



Appeal Decision

Site visit made on 27 January 2023

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 February 2023

Appeal Ref: APP/G5180/D/22/3302268

Bethune, Cudham Lane South, Cudham, Sevenoaks TN14 7QA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr & Mrs D Perrotton against the decision of London Borough of Bromley.
- The application Ref DC/20/03812/RECON, dated 28 October 2021, was refused by notice dated 9 June 2022.
- The application sought planning permission for the erection of single storey rear and side extension and front porch, and conversion of original linked garage to provide habitable accommodation without complying with a condition attached to planning permission Ref DC/20/03812/FULL6, dated 29 April 2021.
- The condition in dispute is No 5 which states that: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order amending, revoking and re-enacting this Order) no building, structure, extension, enlargement or alteration permitted by Class A, B, C, or E of Part 1 of Schedule 2 of the 2015 Order (as amended), shall be erected or made within the curtilage(s) of the dwelling(s) hereby permitted without the prior approval in writing of the Local Planning Authority.
- The reason given for the condition is: In the interests of protecting the character of the area and residential amenity of neighbouring properties in accordance with Policy 37 of the Bromley Local Plan.

Decision

1. The appeal is allowed and planning permission is granted for the erection of a single storey rear and side extension and front porch, and conversion of original linked garage to provide habitable accommodation at Bethune, Cudham Lane South, Cudham, Sevenoaks TN14 7QA in accordance with application Ref DC/20/03812/RECON, dated 28 October 2021, without compliance with condition No 5 previously imposed on planning permission Ref DC/20/03812/FULL6 dated 29 April 2021 and subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of the original decision, that being 29 April 2021.
 - 2) The development hereby permitted shall not be carried out otherwise than in complete accordance with the plans approved under the planning permission reference DC/20/03812/FULL6, dated 29 April 2021.

- 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 and shall thereafter be retained as such.
- 4) While the development hereby permitted is being carried out a suitable hardstanding shall be provided with wash-down facilities for cleaning the wheels of vehicles and any accidental accumulation of mud on the highway caused by such vehicles shall be removed without delay and in no circumstances be left behind at the end of the working day.
- 5) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order amending, revoking and re-enacting this Order) no extension, enlargement or alteration permitted by Classes A, B, C, or D of Part 1 of Schedule 2 of the 2015 Order (as amended), shall be made to the dwelling without the prior approval in writing of the Local Planning Authority.
- 6) Provision shall be made to accommodate operatives and construction vehicles off-loading, parking and turning within the site in accordance with the details hereby approved and such provision shall remain available for such uses to the satisfaction of the Local Planning Authority throughout the course of development.

Applications for costs

2. An application for costs was made by Mr & Mrs D Perrotton against the London Borough of Bromley. This application is the subject of a separate Decision.

Main Issue

3. The appeal property is located in the Green Belt therefore the main issue is whether or not the condition is necessary having specific regard to preventing inappropriate development in the Green Belt and protecting the openness of the Green Belt.

Reasons

Background

4. The disputed condition was attached to a planning permission that granted consent for the erection of a single storey rear and side extension and front porch, and conversion of original linked garage to provide habitable accommodation.
5. The condition in dispute relates to the removal of permitted development rights, specifically those granted by Class E of Part 1 of Schedule 2 of the Order which permits, without the need for planning permission, buildings etc incidental to the enjoyment of a dwellinghouse, subject to certain limitations and conditions.
6. Although the reason given for imposing the condition is in the interests of protecting the character of the area and residential amenity of neighbouring properties in accordance with Policy 37 of the Bromley Local Plan, the Council have subsequently clarified that it is also to protect the openness of the Green Belt.

Site and development

7. The appeal property is a detached dwelling situated on Cudham Lane South. At the time of my site visit the development permitted by DC/20/03812/FULL6 had been largely undertaken with associated groundworks ongoing.
8. The property has a long rear garden which currently contains two timber outbuildings at the foot of the garden. The northern boundary is screened by large trees in the neighbouring garden whilst the southern boundary is more open with views across the neighbouring Westbrook Farm property.

Whether or not inappropriate development including the effect on openness

9. The National Planning Policy Framework (2021) (the Framework) identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The Framework outlines that the construction of new buildings should be regarded as inappropriate in the Green Belt subject to a number of exceptions as set out in paragraph 149. One of the exceptions cited is 149 c) 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'. Policy 49 of the Bromley Local Plan (2019) is consistent with the Green Belt aims of the Framework and includes the same exception from the Framework as set out above.
10. The 'original building' is defined as the building as it existed on 1 July 1948 or if constructed after this date, as it was originally built. The Framework does not define what constitutes a 'disproportionate' addition. Policy 51 of the Bromley Local Plan sets out, amongst other things, that extensions or alterations to dwellinghouses in the Green Belt 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.
11. In their consideration of the initial application, the Council considered that, due to its size, the proposed development would result in disproportionate additions over and above the size of the original building and thereby constituted inappropriate development in the Green Belt. The development was however granted planning permission as the Council considered the harm by reason of inappropriateness was clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposed development.
12. The other considerations were in relation to the existence of a householder prior approval application¹ for an 8m and 5m deep single storey rear extension and a lawful development certificate². The Council outlined how if built, these extensions would result in a greater GEA than the proposed development before them, by approximately 17sqm. In addition, the appellant entered into a Unilateral Undertaking to remove permitted development rights (classes A, B and D) and to revoke both previous consents. This, the Council considered, as a matter of planning judgement, amounted to very special circumstances.
13. At no point in their initial assessment did the Council outline that the other considerations necessary to amount to very special circumstances also required

¹ DC/20/01036/HHPA

² 20/01702/PLUD

the removal of permitted development rights granted under Class E. Neither was this argument put forward by the appellant.

14. Paragraph 54 of the Framework states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. The Planning Practice Guidance – Use of planning conditions, also advises that conditions restricting the future exercise of permitted development rights may not pass the test of reasonableness or necessity.
15. Although the matter is not before me, I understand the Council's initial assessment as it relates to the demonstration of very special circumstances. It is clear however that it was not due to any demonstration of development that would be permissible under Class E that would thus necessitate the removal of this class. Indeed this is acknowledged in the Officer Report.
16. Unlike other designated protection areas, the Order places no restrictions on permitted development rights in Green Belts. This would suggest that development carried out under permitted development would not necessarily be inappropriate or harmful to its openness as this has been taken into account by virtue of the Order.
17. Moreover, the fact that permitted development rights have not been removed for land in the Green Belt means that the Government's fundamental Green Belt aims of preventing urban sprawl by keeping land permanently open do not extend to preventing permitted development within a domestic curtilage. Given this position and bearing in mind the limitations of the Order in terms of size and position of development permitted, I am not persuaded that the site circumstances are such, that development under Class E would have such an effect on the openness of the Green Belt or its purposes that its removal is justified.
18. Regardless, the matter before me is whether the condition was necessary to make the original development acceptable in planning terms. The Council successfully argued that it was necessary to remove those permitted development rights to extend the dwellinghouse, however this was not the case in relation to Class E. And although the Council subsequently held that it was in fact necessary in order to protect the openness of the Green Belt, this is not borne out in the original assessment.
19. Furthermore, the property benefitted from full permitted development rights prior to the application, including Class E. It is not in dispute that it is necessary to remove those classes in relation to extending the dwelling given that these were used to demonstrate the very special circumstances. However, it was not necessary to go beyond this to remove Class E, particularly given that these existed prior to the application and were not put forward by either party to justify the decision.
20. I am therefore not convinced that the condition as originally imposed is necessary to protect the openness of the Green Belt and to make the development acceptable in planning terms. There is not clear justification, as is required. Therefore, the removal of Class E from the disputed condition would not conflict with Policy 49 and 51 of the Bromley Local Plan (2019) or the Framework.

Conditions

21. The guidance in the PPG makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect.
22. In addition to the standard time limit condition (amended to relate to the original consent), I have imposed a condition requiring the development to be carried out in accordance with the approved plans. I have retained those non-disputed conditions from the previous permission that are still relevant. The condition in relation to matching materials is in the interests of the character and appearance of the area. The amended condition in relation to removal of permitted development rights is necessary to protect the Green Belt from inappropriate development in light of the very special circumstances identified. Conditions relating to the construction phase are necessary in the interests of highway safety.

Conclusion

23. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal should be allowed.

A M Nilsson

INSPECTOR