to evolve a scheme, and it is important that what is considered by the Inspector is essentially what was considered by the Council as local planning authority and on which interested people's views were sought.
3. The report provides additional information in relation to the Council's second reason for refusal and comments made on the application by a third party. Given that the Council and the third party have not had the opportunity to comment on the report, if I accepted it and its findings it would deprive those who should have been consulted of the opportunity of such consultation and in doing so would potentially prejudice their interests. Therefore, in the interests of natural justice and fairness to all parties, I have dealt with the appeal on the basis of the scheme that was determined by the Council.

Main Issues

4. The main parties have agreed that the proposal would represent inappropriate development in the Green Belt, as it would not fall to be considered within any of the exceptions set out in Paragraphs 145 and 146 of the National Planning Policy Framework (Framework). I concur with that position.
5. In which case, I consider the main issues to be:
 - a) The effect of the proposed development on the openness of the Green Belt;

¹ ECOSA Ltd Ecological Survey and Assessment A Trinity Consultants Company, Ref: P5050/19, Dated 18 September 2019.

- b) The effect of the proposed development on the adjacent Site of Special Scientific Interest (SSSI) / Site of Importance for Nature Conservation (SINC); and
- c) Would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposed development.

Reasons

Background

- 6. The appeal site is located on the eastern side of, and set back from, Cudham Road. It is in close proximity to the Downe Bank and High Elms SSSI/SINC. The appeal building is a modest, two storey, semi-detached dwelling within a generous garden to the front, side and rear of the property. A vehicle access track, of approximately 3.5 metres (m) in width, runs to the side and rear of the appeal site between it and the SSSI/SINC.
- 7. The Framework states that the construction of new buildings should be regarded as inappropriate development in the Green Belt, subject to a number of exceptions, including the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building².
- 8. The proposed development comprises a two storey side extension which would be 2m in width and have a cumulative depth of about 9m. This would link to a two storey rear extension that would project around 3m from the original rear elevation and have a total width of approximately 6m. The additions would equate to an overall increase in the floor area of the original dwelling of about 63%.
- 9. The appellant accepts that the proposed development would result in disproportionate additions over and above the size of the original building. He also concedes that it would exceed the permitted net increase of floor area of 10% under Policy 51 of the London Borough of Bromley Local Development Framework Local Plan adopted January 2019 (LP). On this basis, the proposal would be inappropriate development in the Green Belt. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

Openness of the Green Belt

- 10. Openness is an essential characteristic of the Green Belt that has visual and spatial aspects. The appeal site is located within a rural landscape which is interspersed by individual houses, farmsteads and small settlements, along with large areas of mature woodland, tree belts and hedge lines. In these respects the surrounding area has moderate openness.
- 11. The appeal building is set well back from Cudham Road and is heavily screened to the south and east by mature woodland of the SSSI/SINC. This would lessen the impact of the proposed development on the visual openness of the Green Belt. Nevertheless, the significant height, scale and massing of the proposal would be highly conspicuous on the landscape when viewed from Cudham Road

² Paragraph 145 of the National Planning Policy Framework.

travelling south, and when viewed from the public footpath located to the side and rear of the appeal building. In these respects, it would have a harmful impact on the visual openness of the Green Belt.

12. In addition, the proposed development would result in the introduction of substantial additional built form into space where currently, apart from a small single storey lean-to, there is none. As such, it would harmfully reduce the spatial openness of the Green Belt.
13. Therefore, I conclude that the development would not preserve, and would have a harmful effect on, the openness of the Green Belt. As such, it would conflict with Policy 51 of the LP and the provisions within the Framework which aim to protect the openness of the Green Belt.

Effect on the SSSI/SINC

14. Policies 68, 69, 70 and 72 of the LP aim to protect the Borough's SSSIs, SINC, wildlife features and protected species from development which may have an adverse effect on them and/or secure suitable mitigating measures to overcome any harm.
15. The Downe Bank and High Elms SSSI/SINC lies to the south and east of the appeal building on the opposite side of the vehicle access track that runs to the side and rear of the appeal site.
16. The proposed development would result in the construction of built form closer to the SSSI/SINC and alterations to the roof and cavity walls. I consider, given the close proximity of the proposed development to these designated sites, that it is likely that it would have some level of impact.
17. Notwithstanding the Ecological Survey and Assessment report referred to above, on the basis of the proposal and information considered by the Council, I am unable to determine the nature and extent of any impact and any measures required to mitigate any resultant harm. Therefore, I cannot be assured that the proposed development would not be harmful.
18. Accordingly, the proposed development would conflict with Policies 68, 69, 70 and 72 of the LP referred to above.

Other considerations

19. The appellant has drawn my attention to an extant Lawful Development Certificate (LDC) which was granted on 30 January 2019³ and a notification that Prior Approval is not required for householder permitted development (PA) dated 11 January 2019⁴.
20. The appellant contends that, in comparison to the extensions and alterations approved under the LDC and PA, which he states could be constructed without any further approval from the Council, the proposed development would have a significantly reduced floor area, would have a far less harmful effect on the openness of the Green Belt and would be of a design that would be far more appropriate and cohesive having regard to the context of the appeal property.

³ Ref: DC/18/05455/PLUD, 2 Hangrove Cottages, Cudham Road, Downe, Orpington BR6 7LE.

⁴ Ref: DC/18/05274/HHPA, 2 Hangrove Cottages, Cudham Road, Downe, Orpington BR6 7LE.

21. On this basis, he declares that the permitted development fallback position of the LDC and PA is a consideration which equates to the very special circumstances required to justify the proposed development within the Green Belt.
22. I acknowledge that, in comparison to the works that could potentially be carried out under the LDC and PA, the proposed development would be, a not insubstantial, 13.5% less in total floor area, would have a reduced building footprint, would reduce the spread of built form across the site and would have a lower carbon footprint. In addition, it would be a more coherent development that would provide additional living accommodation with a more logical layout for the appellant and his family and be of a higher aesthetic quality using a complementary palette of materials.
23. However, I note that the development approved under the PA has not been subject to a lawful development certificate to confirm that the works would be permitted development. Even if I accept that all of the proposed works under the LDC and PA could be constructed, although greater in floor area and of limited design quality, they are essentially limited to single storey structures and a roof alteration. Taking into account the two storey form, wrap around nature and considerable roofscape of the proposed development, I am of the opinion that the harm to the essential characteristic of openness of the Green Belt that would be caused by the permitted development would not be as substantial as the totality of the height, scale and massing of the proposed extensions before me now.
24. I note that the appellant is willing to concede permitted development rights for any further extensions to the property by the imposition of an appropriate condition. I am mindful that the use of conditions to restrict the future use of permitted development rights may not pass the tests of reasonableness and necessity and should only be used in exceptional circumstances⁵. The general circumstances of this case are not exceptional since existing dwellings in the Green Belt are not unusual. Other residents within the Green Belt may want to build sizeable extensions to their homes and could seek to support their proposals in the same manner as this appeal does. On this basis, such a condition would not meet all of the requirements set out in Paragraph 55 of the Framework. For all of these reasons, I give the fallback position of the LDC and PA moderate weight.
25. I have had regard to the fact that the appellant would accept any appropriate planning conditions relating to mitigation and enhancement measures required due to the proximity of the appeal site and the proposed development to the SSSI/SINC. However, as stated above, in the interests of natural justice and fairness to all parties, I am not able to take the findings and recommendations of the Ecological Survey and Assessment report into account. Therefore, I can only give this consideration limited weight.
26. I note that the appellant makes reference to the existing large extensions to No 1 Hangrove Cottages. I am not aware of the detailed circumstances of these developments and, in any event, I must consider the proposed development on its own planning merits. Therefore, it is a matter to which I attach limited weight.

⁵ Paragraph: 017 Reference ID: 21a-017-20190723 Planning Practice Guidance.

27. I am aware that the Council consider that the proposed development would complement the host property and would not appear out of character with surrounding development or the area generally. Given the proposed development's form and design which reflects the architectural detailing and materials of the existing cottage, I have no reason to disagree with this assessment. In addition, I am aware that the Council states that the proposed development would not have a detrimental impact upon residential amenity. Taking into account the existing extensions to No 1 Hangrove Cottages and that there are no nearby residents to the south and east of the dwelling, there is no reason for me to take a different view on this matter. However, the absence of harm in these respects weighs neutrally and does not amount to a consideration in support of the appeal.
28. I have also had regard to the objections to the proposed development by Downe Residents' Association which assert that it would cause harm to the Green Belt, that it may cause harm to the adjacent SSSI and that the 'very special circumstances' described are not valid.

Conclusion

29. In summary, the proposal would represent inappropriate development in the Green Belt that would reduce openness. However, on the basis of the proposal and information considered by the Council, I have been unable to conclude whether the proposed development would have a harmful impact on the adjacent SSSI/SINC. Inappropriate development is by definition harmful and should not be approved except in very special circumstances. In addition, openness is seen as an essential characteristic of Green Belts so a reduction in that quality would also be harmful.
30. Substantial weight should be given to any harm to the Green Belt. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
31. Having regard to the other considerations cited in support of the proposal, particularly the extant LDC and PA, I consider that, either individually or collectively, they do not clearly outweigh the substantial weight which must be given to Green Belt harm and any other harm, and so, are not sufficient to amount to the very special circumstances necessary to justify the proposed development.
32. For the reasons given above, I conclude that the appeal should be dismissed.

F Cullen

INSPECTOR