



Appeal Decision

Site visit made on 29 November 2022

by Emma Worley BA (Hons) Dip EP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th December 2022

Appeal Ref: APP/G5180/W/22/3301749

20 Holly Road, Bromley, Orpington BR6 6BE

- 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 Patrick Greenidge against the decision of London Borough of Bromley.
 - The application Ref 22/01658/FULL1, dated 20 April 2022, was refused by notice dated 23 June 2022.
 - The development proposed is the change of use of land from agricultural to residential garden.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of land from agricultural to residential garden at 20 Holly Road, Bromley, Orpington BR6 6BE in accordance with the terms of the application, Ref 22/01658/FULL1, dated 20 April 2022, and the plans submitted with it, subject to the following condition:
 - 1) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no fences, gates, walls, or incidental buildings or enclosures, swimming or other pools, or containers used for domestic heating purposes for the storage of oil or liquid petroleum gas shall be erected or sited on the land.

Preliminary Matters

2. The planning application form describes the development as 'retrospective planning application for change of use of land Title Number: SGL810083 from agricultural to residential garden'. I have amended it to exclude words that are superfluous and not a description of the development.
3. Whilst I note the appellants suggestion that the use of the land is both agricultural and garden, including land mown as lawn and planting of fruit trees and vegetables akin to an allotment, the description of the development is the use of the land as garden, and it is on this basis on which the appeal is determined. In the event that some of the activities do not need planning permission, that is outside of the appeal, which is concerned solely with the development set out in the description.
4. The development has already been carried out. The plans before me appear to reflect the extent of the land to which the change of use has taken place, as such the appeal is determined on the basis of the submitted plans.

5. The appeal clearly relates to the piece of land beyond the original rear garden to 20 Holly Road. Whilst the land is edged in blue and not red on the submitted plans, the Council clearly considered the proposal on this basis and so shall I.

Main Issues

6. The main issues are:

- whether the development is inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies; and
- the effect of the development on the living conditions of the occupants of the land by reason of contamination, noise pollution and air quality.

Reasons

Whether inappropriate development

7. The appeal property lies at the end of Holly Road, where it adjoins the agricultural land beyond the built-up form of the settlement. The appeal relates to the change of use of an area of land for use as garden.
8. The Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. It goes on to state that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The Framework establishes that the construction of new buildings in the Green Belt should be regarded as inappropriate, subject to a number of exceptions as set out in paragraph 149. Certain other forms of development are then identified at paragraph 150 which are not inappropriate, provided that they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.
9. Under paragraph 150 (e), one of the types of development which are not inappropriate is material changes in the use of land, provided they preserve its openness and do not conflict with the purposes of including land within it. Outdoor sport and recreation, cemeteries and burial grounds are cited as examples, but these are preceded by the words "such as...". The list is therefore clearly not intended to be exhaustive. I can see no apparent reason why a change of use to domestic garden, should fall outside this category of material changes in the use of land.
10. Openness is one of the essential characteristics of the Green Belt and refers to the absence of buildings or development. The proposal does not include any structures or operational development. Whilst a boundary fence is shown on the plans and has been erected on site, it is not included in the description of the development appealed.
11. The appellant has also indicated a desire for a wooden garden shed to be located on the land, although details have not been submitted as part of this application. However, permitted development rights for incidental buildings, as well as walls, fences and other means of enclosure can be controlled by planning condition. Subject to a suitably worded condition removing such rights the openness of the Green Belt would be preserved.

12. I note the Council's concern regarding the siting of domestic paraphernalia, such as furniture or play equipment in connection with the use of the land as garden, which would be more difficult to control. Nonetheless, in the event that this does occur, any such paraphernalia would be likely to be small scale and would not be permanent fixtures. In light of the foregoing considerations, I find that the use of the land as garden does not harm the openness of the Green Belt.
13. The purposes of the Green Belt are set out at paragraph 138 of the Framework and include safeguarding the countryside from encroachment. The appeal site protrudes beyond the edge of the settlement into an area of open agricultural land. Whilst 3 of the appeal site boundaries are contiguous with the open countryside, the site is close to the extended garden at 13 Holly Road (No 13), albeit separated by a strip of agricultural land. The site is greater in size than the existing garden that serves the appeal property but nevertheless has a physical and visual association with it. Moreover, given that the land is free from buildings and structures, the use of the land as garden does not give rise to encroachment into an area of open countryside. As such the proposal does not conflict with the purposes of including land within the Green Belt.
14. I therefore conclude that the proposal preserves the openness of the Green Belt and does not conflict with the purposes of including land within it. The development does therefore not constitute inappropriate development in the Green Belt. The development would therefore accord with Policy 49 of the Bromley Local Plan 2019 which reflects the advice in the Framework with regards to development within the Green Belt.

Living conditions

15. Planning permission was also refused as insufficient information was submitted to demonstrate that the proposed development would incorporate appropriate measures to address potential contamination issues, given the previous agricultural uses of the land. The Council has indicated that the matter could be dealt with by condition should permission be granted and consequently the proposals would comply with the relevant parts of the development plan. I have no reason to disagree. This would however be where a form of harm could be acceptably mitigated and as such does not weigh in favour or against the proposal.
16. Furthermore, with regards to noise pollution and air quality, the location of the appeal site is such that the use of the adjoining land for agricultural purposes is no closer to the residential use of the extended garden area than to the existing gardens that abut the land. Moreover, as highlighted by the appellant, the use of the appeal site as garden actually increases the separation distance between the agricultural land and the dwelling at No 20. I am therefore not persuaded that the proposal gives rise to any increased exposure to noise or other nuisance that would harm the living conditions of the occupiers of the site due to the proximity of the garden to the adjoining agricultural land.

Conditions

17. A condition is necessary to remove permitted development rights in order to preserve the openness of the Green Belt and to safeguard the countryside from encroachment. A condition requiring adherence to an approved plan is unnecessary when applying the statutory tests.

Conclusion

18. For the reasons set out above the appeal succeeds.

Emma Worley

INSPECTOR