



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: 13 March 2023

Appeal Ref: APP/G5180/W/22/3305025

**Oaktree Cottage, Berrys Green Road, Berrys Green, Bromley, Westerham
TN16 3AJ**

- 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 R Arnold against the decision of the Council of the London Borough of Bromley.
- The application Ref DC/85/00462/RECON is dated 31 January 2022, was refused by notice dated 4 August 2022.
- The application sought planning permission for demolition of existing dwelling and erection of 3/4 bedroom two storey detached house without complying with a condition attached to planning permission Ref 85/00462, dated 07/05/1985.
- The condition in dispute is No 30 which states that: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Orders 1977-81 no buildings, structures, 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 in the Green Belt.

Decision

1. The appeal is allowed and planning permission is granted for demolition of existing dwelling and erection of 3/4 bedroom two storey detached house at Oaktree Cottage Berrys Green Road, Berrys Green, Bromley, Westerham TN16 3AJ in accordance with the terms of the application, Ref DC/85/00462/RECON, dated 31 January 2022, subject to the following conditions:
 1. The area between the dwelling and the access shall be kept available at all times for the parking and turning of vehicles.
 2. 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 building, structure or alteration permitted by Classes A, AA, B, C, or E of Part 1 of Schedule 2 of the 2015 Order (as amended), shall be erected or made within the curtilage of the dwelling.

Preliminary Matters

2. My formal decision above refers to the erection of a dwelling even though the property has been constructed. I have used this wording as it was the description of development relating to planning permission ref: 85/00462. The proposal before me is for the same development but without the disputed condition.

Background and Main Issue

3. Oaktree Cottage is a dwelling with a large curtilage within the Metropolitan Green Belt. It was built as a replacement dwelling pursuant to planning permission 85/00462.
4. The appellant seeks removal of condition 30 in order to allow 'permitted development' for extensions and alterations to their home and the erection of outbuildings under Part 1, and walls and means of enclosure under Part 2, of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).
5. The main issue is whether condition 30 is necessary and reasonable to protect the openness of the Green Belt.

Reasons

6. The appeal site comprises a detached dwelling on a large plot on the corner of an S-bend in the road. Berrys Green Road is one of rural character with detached dwellings and park homes of a variety of styles. In the immediate vicinity of the site the road is narrow and bounded on both sides by trees, albeit at the time of my visit with gaps affording views into the appeal site from the road. The rear adjoins the garden of another dwelling, beyond which a housing development was underway at the time of my visit.
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 such conditions should be precisely defined, so it is 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 necessity¹.
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. The appellant describes the existing dwelling as a modest detached dwelling of two storey/three-bedroom design. The officer report accompanying the original planning permission states that it replaced a dwelling less than half its size, far

¹ Paragraph: 017 Reference ID: 21a-017-20190723

exceeding the 10% net increase in floor area allowed under the relevant policy at the time. Although that report made no final recommendation, it concluded with the views of the Greater London Council which advised it would be likely to be acceptable subject to a condition restricting permitted development.

11. London Borough of Bromley Local Plan 2019 (BLP) Policy 51, makes provision for householder development in the Green Belt, but applies a maximum 10% net increase in floor area, and does not normally permit the extension of replacement dwellings. It also requires very special circumstances to be demonstrated for other development within the curtilage. Condition 30 makes broad reference to "buildings, structures, walls or fences of any kind", in a manner less likely to be supported today under current national policy. Nevertheless, given the significantly larger size of the replacement dwelling and its extensive curtilage, removal of the condition would permit extensions and alterations to the dwelling and outbuildings within its curtilage of a substantial size and scale. The effect of such additions would be to reduce the openness of the Green Belt, potentially very significantly, given the size of the dwelling's 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. In APP/G5180/D/19/3225328 permitted development rights pre-existed and could still be utilised if the planning permission in question was not implemented, and the development granted was not considered to increase the likelihood of future harm to the openness of the Green Belt. APP/G5180/D/18/3218571 related to a domestic extension and loft conversion originally justified on the basis of a convincing permitted development fallback argument. The Inspector, considering an earlier version of the PPG, since revised, noted that Class E was not part of that fallback argument, and was not satisfied that the case made for withdrawal of Class E rights represented an exceptional circumstance.
13. In APP/G5180/W/22/3293877 the replacement dwelling was over double the size of the one it replaced, and was deemed to have reduced the site's openness through its greater size. The Inspector considered there was clear site specific justification for a condition restricting permitted development, to prevent significant additional adverse effects arising over that which had already arisen as a result of erecting the new dwelling.
14. I have considered this appeal on its own merits, and apart from the similarities in the case of APP/G5180/W/22/3293877, with the information before me this appeal is clearly distinguishable from those appeals. In the case before me the existing dwelling was a replacement dwelling of more than double the floorspace of the dwelling it replaced. Given its unusually large curtilage, and its prominence from the road in the winter months, development within its curtilage could significantly reduce the openness of the Green Belt spatially and visually.
15. Although condition 30, as currently drafted, may be considered to go further than necessary in its extent, there is a clear case for removal of specific permitted development rights, in relation to extensions and alterations to the dwelling, and to outbuildings.
16. In conclusion, I find clear justification for the removal of permitted development rights for extensions and alterations to the dwelling and

outbuildings within its curtilage in the specific circumstances of this case. However, Condition 30 as currently drafted goes beyond what is necessary to protect the openness of the Green Belt, and is therefore unreasonable in its extent. An alternative condition, limited only to Classes A, AA, B, C, and E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 would be both necessary and reasonable. It would accord 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.

Other Matters

17. Maintaining the removal of permitted development rights for extensions and alterations to the dwelling and outbuildings within its curtilage imposes more stringent restrictions on the appeal site than on some other dwellings in the locality. Doing so may also make it difficult for the appellant to erect outbuildings. There were also no objections to the proposal from local residents or groups. I also note the housing under construction beyond the rear of the appeal site, but have not been advised of the circumstances of that development, or the basis for any consent relating to it.
18. However, with the information before me, these matters attract insufficient weight in favour of the proposal to outweigh the potential harm to the openness of the Green Belt.

Conditions

19. 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. I have clarified with the parties which of the original conditions remain valid. Conditions 1,2 and 6 of the original permission are no longer relevant as the development has been carried out, and the landscaping scheme only applied for a brief period following completion of the development.
20. A condition is required to ensure vehicles can park off the road and enter and leave the site in forward gear, as originally reflected in Condition 3. For the reasons set out above I have also imposed a condition removing specific permitted development rights relating to extensions and alterations to the dwelling and outbuildings within its curtilage.

Conclusion

21. I conclude that the appeal should succeed insofar as it relates to the blanket removal of permitted development rights, but not in relation to extensions and alterations to the dwelling and outbuildings within its curtilage. I shall exercise the powers transferred to me accordingly, and will grant a new planning permission without the disputed condition, but substituting another.

Peter White

INSPECTOR