
Appeal Decision

Site visit made on 15 March 2022 by S Witherley CIHCM MRTPI

Decision by Chris Preston BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 April 2022

Appeal Ref: APP/G5180/W/21/3280431

Eden Fields, Farthing Street, Downe, Orpington, Kent BR6 7JB

- 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 & Mrs P Kulawy against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/20/01510/RECON, dated 16 February 2021, was refused on 7 July 2021.
 - The application sought planning permission for the demolition of existing stables buildings and erection of detached single storey three-bedroom dwelling, without complying with a condition attached to planning permission Ref DC/20/01510/FULL1, dated 24 December 2020.
 - The condition in dispute is No. 7 which states that: *Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order amending, revoking and re-enacting this Order) no building, structure, extension, enlargement or alteration permitted by Class A, B, C, or E of Part 1 of Schedule 2 of the 2015 Order (as amended), shall be erected or made within the curtilage(s) of the dwelling(s) hereby permitted without the prior approval in writing of the Local Planning Authority.*
 - The reason given for the condition is: *In the interests of protecting the character of the area and residential amenity of neighbouring properties in accordance with Policy 37 of the Bromley Local Plan.*
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Decision

1. The appeal is allowed, and planning permission is granted for: Demolition of existing stables buildings and erection of detached single storey three bedroom dwelling at Eden Fields, Farthing Street, Downe, Orpington, Kent BR6 7JB in accordance with the application Ref DC/20/01510/RECON dated 7th July 2021, without compliance with condition number 7, previously imposed on planning permission Ref DC/20/01510/FULL1 dated 24th December 2020 and subject to the conditions set out in the attached schedule.

Appeal Procedure

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

Main Issue

3. Planning permission was granted in December 2020 for the demolition of the existing stable buildings and erection of a detached single storey three bedroom dwelling. Attached to that permission were a number of conditions,

including condition (7) which removed the permitted development rights under the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order amending, revoking and re-enacting this Order) no building, structure, extension, enlargement or alteration permitted by Class A, B, C, or E of Part 1 of Schedule 2 of the 2015 Order (as amended) (GPDO).

4. Paragraph 56 of the National Planning Policy Framework (the Framework) states that 'Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development permitted, enforceable, precise and reasonable in all other aspects'.
5. The appellant contends that the restriction imposed by condition (7) is unreasonable and unnecessary, thereby, does not meet the above 6 tests. Consequently, he requests that the condition is deleted.
6. Against that background, the main issue is whether condition (7) is necessary and reasonable, particularly having regard to the effect that removing it would have on the openness and visual amenity of the Green Belt.

Reasons

7. The Council attached condition (7) "*in the interests of protecting the character of the area and residential amenity of neighbouring properties in accordance with Policy 37 of the Bromley Local Plan*". In their statement of case, they note that this reason is partly incorrect as no nearby neighbouring amenity would be affected. Whilst the above reason does not specifically refer to protecting the openness of the Green Belt, the Council has stated in the refusal reason for this appeal, that "*The removal of condition 7 of permission ref.20/01510/FULL1 in order to restore permitted development rights to the new dwelling is likely to result in development that would impact detrimentally on the openness and visual amenities of the Green Belt, thereby contrary to Policies 49 and 51 of the Bromley Local Plan*".
8. Nevertheless, in granting the original planning permission, the Council accepted that the development would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing buildings. In fact, the officer report identified that the proposal would have a reduced footprint and slightly reduced volume compared to the existing buildings at the site. On that basis the Council was satisfied that the proposed redevelopment of the site complied with the aims of policy 49 of the Bromley Local Plan (2019) (the LP) and paragraph 149(g) of the Framework and would not amount to 'inappropriate development' within the Green Belt. I have no reason to take a different view.
9. Thus, it was not a situation where the applicant relied on very special circumstances to secure approval of the dwelling. Put simply, the new dwelling complied with relevant policy for the redevelopment of previously developed land within the Green Belt. It is notable that the original report into the proposed development made no reference to policy 51 of the LP, nor was that policy quoted in the reasons for imposing condition 7. That policy relates to proposals involving the extension or alterations to dwellings within the Green Belt which is not what is proposed in this instance – the proposal relates to the replacement of the stable buildings with a new dwelling.

10. Consequently, it is questionable whether the policy is directly relevant. Whilst the policy does state that proposals involving the extension of converted or replacement dwellings will not normally be permitted the proposal in this instance is not a replacement or converted dwelling but arises from the redevelopment of previously developed land. In any event, the policy is to be applied where a planning application to extend a property is required and the policy itself, or the supporting text, do not expressly set out a rationale for removing permitted development rights on new residential properties within the Green Belt. In other words, I can find nothing within the Development Plan which directly identifies that development rights granted by the GPDO should not apply.
11. At national level, the Government's Planning Practice Guidance (PPG) states that conditions restricting the future use of permitted development rights may not pass the test of reasonableness or necessity. Paragraph 54 of the the Framework makes clear that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so.
12. Permitted development rights to extend dwellings and construct domestic outbuildings under the Town and Country Planning GPDO apply in the Green Belt. Had the Government wanted to withdraw or restrict permitted development rights for householder developments in the Green Belt it could have done so, as it has done with other locations such as Conservation Areas and National Parks. The fact that the GPDO retains permitted development rights in such areas indicates that the Government considers the implementation of permitted development rights to be acceptable in a Green Belt location. It follows that some extent of development and consequential loss of openness is anticipated, limited in scale to that permitted by the GPDO.
13. Therefore, given that permitted development rights apply to homeowners throughout the Green Belt, I am not satisfied that it would be reasonable to remove such rights from new home owners, purely on principle. The redevelopment of the new dwelling, of itself, would maintain the openness of the Green Belt and the starting point is therefore a development that meets relevant policy tests for proposals within the Green Belt. Having regard to that and relevant planning policy, permitted development rights should not be removed, unless there is a site-specific rationale for doing so.
14. Eden Fields is a relatively large site which currently accommodates a number of detached stable buildings. It is set within a rural setting albeit there is a large business park nearby and a number of other properties in the surrounding area. I noted a number of nearby residential dwellings which were set in spacious grounds on approach to the site from along Farthing Street.
15. Despite the site being relatively large, it does not appear out of scale or character with other residential plots located along Farthing Street, albeit it is set further back from the main highway and closer to a commercial site. Nevertheless, I have not seen any substantiated evidence that any future alteration or extensions carried out under the GPDO, along with the specific limitations and conditions set out therein, would result in development that would appear to significantly spread out from the main dwelling or result in disproportionate additions over and above the size of the original building. The dwelling itself would be of modern appearance and it is not a case where

extensions would necessarily harm the character of the building, as may sometimes be the case in converted agricultural buildings.

16. Having regard to the above, it is considered that the Council has not provided any demonstrable justification as to why household extensions here would be more harmful than they would at any other dwelling that is similarly located in the Green Belt, nor have they submitted any substantive evidence which would demonstrate that the aforementioned Policies represents clear justification for restricting national permitted development rights.
17. It is, therefore, considered that no clear justification for the imposition of the condition to restrict permitted development rights has been presented in this case. Whilst the condition would be clearly relevant to the development, it would be neither necessary nor reasonable for the reasons set out above.
18. Both the appellant and Council have referred to a number of previous development proposals, including appeal decisions, which have either retained or removed a similar condition removing Permitted development rights. I have considered all the information submitted regarding each of these cases and consider in terms of the context of the site, its location, and nature of the development, that no one example characterises similar circumstances as the appeal before me. Therefore, the circumstances behind those cases cannot be considered material in this case. In any case, each appeal is to be determined on its individual merits based on the details of that specific case.
19. The Council has also submitted details of two previous appeals where a condition restricting permitted development rights for new residential properties in the Green Belt was considered reasonable and necessary by the respective Inspector.
20. The appeal at Bromley Common Liveries¹ dated July 2015, relates to the development of 9 dwellings on previously developed land. Given the nature of the development, along with the different site circumstances, including that it sat within a Conservation Area, I do not consider that the circumstances are directly comparable to the appeal before me. It is clear also that the Inspector agreed to apply a condition restricting permitted development based on the site-specific circumstances. Consequently, I do not find this a compelling argument to apply to the appeal before me.
21. The appeal at Hassell's Nursery² relates to development of 9 houses on a site that again bears little comparison with the appeal site before me, and the Inspector's decision was again based on the individual merits of that case. It is considered therefore that the site-specific circumstances relating to Hassell's nursery are not comparable with the details of this appeal.

Conditions

22. The guidance in the PPG 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. A number of these conditions were pre commencement conditions, the appellant confirmed that none of these had been discharged. The Council state that the conditions attached to the previous permission remain relevant to this proposal. As none

¹ APP/G5180/W/15/3005057

² APP/G5180/W/16/3155275

of the other conditions are disputed, on the basis of the evidence that I have seen, I have no reason to reach a different conclusion to that of the Council. The conditions from the previous permission are still, therefore, relevant, reasonable, and necessary and have been attached to this permission, minus the disputed one.

Conclusion

23. Having had regard to all of the above, condition 7 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 the aims of Policies 49 and 51 of the London Borough of Bromley Local Plan (2019) which seek to protect the Green Belt or relevant national planning policy.
24. For the reasons given above it is recommended that the appeal should be allowed.

S Witherley

APPEAL PLANNING OFFICER

Inspector's Decision

25. I have considered all the submitted evidence and the Appeal Planning Officer's report and, on that basis, I agree with the recommendation and shall allow the appeal and grant planning permission for the development without complying with condition 7 but subject to all other conditions as are necessary to make the development acceptable in planning terms.

Chris Preston

INSPECTOR

Schedule of Conditions

1. The development to which this permission relates must be begun not later than 24 December 2023.
2. The development hereby permitted shall not be carried out otherwise than in complete accordance with the plans approved under this planning permission unless previously agreed in writing by the Local Planning Authority.
3. (a) Prior to commencement of the development hereby approved (excluding any ground clearance or demolition) a scheme for the provision of surface water drainage shall be submitted and approved in writing by the local planning authority.

(b) Before the details required to satisfy Part (a) are submitted an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system (SuDS) to ground, watercourse or sewer in accordance with drainage hierarchy contained within the London Plan Policy 5.13 and the advice contained within the National SuDS Standards.

(c) 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 (attenuate) and control the rate of surface water discharged from the site as close to greenfield runoff rates (8l/s/ha) as reasonably practicable and the measures taken to prevent pollution of the receiving groundwater and/or surface water

(d) The drainage scheme approved under Parts a, b and c shall be implemented in full prior to first occupation of the development hereby approved
4. Prior to commencement of development (excluding demolition) details of the proposed slab levels of the building(s) and the existing site levels shall be submitted to and approved in writing by the Local Planning Authority . The development shall be completed strictly in accordance with the approved levels.
5. i) Prior to commencement of above ground works details of treatment of all parts on the site not covered by buildings shall be submitted to and approved in writing by the Local Planning Authority. The site shall be landscaped strictly in accordance with the approved details in the first planting season after completion or first occupation of the development, whichever is the sooner.

Details shall include:

1. A scaled plan showing all existing vegetation to be retained and trees and plants to be planted which shall include use of a minimum of 30% native plant species of home grown stock (where possible) and no invasive species
2. Proposed hardstanding and boundary treatment
3. A schedule detailing sizes and numbers of all proposed trees/plants
4. Sufficient specification to endure successful establishment and survival of new planting.

(ii) There shall be no excavation or raising or lowering of levels within the prescribed root protection area of retained trees unless agreed in writing by the Local Planning Authority.

(iii) Any new tree(s) that die(s), are/is removed or become(s) severely damaged or diseased shall be replaced and any new planting (other than trees) which dies, is removed, becomes severely damaged or diseased within five years of planting shall be replaced. Unless further specific permission has been given by the Local Planning Authority, replacement planting shall be in accordance with the approved details

6. (a) Prior to commencement of above ground works, details (including samples) of the materials to be used for the external surfaces of the building which shall include roof cladding, wall facing materials and cladding, window glass, door and window frames, decorative features, rainwater goods and paving where appropriate shall be submitted to and approved in writing by the Local Planning Authority.

(b) The development shall be carried out in accordance with the approved details.

7. The 3 existing stable buildings on the site shown to be removed on Drawing No.3809-19-PL001 Rev P5 shall be demolished, and the site cleared within three months of the first occupation of the dwelling hereby permitted.