



Appeal Decision

Site visit made on 24 January 2023

by Peter White BA(Hons) MA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 FEBRUARY 2023

Appeal Ref: APP/G5180/W/22/3305741

Rose Cottage, The Coach House, Rectory House and Gables, Church Approach, Cudham, Sevenoaks TN14 7QF

- 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 J Baxter against the decision of the Council of the London Borough of Bromley.
- The application Ref DC/13/01112/RECON, dated 26 April 2021, was refused by notice dated 2 August 2022.
- The application sought planning permission for minor material amendment to permission ref. 11/02727/FULL1 (granted for demolition of two storey part of Angas House, erection of single storey extension, elevational alterations and conversion to nine bedroom house. First floor extension, elevational alterations and conversion of Coach House to three bedroom and four bedroom houses. Demolition of single storey part of Rose Cottage, erection of part one/ two storey extension and conversion to four bedroom house. Detached double and triple garages. Removal of hardstandings, laying out of new driveways and hardstandings) to re-position double garage servicing The Coach House without complying with a condition attached to planning permission Ref DC/13/01112/MATAMD, dated 20/05/2013.
- The condition in dispute is No 10 which states that: 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 building, structure or alteration permitted by Class A, B, C, or E of Part 1 of Schedule 2 of the 1995 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 the openness and visual amenities of the Green Belt and to comply with Policy G1 of the Unitary Development Plan.

Decision

1. The appeal is dismissed.

Background and Main Issues

2. The appeal site is a large parcel of land formerly associated with a Gothic Revival house constructed as a vicarage in around 1880. It was subsequently used as a sailors' convalescent home, then an NHS residential institution. In 2011 planning permission ref DC/11/02727/FULL1 (the original permission) was granted for the development described in the banner heading above, and the four residential dwellings named in the site address were formed. A subsequent minor material amendment ref DC/13/01112/MATAMD allowed the re-positioning of a double garage, and was the planning permission implemented.
3. The appellant seeks removal of condition 10 in order to allow 'permitted development' for the four dwellings under Classes A, B, C, or E of Part 1 of

Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).

4. The main issue is whether condition 10 is reasonable and necessary to protect the openness of the Green Belt and the character and appearance of the area, with particular regard to the Cudham Village Conservation Area, and the four dwellings within the appeal site, which are locally listed buildings.

Reasons

5. The land lies within the Metropolitan Green Belt, and the Cudham Village Conservation Area (CA), and all four dwellings are locally listed buildings. The appeal site comprises the dwellings and their curtilages, and the private access drive to them. It stands as a low-density enclave of rural domestic character within a landscape of fields and the adjacent recreation ground. Rose Cottage and its garden, in particular, and the other dwellings and their gardens beyond it, are a focal point from a public footpath running across open fields from the south-west. There is also more limited visibility from a footpath to the north.
6. The appellant makes general reference to changes in government policy relating to the Green Belt and conditions since the planning permission was granted. I have not seen evidence of a significant change, but have considered the appeal against current local and national policy.
7. Paragraph 56 of the National Planning Policy Framework (the Framework) advises that conditions should be kept to a minimum and only imposed where necessary, relevant to planning and the development to be permitted, enforceable, precise and reasonable in all other respects. Paragraph 54 advises that planning conditions should not be used to restrict national Permitted Development rights unless there is clear justification to do so.
8. The Planning Practice Guidance (PPG) advises that restricting the future use of Permitted Development rights or changes of use may not pass the tests of reasonableness or necessity. It states that it should be clear exactly which rights have been limited or withdrawn, and that the 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.
9. Permitted Development rights to extend dwellings under the GPDO generally apply in the Green Belt. Had the Government wanted to withdraw or restrict Permitted Development rights for householder and minor developments in the Green Belt it could have done so, as it has in other areas such as Conservation Areas and National Parks. The fact that it hasn't is evidence that it considers the implementation of Permitted Development rights to be acceptable in a Green Belt location in general. Therefore, restriction of Permitted Development rights on the basis of the protection of the openness of the Green Belt requires clear and site-specific justification. In general terms this approach accords with that taken by other Inspectors in the appeal decisions put before me.
10. In granting the original permission, the Council's committee report considered the benefits of removing unsympathetic developments associated with the previous institutional uses, alongside the creation of independent dwellings with new extensions and outbuildings, and large curtilages. Spatially, the volumes of the structures to be removed and proposed were an extensive part of that report, which concluded the development would result in a net reduction in floorspace.

Visually, an unsympathetic extension and a number of disused outbuildings were to be removed, along with a large area of hardstanding. The report specifically considered the potential effects on the Green Belt of future permitted development within the new residential curtilages, and recommended the removal of permitted development for further extensions and outbuildings to enable their effects on openness to be considered. On that basis, it concluded the development would not have a materially greater impact on the openness of the Green Belt, and was therefore not inappropriate development.

11. Condition 10¹ is therefore not the blanket removal of Permitted Development, but is targeted at specific elements capable of causing harm to the openness of the Green Belt, which are relevant to planning and to the development permitted. Given the significant extensions and outbuildings already carried out, and the very large residential curtilages, removal of the condition would permit substantial additional outbuildings in the gardens, and further extensions to the already significantly extended buildings. The effect of such additions would be to reduce the openness of the Green Belt, and particularly so with regard to Rose Cottage, which is very prominent from the public footpath and has a large open curtilage.
12. Considering the other appeal decisions referred to me, the dwelling in APP/G5180/W/20/3249637 had a modest curtilage, and therefore had a limited capacity to affect openness. Permitted Development rights existed in APP/G5180/D/19/3225328, and would only be removed if the planning permission was implemented. The Inspector restored Class E rights which could have been carried out previously irrespective of the development in APP/G5180/D/18/3218571. At the same time, he withheld them in relation to extensions and alterations as the original consent had been granted following a persuasive fall-back argument, based on similar works which could have been carried out as Permitted Development.
13. The case before me is therefore distinguishable from those appeals. The four dwellings established by the original permission in 2011 have not previously benefitted from permitted development rights, were originally permitted on the basis of a reduction in overall floorspace, and have extensive curtilages.
14. The reason given on the planning permission for imposing condition 10² referred only to effects on the Green Belt. At the same time, the committee report accompanying the original permission noted the positive contribution the development would make to both the locally listed building (now buildings) and the CA, despite concerns expressed by its Advisory Panel for Conservation Areas about the design, size and scale of the extensions proposed to Coach House and Rose Cottage.
15. Permitted Development is more limited within Conservation Areas than those available more generally, but is not normally restricted for locally listed buildings. In relation to Class E, in particular, which relates to buildings, enclosures, pools or containers, extensive development could take place within the large curtilages. Nevertheless, I have not seen any convincing argument for adding additional reasons for imposing the condition which were not made at the time the planning permission was granted. Neither have I seen any indication that there has been a significant change, sufficient to justify such an approach.

¹ And condition 13 of the original permission, which preceded it

² Or condition 13 of the original permission

16. In conclusion, I find Condition 10 is not unreasonable, in removing Permitted Development rights for further extensions, alterations and outbuildings in this particular context, and I find it to be necessary for the reasons above. In the specific circumstances of this case, I therefore find clear justification for the condition, and that it is both necessary and reasonable to protect the openness of the Green Belt. Consequently, removal of the condition would conflict with BLP Policies 49 and 51, which seek to prevent inappropriate development in the Green Belt unless very special circumstances are demonstrated, while making provision for development in certain circumstances.
17. At the same time, I have not found the condition is necessary to protect the character and appearance of the area, and have therefore not found conflict with the relevant aspects of BLP Policies 39, 41, 43 or 73, which seek to preserve or enhance the character and appearance of heritage assets.

Other Matters

18. The original planning permission related to the development of previously developed land (PDL). However, having been implemented, it no longer meets the definition for PDL in the Glossary to the Framework, as the land has been restored and is now within residential gardens. Even if that were not the case, Permitted Development within the curtilages of the dwellings would not constitute limited infilling or the partial or complete redevelopment of PDL. Neither would it necessarily not have a greater impact on the openness of the Green Belt than the existing development. The exception to inappropriate development in the Green Belt set out in paragraph 149(g) of the Framework would therefore not apply.
19. Rose Cottage is the only one of the four dwellings without an outbuilding. BLP Policies 49 and 51, which are described above, specifically prevent extensions, or limit them to 10% above the original floorspace, and require very special circumstances to be demonstrated for other development. It may therefore be difficult, or impossible, for the appellant to erect a garage or home office structure within the curtilage of Rose Cottage. I also note the support for the proposal by the occupier of Coach House, and that there was only one letter of objection to the proposal. Nevertheless, with the information before me, these matters attract insufficient weight in favour of the proposal to clearly outweigh the substantial weight that must be attached to what could be potential harm to the Green Belt. Consequently, the very special circumstances required to demonstrate that planning permission should be granted for inappropriate development in the Green Belt do not exist.

Conclusion

20. For the reasons above, I conclude the development would conflict with the development plan as a whole and the approach in the Framework. There are no other material considerations that would require a decision to be taken other than in accordance with the development plan, and the appeal should therefore be dismissed.

Peter White

INSPECTOR