
Appeal Decision

Site visit made on 2 September 2020 by Emma Worby BSc (Hons) MSc

Decision by Andrew Owen BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 October 2020

Appeal Ref: APP/G5180/W/20/3249637

Landway House, Petleys Farm, Luxted Road, Downe, Orpington BR6 7JS

- 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 and Mrs Simon McDowell against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/09/00145/RECON dated 18 December 2019, was refused by notice dated 13 March 2020.
 - The application sought planning permission for a change of use of Flint Barn and outbuilding to mixed live-work unit including formation of residential curtilage and demolition of existing structures without complying with a condition attached to planning permission Ref DC/09/00145/FULL2, dated 16 June 2010.
 - The condition in dispute is No.2 which states that: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking, re-enacting or modifying that Order), no building, structure or alteration permitted by Class A, B, C, or E of Part 1 of Schedule 2 of the 1995 Order, shall be erected or made within the curtilage of the dwelling, hereby permitted, without the prior written approval of the Local Planning Authority.
 - The reason given for the condition is: to ensure that the scheme is implemented as intended.
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Decision

1. The appeal is allowed and planning permission is granted for a change of use of Flint Barn and outbuilding to mixed live-work unit including formation of residential curtilage and demolition of existing structures at Landway House, Petleys Farm, Luxted Road, Downe, Orpington BR6 7JS in accordance with the application Ref DC/09/00145/RECON dated 18 December 2019, without compliance with condition number 2 previously imposed on planning permission Ref DC/09/00145/FULL2 dated 16 June 2010 and subject to the conditions contained in the schedule to this decision.

Appeal Procedure

2. The site visit was undertaken by an Appeals Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Main Issue

3. The main issue is the effect that removing condition 2 would have on the openness and visual amenity of the Green Belt.

Reasons for the Recommendation

4. The appeal site is occupied by a detached two-storey dwelling with a single storey outbuilding and parking area to the front and a lawned garden to the rear. It is located within the Green Belt and is in a rural location on the outskirts of the village, surrounded by several other dwellings which previously comprised Petleys Farm. Both parties agree the site is within the Downe Conservation Area. The appellant is seeking to remove 2 condition from the original permission, which restricts permitted development rights, in order to extend the dwelling and construct an outbuilding within the residential curtilage.
5. Paragraph 55 of the National Planning Policy Framework says that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Furthermore, paragraph 53 states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so, and Planning Practise Guidance also advises that conditions restricting the future exercise of permitted development rights may not pass the test of reasonableness or necessity.
6. Properties within both the Green Belt and Conservation Areas usually still benefit from some permitted development rights, however in this instance permitted development rights were removed when the building was converted from a barn to a dwelling to prevent extensions or outbuildings which might affect the openness of the Green Belt. However, this decision pre-dates the Framework and the clear guidance within it.
7. As noted by the Inspector granting planning permission for the conversion of Flint Barn, the residential curtilage is modest. This means any outbuildings which could be erected under permitted development rights would not be significantly spread out so would not be likely to have a significant impact on the openness of the Green Belt. Moreover, any extensions or alterations to the dwelling would be no larger than could be permitted at any other similarly sized houses within the Green Belt. There is no reason to consider that extensions here would be more harmful to the Green Belt here than they would at any other dwelling.
8. It is noted that the original barn never benefitted from permitted development rights. Nonetheless, this is not clear justification for the imposition of this condition. It is not considered that the condition would therefore be in accordance with paragraph 55 of the Framework.
9. Subsequently, I conclude that condition 2 is unnecessary and unreasonable as it is not required to protect the openness and visual amenity of the Green Belt and its removal would not conflict with Policies 49 and 51 of the London Borough of Bromley Local Plan (2019). These policies seek to ensure the protection of the Green Belt.
10. No harm to the character and appearance of the Downe Conservation Area was found by the Inspector in granting the original consent. I also find no harm in this respect in granting this section 73 appeal.

Conditions

11. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. The development has been completed and all pre-commencement/pre-occupation conditions which were imposed have been discharged and are no longer relevant, as confirmed by the Council and the appellant. Therefore, any pre-commencement, pre-occupation or construction-based conditions have not been included in this decision.
12. A condition requiring the business floorspace of the live-work unit to be used for purposes within Class B1 in the Schedule to the Town and Country Planning (Use Classes) Order 1987 has also been removed as a planning permission¹ was granted in August 2020 which limits the use of this annexe to any use ancillary to the dwelling. Indeed this reflects condition 3 from the original planning permission. I have attached a condition to reflect that.
13. A condition requiring the development to accord with the original approved plans has also been retained, as this provides certainty. I recognise that alterations to the house have been approved, such as those granted in the August 2020 appeal decision, which will differ from those original plans. Nonetheless the planning permissions can coexist.

Conclusions and Recommendation

14. For the reasons given above and having had regard to all other matters raised, I recommend that the appeal is allowed.

Emma Worby

APPEALS PLANNING OFFICER

Inspector's Decision

15. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the appeal is allowed.

Andrew Owen

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall not be carried out except in complete accordance with the details shown on the plans, already approved by planning permission Ref DC/09/00145/FULL2.
- 2) The annexe accommodation hereby approved shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as Landway House, Petleys Farm, Luxted Road, Downe, Orpington BR6 7JS.

¹ Under Appeal Ref APP/G5180/D/20/3248153