



Appeal Decisions

Site visit made on 31 August 2022

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd OCTOBER 2022

Appeal A Ref: APP/G5180/X/21/3283296

Sanford House, Skeet Hill Lane, Orpington BR6 7RX

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr & Mrs Cole Smith against the decision of the Council of the London Borough of Bromley.
- The application ref DC/21/01418/PLUD, dated 23 March 2021, was refused by notice dated 14 May 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 on the application form as "*single storey rear extension where prior approval is not required for householder permitted development (DC/21/00228/HHPA) rear dormer extension with front roof lights*".

Appeal B Ref: APP/G5180/D/22/3291586

Sanford House, Skeet Hill Lane, Orpington BR6 7RX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr & Mrs Cole Smith against the decision of the Council of the London Borough of Bromley.
- The application Ref DC/21/04899/FULL6, dated 6 October 2021, was refused by notice dated 6 January 2022.
- The development proposed is erection of single storey rear extension.

Appeal C Ref: APP/G5180/D/22/3295837

Sanford House, Skeet Hill Lane, Orpington BR6 7RX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr & Mrs Cole Smith against the decision of the Council of the London Borough of Bromley.
- The application Ref DC/21/04900, dated 6 October 2021, was refused by notice dated 1 March 2022.
- The development proposed is erection of rear dormer extension.

Appeal D Ref: APP/G5180/W/22/3293877

Sanford House, Skeet Hill Lane, Orpington BR6 7RX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr & Mrs Cole Smith against the decision of the Council of the London Borough of Bromley.

- The application Ref DC/00/02599/RECON, dated 15 October 2021, was refused by notice dated 10 February 2022.
 - The application sought planning permission for demolition of existing dwelling and erection of five bedroom house with detached garage without complying with a condition attached to planning permission Ref DC/00/02599/FULL1 dated 13 November 2000.
 - The condition in dispute is No 8 which states: *"Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order amending, revoking and re-enacting this Order) no buildings, structures, alterations, walls or fences of any kind 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 to prevent an overdevelopment of the site with regard to its Green Belt location.
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Decisions

1. Appeal A-The appeal is dismissed.
2. Appeal B-The appeal is allowed and planning permission is granted for the erection of a single storey rear extension at Sanford House, Skeet Hill Lane, Orpington BR6 7RX in accordance with the terms of the application Ref DC/21/04899/FULL6, dated 6 October 2021, subject to the conditions in the Schedule at the end of this Decision.
3. Appeal C-The appeal is allowed and planning permission is granted for the erection of a rear dormer extension at Sanford House, Skeet Hill Lane, Orpington BR6 7RX in accordance with the terms of the application Ref DC/21/04900/FULL6, dated 6 October 2021, subject to the conditions in the Schedule at the end of this Decision.
4. Appeal D-The appeal is dismissed.

Background

5. The appeal property contains a substantial detached two storey dwelling with a detached double garage and garden outbuilding. The current structure replaced a previous dwelling, following the grant of planning permission in November 2000¹. The dwelling is set well back from the highway within a generously-sized, rectilinear plot which is mostly bounded by tall, thick maturing planting. The property is located just beyond the edge of an urban area, the rural surroundings largely comprising open fields interspersed by sporadic development.

Appeal A

Main Issue

6. The main issue in this appeal is whether the Council's refusal to grant an LDC was well-founded. This turns on whether the applicant has been able to show that the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) grants planning permission for the proposal at Article 3, Schedule 2, Part 1, Classes A, B and C.

¹ Council Ref: DC/00/02599/FULL.

Reasons

7. The proposal involves erecting a 6 m deep, single storey extension with a central glazed lantern at the rear of the dwelling, together with a dormer on the rear roof slope and installing rooflights in the front roof slope as well as a rooflight at the side. The onus is on the appellant to show that the proposal is lawful, the relevant test of the evidence being on the balance of probability.
8. Conditions attached to the 2000 permission include condition No 8, which removes the permitted development rights otherwise available for a range of development within the curtilage of the dwelling together with those rights for the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure. The GPDO has replaced the previous version of the Order referenced in condition No 8. At Article 3, Schedule 2, Part 1, the GPDO grants planning permission in Classes A, B and C for the enlargement, improvement or other alteration of a dwelling, including additions and alterations to its roof, subject to certain limitations and conditions being satisfied. As far as I have been made aware, the proposal would satisfy the relevant size and locational limitations as well as the relevant conditions in Classes A, B and C. However, the granting of planning permission by the GPDO is not absolute and is qualified by other statutory provisions. The effect of the GPDO at Article 3(4) is that development cannot be permitted where it would be contrary to a condition on a grant of express planning permission. Relevant case law confirms that conditions removing permitted development rights otherwise available under a Development Order have a continuing effect in respect of subsequent versions of that Order².
9. Condition No 8 refers to the erection of "*buildings, structures, alterations...*". The definition of a "building" in s336(1) of the Act includes any structure or erection, and any part of a building. The effects on the Green Belt of any development at the property involving, for example, erection of an extension or a freestanding outbuilding, are likely to be substantially similar. Therefore, in my view reference in the condition to "buildings" is meant to be inclusive of extensions and alterations to the dwelling within what otherwise would have been permitted by Classes A, B and C. It follows that, to my mind, condition No 8 is clear and unambiguous regarding exactly what rights under the GPDO it removes.
10. The condition in question pre-dates the Planning Practice Guidance (PPG), which states that the scope of conditions removing permitted development rights needs to be precisely defined by reference to the relevant provisions in the GPDO. Even so, condition No 8 displays sufficient accuracy to enable the reader to understand exactly what rights are removed. Relevant case law, which confirms that conditions should be construed in the context of the permission as a whole and in a common-sense way, rather than too narrowly or strictly, supports the approach set out above³.
11. Condition No 10 of the 2000 permission is specific in terms of removing the permitted development right for the formation of a hardstanding. However, that condition has limited relevance to condition No 8. Condition No 10 has a much narrower scope in terms of the development it restricts. The conditions

² *R v Tunbridge Wells BC ex parte Blue Boys Developments Ltd* [1990] 1 PLR 55; [1990] JPL 495.

³ *Dunnett Investments Ltd v SSCLG & East Dorset DC* [2016] EWHC 534 (Admin), EWCA Civ 192.

were imposed for different reasons. Therefore, I do not regard differences between the text of the respective conditions as having any significance in terms of the generality of the permitted development rights removed by condition No 8.

12. In March 2021, the Council determined that prior approval was not required in respect of a single storey rear extension of dimensions similar to that in this appeal⁴. Nevertheless, where prior approval is deemed to be or expressly granted, a development would only be lawful where it was not otherwise restricted by the GPDO.
13. There was little evidence to suggest that the 2000 permission was not implemented or that the dwelling was erected pursuant to a different permission. Furthermore, I was not made aware of any grant of express planning permission which had the effect of removing condition No 8.
14. Therefore, on the balance of probability the proposal would be contrary to condition No 8 and it cannot benefit from the permitted development rights in the GPDO. The appellant has been unable to show otherwise. It follows that the proposal would not be lawful for planning purposes.

Conclusion

15. 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 and rear dormer extension with front roof lights 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

Main Issue

16. The property is located within the Metropolitan Green Belt. Therefore, the main issue in this appeal is whether the proposed extension would amount to inappropriate development, having regard to the National Planning Policy Framework (the Framework) and the Development Plan.

Reasons

Whether inappropriate development

17. It is proposed to erect a single storey extension at the rear of the dwelling. Paragraph 149 of the Framework advises that with certain exceptions, the construction of new buildings should be regarded as inappropriate in the Green Belt. One of those exceptions is the extension or alteration of a building that does not result in disproportionate additions over and above the size of the original building.
18. The "original building" is defined in the Framework as a building as it existed on 1 July 1948 or, if constructed after that date, as it was built originally. Consequently, it is the existing dwelling as it was built, not the pre-existing structure, that forms the base line in terms of assessing whether the increase in size arising from the extension is disproportionate.

⁴ Council Ref: DC/21/00228/HHPA.

19. The extension would involve an overall increase in the region of 30% over the footprint of the original dwelling. In terms of volume, the extension is likely to represent a similar increase in size. The extension would be the primary addition to the dwelling since it was built. The extension would not be of large scale compared to the form, bulk and height of the original dwelling. As a result, if the extension were erected, the outcome would not be disproportionate in relation to the size of the original dwelling. Moreover, due to the size, siting, materials and design, the extension would be viewed as a subservient addition which would not unduly harm the visual qualities or the open, rural character of the locality, nor would it significantly alter the overall form, bulk or character of the original dwelling.
20. The extension would not accord with two criteria in Policy 51 of the Bromley Local Plan (BLP). These provide that in the Green Belt extensions to dwellings are not permitted where the net increase in external floor area over that of the original dwelling is more than 10% and that the extension of a replacement dwelling is restricted. However, this would restrict extensions which might otherwise be regarded as proportionate to the size of the original dwelling. For example, an extension might only marginally exceed permitted development rights. Assessing proportionality is primarily an objective test based on size. Accordingly, it cannot be the case that any extension which failed to meet the above criteria would automatically be disproportionate. The Council did not elaborate on how an extension not meeting those criteria but nevertheless of modest size and not disproportionate in relation to the original dwelling, either individually or in accumulation with other additions, would adversely affect openness. For these reasons, in this instance and on the basis of the information before me I shall afford greater weight to the Framework.
21. Therefore, the extension would not result in disproportionate additions over and above the size of the original building and is not inappropriate in the Green Belt, being consistent with the Framework. Development which is not inappropriate does not harm the openness of the Green Belt or the purposes of including land within it. Moreover, the extension accords with the Development Plan taken as a whole as other criteria in BLP Policy 51 are complied with and there is compliance with Policy G2 of the London Plan (LP), which reflects the policy approach set out in the Framework at a strategic level.

Conditions

22. In addition to the standard commencement condition, I have imposed a condition specifying the approved drawings in the interests of certainty. To ensure a harmonious appearance, I have also imposed a condition requiring the external materials of the extension to match those of the dwelling.

Conclusion

23. For the reasons given above I conclude that the appeal should be allowed.

Appeal C

Main Issue

24. The main issue in this appeal is whether the proposed dormer would amount to inappropriate development in the Green Belt, having regard to the Framework and the Development Plan.

Reasons

Whether inappropriate development

25. It is proposed to erect a dormer on the rear roof slope of the dwelling, installing rooflights in the front roof slope as well as on one side. The national and local policy context is set out in Appeal B, as is what should be regarded as the original building.
26. The dormer would be contained within the original roof slope, sitting above the eaves line and below the ridge line. In terms of width, the dormer would span the central part of the roof slope, leaving significant sections of the original roof on either side. The dormer would not add to the footprint of the dwelling but would increase its floor area by around 11 m². The volume of the dormer is likely to involve a similar increase over the size of the original dwelling. The dormer is therefore of modest scale compared to the form, bulk and height of the original dwelling. If the dormer were erected, either individually or in accumulation with the Appeal B extension, the outcome would not be disproportionate in relation to the original dwelling.
27. Moreover, due to its design and size the dormer would integrate satisfactorily with the original dwelling. It would not be perceived as a bulky or visually dominant feature on the rear of the dwelling, nor would it significantly alter the original dwelling's roof form in the limited views of the property in the wider surroundings. Utilising external materials matching those of the existing roof would further assist the successful assimilation of the dormer within its context. As a result, the dormer would be seen as a subservient addition, not unduly harming the visual qualities and open, rural character of the locality or significantly altering the overall form, bulk or character of the original dwelling.
28. Therefore, the dormer would not result in disproportionate additions over and above the size of the original building and is not inappropriate in the Green Belt, being consistent with the Framework. For similar reasons to those set out in Appeal B, I afford the Framework greater weight over two of the BLP Policy 51 criteria. Moreover, the dormer accords with the Development Plan taken as a whole as other criteria in BLP Policy 51 are complied with and there is compliance with LP Policy G2.

Conditions

29. I have imposed similar conditions to those in Appeal B, for much the same reasons.

Conclusion

30. For the reasons given above I conclude that the appeal should be allowed.

Appeal D

Main Issue

31. The main issue in this appeal is whether condition No 8 is necessary and reasonable in the interests of safeguarding the openness and visual qualities of the Green Belt.

Reasons

32. Paragraph 56 of the Framework advises that 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. At paragraph 54, the Framework advises that conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. The PPG states that conditions restricting the future use of permitted development rights or changes of use may not pass the test of reasonableness or necessity⁵.
33. The generality of permitted development rights removed by condition No 8 is set out in the banner heading above. Permitted development rights in the GPDO Part 1 largely apply to all dwellings, apart from specific exceptions in relation to some Classes. For example, certain developments in Class A are not permitted where the dwelling is on Article 2(3) land. The GPDO definition of such land includes where it is within a Conservation Area, an Area of Outstanding Natural Beauty, a National Park and a World Heritage Site. However, land located within a Green Belt is not included in the definition. Similarly, permitted development rights in Part 2, Class A apply generally to land with the exception of that which is within the curtilage of or surrounding a listed building.
34. Therefore, in terms of the availability of the above permitted development rights there is no difference between land located within a Green Belt and that outside. Had the Government intended to include land in a Green Belt within the definition of Article 2(3) land, it surely would have done. The only inference that can be drawn from the absence of restriction on these permitted development rights is that the Government's fundamental Green Belt aims of preventing urban sprawl by keeping land permanently open do not extend to limiting permitted development within a residential curtilage. It follows that in the Green Belt permitted development rights should not be restricted unless there is clear, site-specific justification for doing so.
35. It is nevertheless apparent that the 2000 permission provided for the erection of a dwelling over double the size of the one it has replaced. The effect of allowing this appeal would create a new separate permission for erecting the replacement dwelling. Therefore, the need for condition No 8 and its reasonableness has to be considered in the context of the acceptability in planning terms of the replacement dwelling, not on the basis of what would now be regarded as the original building.
36. At paragraph 149, the Framework advises that in the Green Belt the replacement of a building is inappropriate development unless it is not materially larger than the building being replaced. BLP Policy 49 largely reiterates the Framework in that respect. Limited details of the circumstances that led to the grant of the 2000 permission are before me. However, my understanding is that removal of the pre-existing dwelling along with a number of caravans stationed at the property was considered by the Council to clearly outweigh the harm to the Green Belt that would arise from inappropriate development, so as to amount to the very special circumstances required to

⁵ Paragraph: 017 Reference ID: 21a-017-20190723.

justify granting permission for a dwelling materially larger than that which was being replaced.

37. In 2004, an Inspector described the existing dwelling as having reduced the site's openness, through its greater size⁶. There is no sound reason why I should find otherwise. Also, much like that Inspector I attach importance to safeguarding the Green Belt from urban sprawl and encroachment into the countryside, having regard to the proximity of the built-up area. Given the substantial size of the existing dwelling and that of its curtilage, if condition No 8 were removed it would be possible to erect large extensions and outbuildings and extensive means of enclosure as permitted development. In turn, this would lead to significant additional adverse effects on Green Belt openness, including both spatially and visually, over that which have already arisen as a result of erecting the existing dwelling.
38. A significant number of dwellings throughout the Green Belt are able to exercise permitted development rights without reference to the effects on openness and visual qualities. However, it is highly unlikely that the circumstances in which most of those properties originated will bear significant similarity to those of the existing dwelling. Whilst the existing boundary screening might assist in offsetting any visual impacts, there would still be a significant erosion of openness in spatial terms in the eventuality of unfettered exercise of permitted development rights at the property.
39. Reference was made to a number of recent appeal decisions in the Council's area concerning conditions removing permitted development rights. Nevertheless, in those appeals the disputed condition was not imposed on a permission for the erection of a materially larger replacement dwelling in the Green Belt. As a result, the circumstances in this instance differ materially from the other appeals.
40. Therefore, I find that the disputed condition is necessary and reasonable in the interests of safeguarding the openness and visual qualities of the Green Belt and it meets the Framework tests. It follows that granting permission for the dwelling without the disputed condition would not accord with BLP Policies 49 and 51, which seek to protect the Green Belt from inappropriate development.

Conclusion

41. For the reasons given above, I conclude that the appeal should be dismissed.

Stephen Hawkins

INSPECTOR

⁶ Appeal Ref: APP/G5180/A/03/1135994.

SCHEDULE OF CONDITIONS

Appeal B:

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: SAN/1/A, SAN/2.
- 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.

Appeal C:

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: SAN/1/B, SAN/3, SAN/4.
- 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.