



Appeal Decisions

Site visit made on 24 August 2022

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 September 2022

Appeal A Ref: APP/G5180/C/21/3284354

Land at the back of number 4 and number 5 Leaves Green Crescent, Keston BR2 6DN

- 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 Callum Harwood against an enforcement notice issued by the Council of the London Borough of Bromley.
 - The enforcement notice was issued on 14 September 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of an extension to the existing double garage, marked 'A' on the attached plan; and the erection of a single storey detached outbuilding, marked 'B' on the attached plan.
 - The requirements of the notice, set out in its paragraph 5, are:
 - (1) Remove from the Land; the extension to the double garage; marked 'A' on the attached plan, and
 - (2) Remove from the Land; the single storey detached outbuilding, marked 'B' on the attached plan, and
 - (3) Remove from the Land all materials and debris associated with paragraphs (5)1 and 5(2).
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Appeal B Ref: APP/G5180/X/22/3291627

5 Leaves Green Crescent, Keston BR2 6DN

- 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 failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Callum Harwood against the Council of the London Borough of Bromley.
 - The application, Ref: 21/05172, is dated 27 October 2021.
 - 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 described as: Erection of an outbuilding comprising home office and gym as shown in the submitted plans and described in the LDC submissions.
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Decisions

1. Appeal A is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.
2. Appeal B is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operation which is considered to be lawful.

Applications for Costs

3. In respect of both appeals, an application for costs was made by Mr Callum Harwood against the Council of the London Borough of Bromley. These applications are the subject of separate decisions.

Preliminary Matters

4. From the information provided, Land Registry records indicate that the site for Appeal A is known as 'Land at the back of 4 Leaves Green Crescent'. However, it is under the same ownership as No 5 and may be directly accessed from the rear of No 5 as there is no boundary treatment between the two plots. Taking into account the above, as well as the siting of the buildings attacked by the notice, I am satisfied that the enforcement notice, read together with its attached plan, accurately describes the land to which it relates.
5. For Appeal B, the description in the heading above has been taken from the application form. I have omitted unnecessary further wording.
6. The LDCs Planning Practice Guidance is clear that planning merits are not relevant at any stage in a lawful development certificate application or the appeal process for such an application (Paragraph: 009 Reference ID: 17c-009-20140306). Therefore, I have not taken any planning merits into account in my decision for Appeal B.

Reasons

Appeal A

7. An appeal on ground (a) is that planning permission ought to be granted for the matters stated in the notice. The appeal site is in the Green Belt and the reasons for the notice refer to visual amenity. So I consider the main issues in the ground (a) appeal to be:
 - whether the appeal development is inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the Framework) and any relevant development plan policies;
 - the effect of the appeal development on the openness of the Green Belt;
 - the effect of the appeal development on the character and appearance of the area; and
 - if the appeal development is inappropriate development in the Green Belt, whether any 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 appeal development.

Whether Inappropriate Development

8. The appeal development consists of an extension to an existing building, hereafter referred to as 'the extension', and a single storey detached outbuilding, hereafter referred to as 'the outbuilding'.
9. At the time of my site visit, the existing building (excluding its extension) was occupied as habitable accommodation. From the information provided, this existing building was constructed as a detached double garage, following a grant of planning permission in 1996. Two sets of glazed doors were in place on its front elevation, where garage doors might otherwise be expected to be seen.
10. I saw at my site visit that the extension to this existing building is a single garage, with an up and over garage door. At the time of my visit it was being used for storage. The appellant states that the outbuilding is intended to be a home office. It is described by the appellant as a shell. It too was being used for storage, at the time of my visit.
11. Policy G2 of the London Plan 2021 states that development proposals that would harm the Green Belt should be refused except where very special circumstances exist. This is consistent with the Framework.
12. Policy 49 of the Bromley Local Plan 2019 (the Local Plan) states that within the Green Belt permission will not be given for inappropriate development unless very special circumstances can be demonstrated that clearly outweigh the harm by reason of inappropriateness or any other harm. This is consistent with the Framework.
13. Policy 49 states that the construction of new buildings on land falling within the Green Belt will be inappropriate, unless it is for purposes which are specified in the policy. One of these is: "extension or alteration of a building that it does not result in disproportionate additions over and above the size of the original building". This is consistent with paragraph 149 of the Framework, in particular 149(c).
14. The enforcement notice also refers to Policy 51 of the Local Plan. The Council states that this was included in error and so I have not applied this policy to the appeal development in this case.
15. In light of the above policies, in particular Policy 49, I conclude that the outbuilding is inappropriate development in the Green Belt. I have no reason to think otherwise.
16. For the extension, I must consider whether it results in disproportionate additions over and above the size of the original building.
17. From the information provided, the original building measures 8m wide, 8m deep and 4.2m high and the extension measures 2.5m wide, 7m deep and 2.5m high. This is an increase in floor space of approximately 27%¹. In my judgement, this is a disproportionate addition over and above the size of the original building, notwithstanding that the extension is lower and set back.

¹ The Council and the appellant have provided figures of 26% and 27%. Based on the dimensions provided, the correct figure is 27%.

18. My attention has been drawn to extension floorspace percentage increases in other local planning authority areas. But policies in other areas will be based on a different evidence base and so should not necessarily be used to determine what is disproportionate in this case.
19. I conclude the extension is inappropriate development in the Green Belt.

Effect on Openness

20. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The essential characteristics of Green Belts are their openness and permanence. The Framework sets out the purposes of Green Belts and these include safeguarding the countryside from encroachment.
21. The extension and the outbuilding are clearly seen from the public byway to the south of the appeal site, even when the vehicular gates to the site are closed. This is because the extension and outbuilding are sited on higher land than the public byway. Both developments are also clearly seen from the open land to the west, and across this land, when travelling east along the public byway. The extension and outbuilding significantly increase the width of built development from the above viewpoints, notwithstanding that the flank of the extension is partly concealed by vegetation on the western boundary.
22. The outbuilding is clearly seen from the land to the north, notwithstanding that there is some planting and trellis fencing on this boundary. The extension is also seen from here, but to a lesser extent due to some vegetation on its north side. A mature tree obscures some views of the outbuilding from houses on Leaves Green Crescent. But from my site visit observations, it is clearly seen from the upper floors of houses to the south of No 5, particularly No 6.
23. In my view, the distance between the houses and outbuilding makes no material difference to the effect on openness in this case and whilst the original garage building provides part of the backdrop for the outbuilding when viewed from the houses, it still visually extends built development across the appeal site. In light of the above, openness is visually reduced as a result of the extension and the outbuilding and spatially, encroachment into the countryside occurs.
24. I appreciate that the driveway on the appeal site may be used to park vehicles but this does not change my assessment above.
25. I conclude on this main issue, that the appeal development has a harmful effect on openness. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

Character and Appearance

26. The Council's statement presents the effect of the appeal development on the character and appearance of the area as a discrete issue. However, it then goes on to conflate this with the openness of the Green Belt when these are separate issues (although they may overlap in some cases).
27. From the limited information provided in respect of character and appearance (and setting aside the separate issue of the effect of the appeal development

on openness, which I have already addressed above), I am not satisfied the extension or outbuilding harm the character or appearance of the area.

28. Moreover, I have not been directed to any development plan policy which is specifically relevant to the effect of the appeal development on the character or appearance of the area. So based on the limited case put to me in this regard, I conclude the appeal development does not harm the character or appearance of the area.

Other Considerations

29. The appellant has indicated that the outbuilding would be compliant with permitted development rights, had these not been removed in 1994, and that the removal of permitted development rights is unjustified in Green Belt cases. But the rights referred to cannot be relied on in this case and permitted development rights can be removed where there is clear justification to do so. Moreover, there is no evidence before me that the reason permitted development rights were removed on the appeal site does not remain relevant today. So I give the above consideration limited weight.
30. My attention has been drawn to correspondence between the appellant and the Council and in particular an email of 29 May 2020. The appellant states that the Council changed its position on the land benefitting from permitted development rights and that the outbuilding was erected because of correspondence received from the Council. But there is nothing in the information provided to me that indicates that the Council's view was that the outbuilding is or would be permitted development, and the aforementioned email indicates that the extension is not permitted development.
31. From the information available to me, the planning permission with the condition which removes permitted development rights was provided to the appellant along with the local authority search carried out in 2016 when the property was sold, and, it is the responsibility of the landowner to be aware of such restrictions before carrying out development. So I give the above consideration limited weight.
32. The appellant states that the outbuilding is intended to be a home office as they operate a charity and need additional room unavailable in the main house. I am sympathetic to this requirement. But the appellant has not explained why the existing building next to the outbuilding could not be used for this purpose, or at least part of it. This is particularly the case given that the appellant clearly no longer needs all of that existing building as a double garage. So I give this consideration limited weight.
33. I understand that the appellant needs a gym to aid long term recovery following surgery and I am sympathetic to this. But a gym is not the stated purpose of the outbuilding which has been built and it is not the purpose of the extension either. So I give this consideration limited weight.
34. The appellant indicates that the appeal development does not cause amenity harm. But even if this is the case, this is a neutral consideration and not a benefit of the scheme so I give it limited weight.
35. The appellant has drawn my attention to two fallback positions and I have taken these into account as material considerations in this case. It is said that a static caravan 'or similar' could be stationed on the site of the outbuilding

- and/or a larger 'permitted development' outbuilding could be erected within the original back garden of No 5.
36. According to the appellant, a caravan could be 20m long and 6.8m wide and so would be larger than the outbuilding. The appellant also says it would be less suitable in terms of its effect on character and appearance. But no further details have been provided for me to be satisfied that this is the case. The extension before me in this appeal is a garage. A caravan would not be able to be used as a garage and so it does not pose a fallback position for the extension.
37. The outbuilding had not been fitted out as such by the time of my visit. A caravan could theoretically be used as a home office. But I am not satisfied that a caravan, which by definition could be moved, would have a worse effect on the openness of the Green Belt than a permanent building, which is what the outbuilding is, even if the caravan is larger. So I give the 'caravan' fallback position limited weight.
38. According to the appellant, the same or larger outbuilding could be erected within the original back garden of No 5 and I have been provided with a copy of a lawful development certificate (LDC), granted by the Council², which confirms this is the case. The LDC building would have a larger cross sectional area than the outbuilding and would sit on slightly higher land. I have carefully compared this fallback with the appeal scheme.
39. From the public byway to the south, the LDC building would be significantly less visible than the outbuilding, if at all. From the open land to the west, and when travelling east along the public byway, the LDC building would be seen against a backdrop of the existing taller two storey houses on Leaves Green Crescent. From the properties either side, the LDC building would sit between, and be partly screened by existing domestic timber fences.
40. Sited here, I do not consider the LDC building poses the same level of encroachment into the countryside as the appeal scheme. Taking all of the above into account, I am not satisfied that the LDC building has a worse effect on the visual or spatial openness of the Green Belt than the appeal scheme. So I give the 'larger outbuilding' fallback position limited weight.
41. The appellant states that if the enforcement notice were to come into force, the building materials from disassembling the appeal development would generate much of the building materials required for the LDC building. It is indicated that the dismantled materials (and more to be imported, as the LDC building is larger) would be moved just 22m east to the site of the proposed LDC building. Further, it is stated that the machinery required to do so would ensure significant damage to the surrounding greenery. But I do not accept that it is in the appellant's interests to cause such damage to their own land and there is nothing to lead me to believe that greenery would not soon grow back so that such an effect would be short term in any event. So I give this consideration limited weight.
42. The appellant indicates this fallback is worse in terms of the impact on the amenities of others and reports that the neighbours are unhappy with the prospect of a new building (ie the LDC building) affecting their outlook. But in

² Application No: DC/21/05110/PLUD dated 10 February 2022

my judgement, this outlook effect of the LDC building would not be materially different to the appeal development, both schemes being sited close to the boundary with neighbouring gardens. So I give this consideration limited weight.

43. The appellant reports that 'the neighbours fully support the appellant' and I have been provided with a copy of representations which do not object to the appeal development. Although my attention has also been drawn to representations which object to the appeal development and so in this context, I give the support lent to the appellant limited weight.
44. The appellant indicates that if the extension were removed the tools, garden supplies and machinery stored in it would be on display again. But I find this unlikely as it seems to me that such items need to be sheltered from the elements and so would have to be stored indoors elsewhere. So I give this consideration limited weight.
45. The appellant suggests that if the extension and outbuilding have to be demolished, they will extend the existing gravel driveway by 30m (approximately 120sqm) under Class F permitted development rights, which would cause further harm to land within the green belt.
46. But even if the land enjoys such permitted development rights (and the Council indicates it does not) I am not satisfied that the driveway extension described would have a worse effect on the openness of the Green Belt than the appeal development before me. So I give this consideration limited weight.
47. The appellant states that the Council is biased and that there is reason to believe there is collusion between a local resident with Council ties. But there is no evidence of this before me and, in any event, I have based my decision on the planning considerations relevant to the case. So I give this consideration limited weight.
48. In accordance with the Framework, I must give substantial weight to any harm to the Green Belt. In this case I do not consider the harm to the Green Belt is clearly outweighed by other considerations, including those noted above. I therefore find the very special circumstances necessary to justify the appeal development do not exist.

Conclusion on Ground (a)

49. Whilst I have not found harm in terms of the effect of the appeal development on the character or appearance of the area, this is a neutral factor which does not weigh in favour of the appeal development. The appeal development is inappropriate development in the terms set out in the Framework and leads to a loss of openness in the Green Belt. This harm is not outweighed by other considerations so as to amount to very special circumstances and so the appeal development does not comply with the Framework, Policy G2 of the London Plan 2021 or Policy 49 of the Local Plan. For all of the reasons given above and taking into account all other matters raised, I conclude that the ground (a) appeal should be dismissed.

Appeal B

50. The main issue in Appeal B is, if the Council had refused the application, whether the refusal would have been well-founded or not.
51. Under section 192(1) of the 1990 Act, if any person wishes to ascertain whether any operations proposed to be carried out in, on, over or under land, would be lawful, they may make an application for the purpose to the local planning authority specifying the land and describing the operations in question.
52. Under section 192(2), if, on an application under this section, the local planning authority are provided with information satisfying them that the operations described in the application would be lawful if begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application.
53. The Town and Country Planning (General Permitted Development) (England) Order 2015 (the Order) grants planning permission for specified forms of development, subject to conditions and limitations. Schedule 2, Part 1, Class E of the Order concerns buildings etc incidental to the enjoyment of a dwellinghouse. Class E provides that the provision within the curtilage of a dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such is permitted development.
54. The Council has resolved not to contest Appeal B. As such, I have been given no reason to consider that the development before me is not lawful. Moreover, another application, Ref: 21/05110/PLUD, described by the Council as "identical", has been granted by the Council. So there is no dispute between the main parties that the development described in this LDC application is lawful.
55. On the basis of the evidence before me, I have no reason to depart from the view that the outbuilding described in the LDC application would benefit from the permitted development right set out in Class E of the Order.

Conclusions

56. Appeal A: For the reasons given above, I conclude that Appeal A should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.
57. Appeal B: For the reasons given above I conclude, on the evidence now available, that the Council's deemed refusal to grant a certificate of lawful use or development in respect of the erection of an outbuilding comprising home office and gym as shown in the submitted plans and described in the LDC submissions, was not well-founded and that Appeal B should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

L Perkins

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 27 October 2021 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The outbuilding described on drawing numbers 1297(00)01 P1 and 1297(02)01 P1 complies with Schedule 2, Part 1, Class E of The Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

L Perkins

INSPECTOR

Date: 16 September 2022

Reference: APP/G5180/X/22/3291627

First Schedule

Erection of an outbuilding comprising home office and gym as shown in the submitted plans and described in the LDC submissions.

Second Schedule

Land at 5 Leaves Green Crescent, Keston BR2 6DN

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 16 September 2022

by **L Perkins BSc (Hons) DipTP MRTPI**

Land at: 5 Leaves Green Crescent, Keston BR2 6DN

Reference: APP/G5180/X/22/3291627

Scale: Not to scale

