



Appeal Decision

Site visit made on 12 May 2023

by Jane Smith MA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 June 2023

Appeal Ref: APP/G5180/W/22/3309144

**Land Adjacent to Hillside, Berrys Green Road, Berrys Green, 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.
 - The appeal is made by Mr Tony Bates against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/21/05640/FULL1, dated 26 November 2021, was refused by notice dated 19 August 2022.
 - The development proposed is extension to an existing stable block (originally granted permission under DC/09/02996/FULL 1 dated 05.05.2010).
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The existing stable block on the site is referred to by both parties as being partially completed. I noted during my site visit that the blockwork walls lack the proposed weatherboard cladding and supporting pillars to the roof have not yet been installed. Roof lights have been inserted, which are not shown on the application drawings as either existing or proposed. Nevertheless, based on my observations on site, the position, scale and form of the existing building appear consistent with the plans approved in 2010¹ and it is being used for stabling.
3. I have therefore considered the proposal on the basis that it involves extension of an existing stable building and I have based my consideration of the appeal on the details shown on the application drawings.

Main Issues

4. The main issues are:
 - whether the proposed development would be inappropriate development in the Green Belt, taking into account the effect on openness and the purposes of including land within the Green Belt,
 - its effect on the rural character and appearance of the area, and
 - whether the proposal would protect or enhance biodiversity.

¹ London Borough of Bromley ref DC/09/02996/FULL1, granted 5 May 2010

Reasons

Inappropriate Development in the Green Belt

5. Paragraph 149 of the National Planning Policy Framework July 2021 (the Framework) states new buildings (which includes extensions), should be regarded as inappropriate in the Green Belt. It goes on to set out a number of exceptions, which include *'the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation ...; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it'*. (Framework paragraph 149b)
6. Policy 49 of the Bromley Local Plan² likewise defines the construction of new buildings as inappropriate, while making a similar exception for appropriate facilities for outdoor sport and recreation.
7. The appeal site comprises a series of paddocks, with an existing stable building in one corner. It adjoins a ribbon of residential development further along the lane, including a dwelling in the same ownership as the appeal site. The site boundaries are planted with mature trees and hedgerows. These include a dense and well-established hedgerow of mixed species along the boundary with Berrys Green Road and what appears to be a more recently introduced evergreen hedge separating the stable building from the vehicular access.
8. Although the existing building is not fully completed, it is in use for equestrian purposes. The land immediately surrounding the building has been fenced off and is surfaced with loose chippings. This area provides an informal but well-defined stable yard, with vehicular access, space for parking and a manure heap. The surrounding paddocks provide grazing.
9. Since horse riding is an outdoor sporting or recreational pursuit, it follows that stable buildings are capable of falling within the exception set out in Framework paragraph 149b. Stabling is not an unusual requirement on land where horses are kept for domestic purposes. Based on the British Horse Society guidelines quoted by the Council, the extended stables would remain reasonably consistent with the capacity of the grazing land, depending how the site is managed. Their capacity would also be consistent with condition 6 of the 2010 permission, which allows for up to 7 horses to be kept at the site. The proposed ancillary storage facilities would be a modest proportion of the floorspace and clearly related to the care of horses and maintenance of the land.
10. On that basis, the proposed extension would fall within the scope of paragraph 149b in principle. However, its effect on the openness and purposes of the Green Belt has also to be considered.
11. Openness is an essential characteristic of the Green Belt that has spatial as well as visual aspects. In spatial terms, the site already includes a modest amount of built development, in the form of the existing stable. Therefore, the proposal would not introduce buildings where none currently exist. Although the proposed extension would be set at right angles to the existing building, projecting into a more open area of the site, it would remain well within the perimeter of the established stable yard. The extended building would remain

² London Borough of Bromley Local Plan adopted January 2019

relatively modest and in reasonable proportion to the extent of the surrounding open paddocks.

12. In visual terms, only a small part of the existing roof is visible from Berrys Green Road, above the surrounding hedgerows. While the amount of visible roof would increase, the majority of the building would remain well screened from public view. It would not be excessively bulky or prominent and would not be an intrusive feature within the surrounding area.
13. For the above reasons, having had regard to the relationship with the existing building, the established equestrian use and the effectiveness of the existing boundary screening I conclude that the proposal would preserve the openness of the Green Belt in both spatial and visual terms.
14. Provision of a stable building does not amount to urban sprawl, being a typically rural form of development. There would be no material encroachment into open countryside, given the existing equestrian use. No issues arise in terms of merging of settlements, the setting of historic towns or promoting urban regeneration. Therefore, there is no conflict with the purposes of the Green Belt as defined in the Framework.
15. While different figures have been proposed as to the percentage increase in the size of the building, it is clear that a substantial proportionate increase is proposed. Furthermore, paragraph 149c defines the extension of an existing building as inappropriate development where it would result in disproportionate additions over and above the size of the original building. However, that does not prevent an extension being deemed acceptable if it falls within one of the other exceptions in paragraph 149. Therefore, the proportionate increase is not a determinative factor in this case, given the outdoor recreational use of the site and the provisions of paragraph 149b.
16. For the reasons set out above, having taken into account the effect on openness and the purposes of including land within the Green Belt, I conclude that the proposed development would not be inappropriate development in the Green Belt. It would furthermore not conflict with Policy 49 of the Bromley Local Plan. This policy, amongst other things, allows for the erection of appropriate facilities for outdoor sport and recreation which preserve the openness of the Green Belt and do not conflict with the purposes of including land in it.

Character and Appearance

17. The proposed extension would be a timber-clad single storey structure with tiled roof, typical of domestic stable facilities within rural surroundings. It would harmonise with the design and appearance of the existing building, as shown on the approved drawings. There would be no overall increase in height. The building is, and would remain, well screened by vegetation. Although the extension would project into a relatively open part of the site, as noted above this area already has the appearance and typical characteristics of an established stable yard.
18. For the above reasons, I conclude that the proposal would not harm the rural character and appearance of the area. It would not conflict with relevant requirements of policies 37 or 61 of the Bromley Local Plan. These policies, amongst other things require that development is well designed in relation to

existing buildings and the surrounding area and that equestrian buildings should be adequately screened and not have any adverse visual impact on the open or rural character of the Green Belt.

Biodiversity

19. The appeal site is located within the Cudham Valley South Site of Importance for Nature Conservation (SINC). The citation for this locally designated site describes it as 'a large area of superb countryside, with many ancient woods, areas of chalk grassland and perhaps the finest network of hedgerows in London'. As noted above, the appeal site is bounded by hedgerows, notably a dense and well-established mixed species hedgerow along the boundary to Berrys Green Road, close to the existing stable. While the SINC citation largely focusses on the presence of important plant and invertebrate species, it also alludes to the presence of bats and declining farmland birds within the designated area.
20. In their response to consultation on the application, the Orpington Field Club & Bromley Biodiversity Partnership Sub-group highlighted the importance of the ancient hedgerows and a range of specific potential risks to bats, birds and reptiles as a result of the proposed development.
21. The application was not supported by any evidence that the presence or otherwise of protected species has been assessed by a suitably qualified ecologist. Although the appellant has confirmed that the existing hedgerow would be unaltered, this does not address the other potential risks to protected species. In particular, there is no objective evidence to confirm the presence or otherwise of bats or nesting birds within the existing roof, or whether reptiles are present within the potentially suitable habitat around the building. In the absence of this baseline ecological information, there is insufficient evidence to confirm whether or not protected species are present on the site.
22. Circular 06/2005³ makes clear that it is essential that the presence or otherwise of a protected species, and the extent that they may be affected by the proposed development, is established before planning permission is granted. The Circular furthermore makes clear that planning conditions should only be used to secure ecological survey evidence in exceptional circumstances.
23. While Policy 69 of the Bromley Local Plan mentions the use of conditions, this is in relation to mitigation measures to overcome any harm. In this case, there is insufficient baseline evidence to identify the extent of any such harm and therefore whether effective mitigation can feasibly be secured. As such, the support for use of conditions in policy 69 is not applicable.
24. Given the relevant features of the building and surrounding land, the specific risks to any protected species which are present, and the site's location within a SINC, I cannot be confident that planning conditions would be an effective mechanism for protecting biodiversity. Neither is there sufficient evidence to form the basis of planning conditions to secure mitigation for any potential harm or implementation of biodiversity enhancements as part of the proposed development. There is furthermore no evidence of any exceptional circumstances which would justify reliance on planning conditions, contrary to the general advice in the Circular.

³ Office of the Deputy Prime Minister Circular: Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System, 16 August 2005

25. While I appreciate that there is a cost involved in undertaking the required ecological survey, an equivalent cost would have been incurred at a later stage, had planning permission been granted subject to conditions. Therefore, the cost of the required survey evidence is an unavoidable consequence of the proposed development.
26. I note that no ecology survey was required with the planning application for the existing stable. However, since the risks outlined above relate to potential habitat in and around the existing building, the circumstances prior to its construction were objectively different. With regard to the nearby development at Marcols, that application site was outside the boundaries of the SINC and no evidence has been provided that any specific risks to protected species were identified when that application was being considered. In any event, when reaching my conclusion on this issue I have had appropriate regard to the evidence which is now before me, in accordance with the statutory duty on decision-makers to conserve and enhance biodiversity⁴.
27. For the reasons given above, on the basis of the information before me, I am not satisfied that the proposed development would protect or enhance biodiversity. As such, it would conflict with policies 61 and 69 of the Bromley Local Plan. These policies, amongst other things, resist proposals that may significantly affect the nature conservation interest or value of a SINC and require that proposed stabling facilities would not adversely affect areas which are of importance for nature conservation.

Other Matters

28. Since I have concluded that the appeal proposal would not be inappropriate development in the Green Belt or harmful to the rural character and appearance of the area, any further comparison with the development approved at Marcols is of little relevance. While I note that other development has been permitted nearby along Berrys Green Road, including extensions to existing dwellings, I am not aware of the particular circumstances of those cases. In any event I must consider the appeal scheme on its own merits based on the evidence before me.
29. The absence of any adjacent properties is a neutral factor which does not weigh for or against the proposal.
30. Any concerns about how the application was handled by the Council in terms of procedure or timescale fall outside the scope of this appeal.
31. Consequently no other matters outweigh the harm that would result from the proposal, as set out in the foregoing main issues.

Conclusion

32. While I have found that the proposal would not be inappropriate development in the Green Belt and no harm would arise to the rural character and appearance of the area, the absence of convincing evidence that it would protect or enhance biodiversity brings the proposal into conflict with the development plan read as a whole.

⁴ Section 40 of the Natural Environment and Rural Communities Act 2006

33. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should be dismissed.

Jane Smith

INSPECTOR