
Appeal Decisions

Site visit made on 15 July 2022

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 August 2022

Appeal A Ref: APP/G5180/C/21/3270920

Land at Uphill, Viewlands Avenue, Westerham TN16 2JE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr David Thomas against an enforcement notice issued by the Council of the London Borough of Bromley.
 - The enforcement notice was issued on 15 February 2021.
 - The breach of planning control as alleged in the notice is, without planning permission, the construction of a conservatory to the rear of the property contained in the existing wall structures.
 - The requirements of the notice are to remove the unauthorised conservatory from the Land and leave the land in a neat and tidy condition.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal Ref: B APP/G5180/W/20/3262673

Uphill, Viewlands Avenue, Westerham TN16 2JE

- 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 David Thomas against the decision of the Council of the London Borough of Bromley.
 - The application Ref: DC/08/02259/RECON, dated 1 June 2020, was refused by notice dated 23 October 2020.
 - The application sought planning permission for the retention of a single storey side extension and demolition of garage without complying with a condition attached to planning permission Ref DC/08/02259/FULL6, dated 25 March 2009.
 - The condition in dispute is No 5 which states that: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no buildings or other structures shall be erected on the land without prior approval in writing of the Local Planning Authority.
 - The reason given for the condition is that in view of the planning history and the risk of structures being replaced further from the main house the removal of permitted development rights is justified.
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Appeal C Ref: APP/G5180/X/20/3255199

Uphill, Viewlands Avenue, Westerham TN16 2JE

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
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- The appeal is made by Mr David Thomas against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/20/00989/PLUD, dated 11 March 2020, was refused by notice dated 28 May 2020.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is a single-storey rear extension.
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Summary Decisions: Appeal A is dismissed and the enforcement notice is upheld with a variation. Appeal B is dismissed. Appeal C is dismissed.

Procedural matters

1. When appeals under section 78, section 174 and section 192 of the Town and Country Planning Act 1990 (the 1990 Act) are linked, as in this case, it is the convention to take the appeal under section 174 as the lead appeal. I have set out the details of the appeals in the header above in conformity with that convention. However, in practice the order in which they are set out above is not the logical sequence in which the appeals ought to be considered. I have therefore adopted a logical sequence based on the principle that if the extension is not caught by Condition No 5 at all, then there would be no reason to vary it.

The enforcement notice

2. The notice requires in paragraph 5 that the unauthorised conservatory is removed and the land left in a neat and tidy condition. The latter requirement is subjective: it would not be possible for the recipient of the notice (in this case the appellant) to know what, in the view of the Council, would constitute 'neat and tidy'. The notice as originally drafted is therefore technically invalid in that respect, because it does not tell the recipient with reasonable certainty what he must do to comply with notice.
3. Nevertheless, the notice could be varied to provide the certainty required by deleting the reference to 'neat and tidy' and substituting there that the land must be restored to the condition that it was in before the alleged breach of planning control took place. That would be entirely consistent with section 173(4)(a) of the 1990 Act. I am satisfied that the notice can be varied in that respect without causing injustice.

Appeal C: the certificate of lawful use or development

4. Section 192(2) of the Town and Country Planning Act 1990 (1990 Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case shall refuse the application. My decision is therefore based on the facts of the case and judicial authority. For the avoidance of doubt, this means that the planning merits of the proposed development are not relevant to this appeal and the main issue is whether the Council's decision to refuse to grant a LDC was well founded. In this respect, the burden of proof is on the appellant to show that, on the balance of probability, the development proposed would have been lawful on the date on which the application was made.

5. On 25 March 2009, planning permission was granted on appeal for the retention of a single storey side extension to the appeal property and the demolition of a garage and shed (APP/G5180/A/08/2087314). The permission was subject to conditions, of which condition No 5 stated:

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no buildings or other structures shall be erected on the land without prior approval in writing of the Local Planning Authority.

6. It follows that it was the Town and Country Planning (General Permitted Development) Order 1995 (1995 GPDO)¹ that the inspector would have had in mind when imposing condition No 5. The 1995 GPDO defines a building as:

(a) includes any structure or erection and, except in [Parts 24, 25, 33 and 40, Class A of Part 31 and Class C of Part 38, of Schedule 2] 6, includes any part of a building, as defined in this article; and (b) does not include plant or machinery and, in Schedule 2, except in Class B of Part 31 and Part 33, does not include any gate, fence, wall or other means of enclosure;
7. For present purposes, the operative part of that definition (i.e. 'includes any structure or erection') remains the same in the Town and Country Planning (General Permitted Development) (England) Order 2015 (2015 GPDO). That was the version of the GPDO in force on the date that the application for the LDC was made, and remains extant at this time.
8. The definition of a 'building' in both the 1995 GPDO and the 2015 GPDO reflects the definition in the 1990 Act, which at section 336 defines a building as including any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building.
9. There is no dispute that the single-storey rear extension proposed in the LDC application would constitute a building for the purposes of the 1990 Act and the 2015 GPDO (and therefore, by association, the 1995 GPDO). Consequently, on a plain reading of condition No 5, as a matter of ordinary language the proposed single-storey rear extension would be caught by the inclusion of the words "no buildings or other structures" in that condition.
10. The appellant, however, seeks to look behind that plain language to the intentions of the Inspector in imposing that condition. In that respect, the appellant dissects the Inspector's reasoning in his Decision and from that concludes that the Inspector was clearly seeking to remove permitted development rights in respect of garden buildings, rather than extensions.
11. Firstly, I am not persuaded that it is permissible to look behind the clear wording and ordinary language of condition No 5 in an attempt to 'second-guess' the reasons behind the imposition of that condition. Secondly, even if an attempt is made to look behind that plain language, I am not convinced that the appellant's interpretation is necessarily correct.
12. The Inspector was clearly concerned about the effect of the development then proposed on the openness of the Green Belt. In allowing the appeal, the Inspector accepted a trade-off that involved two structures: a garage and a

¹ SI 1995/418

shed. The latter was clearly a garden building but the extension had been built adjoining the house and the garage to make one building. That description implies that the garage was not a garden building remote from the main dwelling, but rather was located close to the built envelope of that dwelling.

13. The corollary, on my reading of the Decision as a whole, is that the Inspector was concerned not only about garden buildings but also about the loss of openness to the Green Belt resulting from all built form on the site. In that respect, the word "building" in Condition No 5 can apply equally to garden buildings as to extensions to the main dwelling: both may be regarded as buildings for the purposes of the 1990 Act and the 1995 GPDO.
14. Moreover, the specific provision to erect outbuildings within the curtilage of a dwellinghouse under what is now Class E, Part 1, Schedule 2 of the 2015 GPDO was also present in the 1995 GPDO extant at the time of the appeal decision². Had the Inspector intended to remove permitted development rights only in relation to garden buildings, it would have been a relatively simple matter to phrase condition 5 in terms of simply removing the rights specifically afforded under the equivalent provision in the 1995 GPDO or by reference to 'outbuildings'.
15. Indeed, I would go further: it would have been incumbent upon the Inspector to do so. The policy tests for the imposition of conditions were, at the time of the appeal decision, set out in Circular 11/95; Use of conditions in planning permissions. These were the same tests as currently set out in the Planning Practice Guidance (PPG), and include that a condition must be precise, reasonable and necessary.
16. Had the Inspector intended only to remove permitted development rights under Class E in relation to garden buildings, it would have been excessive to impose a condition removing all permitted development rights. That would have failed the 'reasonable' test set out in Circular 11/95. It is reasonable to conclude that the Inspector has those tests firmly in mind when drafting condition No 5 and would have drafted Condition No 5 to accord with the 'reasonable' and 'precise' test by making specific reference to garden buildings only. But he did not do so. To my mind, that is compelling evidence that the Inspector did intend to remove all permitted rights as being necessary to safeguard the openness of the Green Belt.
17. The appellant has provided a number of quotes from the above appeal decision which, in his view, support the proposition that the Inspector intended only to remove permitted development rights in relation to Class E. These include a quote from paragraph 14 of the Inspector's Decision, which reads:

In view of the planning history and the risk of structures being replaced further from the main house I consider in this case that removal of permitted development rights is justified, as required in Circular 11/95 "The Use of Conditions in Planning Permissions.
18. The appellant alights in particular on the wording in that paragraph "the risk of structures being replaced further from the main house". However, those words are immediately prefaced in that sentence by the word "and", which in turn is prefaced by the words "In view of the planning history". The planning history

² Class E, Part 1, Schedule 2 of the 1995 GPDO.

rehearsed by the Inspector earlier in his Decision does refer to a garden building (a shed), but also to a garage. As I understand it from the Inspector's Decision, that garage was in relatively close proximity to the main dwelling. Consequently, when read as a whole, the sentence particularly relied upon by the appellant relates to more than just garden buildings: on my reading, the Inspector was relating his intention to withdraw permitted development rights to all built development on the appeal site.

19. The same is also true of the other quotes highlighted by the appellant. On my reading of the Inspector's Decision as a whole, there is nothing to indicate that the Inspector intended to remove permitted development rights only in relation to Class E.
20. Following that appeal decision, the appellant constructed a conservatory to the rear of the property. Planning permission was refused by the Council, and a subsequent appeal was dismissed (APP/G5180/D/19/3234695). In paragraph 15 of that decision, the Appeal Planning Officer commented that the "submitted evidence refers to the existence of a fallback position in that a single-storey rear extension could be erected in accordance with the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015". That comment then formed part of the Inspector's decision. The appellant contends that this comment was acknowledging that the 2009 appeal decision had only removed Class E permitted development.
21. I do not agree. The words "submitted evidence refers" at the beginning of that comment clearly indicates that the Appeal Planning Officer was simply reciting the evidence before him, and not expressing an opinion on that evidence. Nowhere in that appeal decision is it expressly stated, or for that matter implied, that condition 5 imposed on the planning permission granted in 2009 only removed permitted development rights in relation to Class E. Moreover, even if an opinion had been expressed to that effect, it would not have any legal force and could not be binding on my own Decision.
22. Having regard to the above, I consider that the single-storey rear extension proposed in the LDC application is caught by condition No 5 imposed upon planning permission DC/08/02259/FULL6, as granted on appeal on 25 March 2009. It follows that the single-storey rear extension cannot constitute permitted development under Class A, Part 1, Schedule 2 of the 2015 GPDO, because it is precluded from benefitting from those rights by that condition.

Conclusion on Appeal C

23. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a single-storey rear extension was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Appeal B: variation of condition 5

24. The PPG indicates that conditions imposed on planning permissions must meet each of six tests. The appellant accepts that Condition 5 is relevant to planning; relevant to the development being permitted; enforceable; and precise. The appellant does, however, contend that the condition is not

necessary and is not reasonable. It is convenient to assess condition 5 against each of those tests in turn.

Necessary

25. Condition No 5 was imposed on a planning permission granted on appeal. The Inspector had heard evidence at a Hearing and had visited the site. In allowing the appeal, it is apparent from the Inspector's reasoning that he was concerned about the effect of the proposed development on the openness of the Green Belt but concluded that this would be acceptable subject to the imposition of conditions. In that context, I note that condition No 5 was not the only condition imposed by the Inspector to mitigate harm to the Green Belt: there is also condition No 1 which, amongst other things, requires the removal of the garage and the shed. The necessity for the imposition of condition No 5 must be considered in the context of that other condition, and the Inspector's decision when read as a whole.
26. At the time the Decision was issued, advice on the imposition of conditions was set out in Circular 11:95; Use of conditions in planning permissions. That guidance contained the same policy tests as currently set out in the Planning Practice Guidance (PPG), including that a condition must be necessary. It follows that the Inspector must have considered that condition No 5 was necessary in order to make the development acceptable in planning terms.
27. In dismissing the appeal in December 2019 (APP/G5180/D/19/3234695), the Inspector endorsed the conclusions of the Appeal Planning Officer, who found that the proposed development (the same conservatory now before me in Appeal A) caused harm to the Green Belt by way of its inappropriateness and to its openness. The dismissal of that appeal, for a relatively minor addition to the property, tends to support the conclusion that the imposition of condition No 5 was necessary to safeguard the openness of the Green Belt.

Reasonable

28. Condition No 5 seeks to preserve the openness of the Green Belt by removing permitted development rights for new built development. The protection of the Green Belt is a legitimate aim of planning policy and one to which the Government attaches great importance, as set out in the National Planning Policy Framework (Framework). As a matter of principle, I see nothing intrinsically unreasonable in the imposition of a condition pursuant to that policy objective.
29. I recognise that condition No 5 removes certain rights from the appellant that the Government ordinarily intended should be available to all householders, including within the Green Belt. However, it is also Government policy, as set out in paragraph 147 of the Framework, that inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances. Having regard to the planning history of the appeal site, in which two Inspectors have already found that further extensions to the property would constitute inappropriate development in the Green Belt, I find nothing unreasonable in a condition that removes permitted rights to further extend the property. In the specific circumstances of this case, I consider that to strike a reasonable balance between two competing Government objectives: the freedom of householders to extend and improve their homes, and the protection of the Green Belt.

30. The PPG indicates that conditions restricting the future use of permitted development rights or changes of use *may* not pass the test of reasonableness or necessity (emphasis added). The PPG goes on to indicate that the scope of such conditions needs to be precisely defined, by reference to the relevant provisions in the 2015 GPDO, so that it is clear exactly which rights have been limited or withdrawn. The PPG is clear in stating that area-wide or blanket removal of freedoms to carry out small scale domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity. This paragraph in the PPG is the cornerstone of the appellant's evidence on this appeal.
31. It is firstly relevant that Condition No 5 was imposed at a time when Circular 11:95; Use of conditions in planning permissions was the extant policy guidance. The guidance set out in Circular 11:95 was essentially the same as that now set out in the PPG. For example, Circular 11:95 indicates that is possible, exceptionally, to impose conditions to restrict further development which would normally be permitted by a development order (paragraph 86). It confirms that the Secretary of State would regard such conditions as unreasonable unless there were clear evidence that the uses³ excluded would have serious effects on the environment, and that the condition would serve a clear planning purpose (paragraph 87). The Circular also makes it clear that specific conditions are better than general ones.
32. It is reasonable to conclude that the Inspector would have had regard to the then current guidance on the imposition of conditions when considering whether to impose condition No5, as well as in the drafting of it. In that context, I note that the wording of condition No 5 follows very closely the wording of the model condition for the restrictions on Permitted Development included at Appendix A of the Circular (model condition 50). I note in particular that model condition 50 does not specify which provisions or Classes within the 1995 GPDO are removed.
33. Relating this to the current guidance in the PPG, it seems to me that condition No 5 remains generally in accordance with that guidance. It is not a blanket area-wide or blanket removal of freedoms to carry out small scale domestic alterations: it is tailored to tackle a specific problem, namely the harm to the Green Belt arising from the site-specific circumstances of the appeal property and its planning history. Again, in this respect condition No 5 must be read in the context of condition No 1.
34. This also goes to the guidance on Green Belts in the Framework and the PPG. As the appellant points out, there is nothing in the Framework or PPG to suggest that the grant of permission for the extension of a dwelling in the Green Belt amounts to the exceptional circumstances necessary to impose a condition limiting permitted development rights. Nonetheless, the Framework also makes it clear that the Government attaches great importance to Green Belt. The Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. On my reading, there is nothing in the Framework or the PPG to suggest that in some instances the site-specific circumstances of the site could not justify that the removal of permitted development rights in order to control inappropriate development in the Green Belt.

³ The relevant sentence in Paragraph 87 does not specifically mention operational development but from context it may be inferred that the guidance applies equally to operational development.

35. I recognise that condition No 5 does not make reference to the relevant provisions in the GPDO and to that extent does not accord with the guidance in the PPG. Nevertheless, for the reasons that I have set out above, I consider that the plain language used in the drafting of condition 5 makes it reasonably clear what permitted development rights have been removed.
36. In that respect, I have considered whether this appeal should be allowed and a variation of condition No 5 substituted which did make reference to specific provisions in the GPDO. However, for reasons that I set out fully in relation to Appeal A below, I consider that in order to safeguard the openness of the Green Belt in this location it would be necessary to remove permitted development rights in relation to both extensions (Class A) and outbuildings (Class E). Given that I am satisfied that condition No 5 as drafted effectively fulfils that purpose, I see no merit in re-imposing a condition to specify those specific provisions within the 2015 GPDO.
37. Having regard to all of foregoing, I conclude that the appeal should be dismissed.

Appeal A: the appeal on ground (d)

38. The appeal on this ground is that, at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by those matters. The test in this regard is the balance of probability and the burden of proof is on the appellant.
39. The appellant explains that the development the subject of the notice commenced in 2012 when the foundations were laid. The appellant then correctly points out that section 56(4) of the 1990 Act confirms that the laying of foundations can constitute a material start of operational development. But that is not the relevant test: section 171(B)1 of the 1990 Act specifically indicates that no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed. It therefore matters not when the material start was made: it only matters when the development was substantially completed.
40. The appellant offers no evidence as to the date on which the conservatory was substantially completed. On the other hand, the Council has provided a series of photographs taken in January 2019, some two years before the notice was issued. Those photographs show that the roof is not complete and the external finish not yet applied, and that the interior (including the flooring) has not been fitted out. The courts have held that a building could not be regarded as substantially completed for the purposes of section 171B (1) even if outstanding works affected only the interior. As shown in those photographs, the outstanding works go beyond just the interior, with elements of the exterior works yet to be completed at that time. This was largely the position at the time of my site visit, albeit by then the flooring was in place.
41. I therefore conclude that, as matter of fact and degree, the extension was not substantially completed on the date four years before the notice was issued. I am therefore satisfied, on the balance of probability, that on the date the notice was issued the Council was in a position to initiate enforcement action in respect of the breach of planning control alleged.
42. Accordingly, the appeal on ground (d) fails.

43. Appeal A: the appeal on ground (a) and the deemed planning application

44. The ground of appeal is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The Council has stated one substantive reason for issuing the enforcement notice, from which the following main issues are raised:

- whether the breach of planning control alleged in the notice is inappropriate development in the Green Belt for the purposes of the Framework and the development plan
- the effect on the openness of the Green Belt, and
- if the breach of planning control alleged in the notice is inappropriate development in the Green Belt, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Whether the proposal is inappropriate development for the purposes of the Framework and the development plan

45. Paragraph 149 of the Framework indicates that, with some exceptions, the construction of new buildings is inappropriate in the Green Belt. One of those exceptions is the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building.
46. The appellant maintains that the extension, which has a floor area of some 37m² and a volume of some 97m³, is not a disproportionate extension. Whilst that may be so when viewed in isolation, the exception in paragraph 149 of the Framework is predicated upon the extension being a disproportionate addition over and above the size of the *original* building (emphasis added). For that purpose, the Glossary at Annex A of the Framework defines an original building as being as it existed on 1 July 1948 or, if constructed after 1 July 1948, as it was built originally.
47. It is evident from the planning history of the site that the dwelling as it stands today is not the original building. It is not entirely clear whether planning permissions granted for single storey extensions to the property in 1985 and 1986 were ever implemented. I will therefore discount those for present purposes. However, retrospective planning permission was granted for the erection of two storey side, front and rear extensions together with new roof and front and rear dormer extensions including demolition of existing double garage (Council Ref: 99/02176/FULL1). Comparison of the building as it currently stands with the plans submitted with the planning application submitted in 1986 reveals that the property was significantly extended as a result of the extensions granted by planning permission 99/02176/FULL1.
48. The building was then extended again in or around 2008, gaining retrospective planning permission on appeal in March 2009 (APP/G5180/A/08/2087314). The Inspector concluded (and, I note, the appellant accepted) that the proposal was inappropriate development in the Green Belt, and only allowed the appeal on the basis of a trade-off involving the demolition of two existing structures on the site.

49. Similarly, in dismissing the appeal for a conservatory in December 2019 (APP/G5180/D/19/3234695), the Inspector endorsed the conclusions of the Appeal Planning Officer that the proposed development constituted inappropriate development in the Green Belt. Significantly, this was the same conservatory that is now before me.
50. As a result of this planning history, I consider that the conservatory subject to the notice does result in a disproportionate addition over and above the size of the original building on the site. I therefore conclude that the breach of planning control alleged in the notice is inappropriate development in the Green Belt in the context of Paragraph 149 of the Framework, as well as Policy G2 of the London Plan and Policies 49 and 51 of the Bromley Local Plan. The latter provides that extensions to dwellinghouses will only be permitted if the net increase in the floor area over that of the original dwellinghouse is no more than 10%, as ascertained by external measurement. The previous extensions to the appeal property have already exceeded the 10% limitation in that policy, irrespective of the relatively modest floor area of the proposed conservatory.

Effect on the openness of the Green Belt

51. The Courts have held that matters relevant to the openness of the Green Belt are a matter of planning judgement, and that openness can have both a spatial aspect as well as a visual aspect. In spatial terms, the volumetric increase in built form resulting from the conservatory is readily apparent. In visual terms, the conservatory is a box-like structure with an overhanging roof that projects significantly beyond the rear elevation of the main house. However, the visual impact on the openness of the Green Belt is mitigated by its location at the rear of the property where it is mostly viewed against the backdrop of the main house. Moreover, the conservatory is not visible from outside of the appeal site. Overall, I consider that the harm on the openness of the Green Belt is limited. Nevertheless, by definition, any harm to the openness of the Green Belt, however slight, fails to preserve the openness of the Green Belt.

Other considerations

52. The appellant explains that as the family needs have changed over time, a (in his words) substantial climbing frame has been removed. It is described as having been two-storey in height and having had vibrant yellow slides and tubes on the outside. The appellant advises that this structure, which also functioned as a play room/storage area, had a volume of some 212m³. The appellant calculates that the conservatory represents a reduction in volume of 49% compared to the climbing frame now removed. The appellant had helpfully marked out the footprint of that climbing frame for the purposes of my site visit, enabling me to gain some impression of the size of structure, although not of course its appearance.
53. The removal of this climbing frame was considered by the Inspector in allowing the appeal in March 2009 (APP/G5180/A/08/2087314), who found it to be a large but mainly open structure which due its position and form did not result in an erosion of openness. The Inspector therefore concluded that its removal would not be a benefit.
54. The removal of the climbing frame was considered afresh by the Appeal Planning Officer in recommending that the appeal in December 2019 should be dismissed (APP/G5180/D/19/3234695). The Appeal Planning Officer found no

reason to come to a different view to the Inspector who determined the previous appeal adding that, because the climbing frame had already been removed, its removal could not be considered as a direct benefit arising from the development then before him. The Inspector endorsed those views in dismissing the appeal.

55. For all the reasons given and endorsed by the Inspectors in the two previous appeals, I similarly consider that the removal of the climbing frame does not provide justification for the erection of the conservatory.
56. The appellant also explains that the conservatory has provided a sitting area for his mother in-law to be able to view the now open garden. The appellant goes on to explain that he has installed a pool table in the conservatory which he considers brought immense pleasure to all the family in difficult times (i.e. the Coronavirus pandemic). The appellant considers that the conservatory allows his family to come together or alternatively seek solace away from the family, and that its loss would be detrimental to all the family.
57. The occupier of a neighbouring property has explained that she has enjoyed spending time with appellant and his family in the conservatory, and that the building causes no concern to her⁴.
58. I do not underestimate the value of the space provided by the conservatory during that difficult period. Nonetheless, the restrictions imposed by the Coronavirus pandemic have now been lifted. The conservatory, on the other hand, would be a permanent addition to the property. I have no doubt that the conservatory would continue to be a valuable facility for the whole family and their friends should it be retained, but I must balance that against the permanent harm to the Green Belt that would result from its retention.
59. It is a fundamental principle of development control that each case must be considered on its own merits. Nevertheless, consistency is an important aspect of decision making. On two occasions now, Inspectors have found further extensions to the property to be inappropriate development in the Green Belt. One of those extensions was granted planning permission, but only on the basis of a trade-off involving the removal of two other structures. The other extension, which was the exact same development that is now before me, was denied planning permission less than three years ago. I have not been made aware of any significant change in the material circumstances of the appeal site that would lead me to a different conclusion to that reached by the Inspectors in those two previous appeals.
60. The appellant has drawn my attention to an extension to another property in Viewlands Avenue, known as Good Shelter. I was able to view that extension from the upper floor of the appeal property as part of my site visit. The extension to that property was granted planning permission on appeal in October 2018 (APP/G5180/D/18/3207716). In allowing the appeal, the Inspector found that the proposed extension did not result in disproportionate additions over and above the size of the original building and was therefore not inappropriate development in the Green Belt. That, right there, is a key finding and a fundamental difference between that proposal and the development now before me. For that reason alone, the extension to Good Shelter can be

⁴ That representation was submitted in relation to Appeal C Ref: APP/G5180/X/20/3255199.

distinguished from the development subject to this appeal. Because it is not directly comparable, the permission for that extension provides no justification for the development now before me.

61. The appellant is quick to point out that, in allowing the appeal and granting planning permission for the extension, the Inspector did not impose a condition removing permitted development rights. Not to do so was a course of action open to the Inspector based on the facts and circumstances of that particular case. But that does not mean that removing permitted development rights was not appropriate in the very different set of circumstances of the current appeal property, having regard to the planning history of previous substantial extensions.

Green Belt balancing exercise and conclusion on the ground (a) appeal

62. In accordance with paragraph 148 of the Framework, I attach substantial weight to the harm to the Green Belt by reason of the inappropriate nature of the development. That harm could not be overcome by the imposition of suitably worded conditions. I also attach significant weight to the importance of consistency in decision making.
63. Against this, I attach minimal weight to the removal of the climbing frame. I attach moderate weight to the benefit to the appellant's family of retaining the conservatory.
64. Consequently, the harm by reason of inappropriateness and any other harm, is not clearly outweighed by other considerations, such that the very special circumstances necessary to justify the development do not exist.
65. For the reasons set out above, the breach of planning control alleged in the notice is contrary Policy G2 of the London Plan as well as Policies 49 and 51 of the Bromley Local Plan. I have not been advised of any material considerations of sufficient weight, either taken individually or cumulatively, to indicate that determination should be made otherwise than in accordance with the development plan.
66. Accordingly, I conclude that the appeal on ground (a) should be dismissed and planning permission refused on the deemed planning application.

Appeal A; the appeal on ground (f)

67. The ground of appeal is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the Town and Country Planning Act 1990 sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place or (b) remedying any injury to amenity which has been caused by the breach. In this case, the requirements of notice (as I propose to vary them) are to remove the unauthorised conservatory and to restore the land to the condition that it was in before the alleged breach of planning control took place. The purpose of the notice must therefore be to remedy the breach of planning control that has taken place.

68. The appellant's case on this ground of appeal the development commenced in 2012 and that, because that was more than four years before the notice was issued, the notice cannot require the removal of the development. However, that is not an appeal under ground (f): it is an appeal on ground (d), and one which I have already found could not succeed. The corollary is that the conservatory is not immune from enforcement action and the enforcement notice can properly require its removal.
69. In any event, the removal of the conservatory and the restoration of the land to the condition that it was in before the alleged breach of planning control took place are the minimum necessary to achieve the purpose of the notice. Those requirements are therefore not excessive.
70. Accordingly, the appeal on ground (f) must fail.

Appeal A; the appeal on ground (g)

71. The ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The period for compliance specified in the notice is three months.
72. The essence of the appellant's case on this ground of appeal is that the compliance period of three months is considered to be too short to be practicable. A compliance period of at least twelve months is requested.
73. The appellant's contention that the period of compliance stated in the notice is too short to be practicable is not supported by any evidence or justification. It seems to me that the removal of the conservatory would be a relatively simple matter, requiring no specialist skills or equipment. The appellant has provided no evidence to show that he has not been able to source suitable contractors to carry out the work or, having found a suitable contractor, has been advised that the task could not be completed within the period of three months stated in the notice. In the absence of that evidence, I have no justification for extending the period of compliance.
74. I am, therefore, not persuaded that there is any need to extend the period for compliance with the notice and am satisfied the period of compliance of stated in the notice is a proportionate response to the breach of planning control that has occurred.
75. Accordingly, the appeal on ground (g) fails.

Conclusion on Appeal A

76. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation.

Formal Decisions

Appeal A Ref: APP/G5180/C/21/3270920

77. It is directed that the enforcement notice is varied by:
- in paragraph 5 of the notice, deleting the words "leave the Land in a neat and tidy condition" and substituting there the words "restore the Land to the condition that it was in before the breach of planning control took place".

78. Subject to that variation, the appeal is dismissed and the enforcement notice is upheld.

Appeal Ref: B APP/G5180/W/20/3262673

79. The appeal is dismissed.

Appeal C Ref: APP/G5180/X/20/3255199

80. The appeal is dismissed.

Paul Freer
INSPECTOR