



Appeal Decision

Site visit made on 4 August 2023

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 September 2023

Appeal Ref: APP/G5180/D/23/3318829

**Perry Street Lodge, Scadbury Park, Scadbury, Bromley, Chislehurst
BR7 6LN**

- 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 Bayar Chakarto against the decision of London Borough of Bromley.
 - The application Ref DC/22/04299/FULL6, dated 31 October 2022, was refused by notice dated 23 December 2022.
 - The development proposed is the construction of a detached wheelchair accessible annex accommodation.
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Decision

1. The appeal is dismissed.

Main Issues

2. The appeal site is within the Green Belt and so the main issues are:
 - Whether or not the proposed development is inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (2023) (the Framework), including the effect on openness;
 - The effect of the proposed development on nature conservation; and
 - If the proposed development is inappropriate development, would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

Reasons

Site and proposal

3. The appeal property is a detached two-storey dwelling. It is accessed via a track leading from Perry Street. The property is surrounded by its garden on three sides which is bounded for the most part by a low-level timber fence. The surrounding area is notable for its parkland of grassland and wooded areas.
4. The proposed development would involve the construction of a detached, wheelchair accessible outbuilding forward and to the side of the existing property. The building would be single storey, timber clad and would serve as annex accommodation to the main dwelling.

Whether or not inappropriate development

5. The Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. 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. Policy 49 of the Bromley Local Plan (2019) reflects the exceptions as set out in the Framework.
6. The appellant considers that the proposed development would constitute an exception under paragraph 149 g), namely it would constitute the limited infilling of previously developed land. Additionally, for this exception to apply, the development must not have a greater impact on the openness of the Green Belt than the existing development.
7. The definition of previously developed land contained in the Framework excludes land in built-up areas such as residential gardens. What constitutes a 'built-up area' is not defined in the Framework. The Cambridge Dictionary defines a built-up area as 'an area such as a town or city which has a lot of buildings in it'. It is therefore necessary to form a view on whether or not the residential garden of the appeal property is within a built-up area.
8. The appeal site is accessed via a short track of around 200 metres in length leading from Perry Street which is a relatively busy 'A' road. The surrounding area contains a number of residential properties, a school, a car showroom and a petrol filling station. Although the appeal site sits somewhat on its own in open space, and does not adjoin any of the above uses, the proximity to these features leads me to conclude, as a matter of planning judgement, that the site is within a built-up area. As a result, it is excluded from constituting previously developed land.
9. Even if I were to have determined that the appeal site was to constitute previously developed land, in order not to be considered inappropriate development, proposals must not have a greater impact on the openness of the Green Belt than the existing development.
10. The Framework outlines that one of the essential characteristics of Green Belts is their openness. Openness has a spatial aspect as well as a visual aspect. There is currently no development on the site of the proposed outbuilding. The appeal site is surrounded by a low-level boundary treatment of approximately 1 metre in height giving it a particularly open aspect. I observed on my site visit that planting had taken place along the boundary, although this had not become established. As there is currently no development on this part of the site, the siting of the proposed outbuilding would have an obvious greater impact on the openness of the Green Belt in spatial terms. I find that in light of the overall size and scale of the development, the harm to the openness of the Green Belt from a spatial aspect would be relatively moderate.
11. The proposed development would be single storey and be sited close to the main body of the dwelling. In time, it would also be screened by the boundary planting to some extent. Nevertheless, in the short to medium term it would be highly prominent, and I therefore find that there would be moderate harm to the openness of the Green Belt from a visual point of view.

12. For these collective reasons, the outbuilding would have a greater impact on the openness of the Green Belt in spatial and visual terms than the existing development.
13. For the reasons given above, the proposed development would not constitute an exception as outlined in paragraph 149 g) of the Framework. The proposed development would therefore be inappropriate development in the Green Belt and would be contrary to Policies 49 and 51 of the Bromley Local Plan (2019) and Policy G2 of the London Plan (2021) which protect the Green Belt from inappropriate development.

Nature Conservation

14. The evidence outlines that the appeal site lies within the Scadbury Park, St Paul's Cray Common, Petts Wood and Hawkwood Estate Site of Importance for Nature Conservation (SINC) and the Scadbury Park Local Nature Reserve (LNR). It is also outlined that the appeal site is very close to a pond with a recorded presence of a breeding population of Great Crested Newts, a legally protected species.
15. In light of these factors, the proposed development has the potential to cause harm to wildlife and features of biodiversity value that might be using the land for habitat, to commute or forage on. I do not agree with the appellant that due to the appeal site being located within a residential garden it would therefore not result in harm to the biodiversity value of the area.
16. As the proposed development would occupy a relatively small area in the context of the wider area of ecological significance, it is possible that its effects would not be significant and/or can be mitigated. This, however, has not been demonstrated to any degree of certainty despite the proposed development commendably accommodating features such as a green roof and hedge planting.
17. In the absence of such an assessment I am unable to be certain that there would not be harm caused to the Site of Importance for Nature Conservation and Local Nature Reserve and/or any important or protected species. This would be contrary to Policies 69 and 72 of the Bromley Local Plan (2019) and Policy G6 of the London Plan (2021) which collectively require, amongst other things, that development does not have an adverse impact on the nature conservation interest or value of Local Nature Reserves, Sites of Importance for Nature Conservation and protected species.

Other considerations

18. Paragraph 147 of the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 148 continues by stating that very special circumstances will not exist unless the harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
19. The development in this case amounts to inappropriate development in the Green Belt and the Framework requires that substantial weight is attached to the harm in that regard. It would also cause moderate harm to the openness of the Green Belt.

20. The appellant outlines how the proposed outbuilding would be specifically for a disabled family member. The evidence does not, however, outline why the proposed development is the sole means of catering for the medical needs of a family member. Nevertheless, I do not doubt that the proposal would be of a benefit to the family member in terms of providing accessible accommodation.
21. I have had due regard to the Public Sector Equality Duty contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. I have also had regard to rights conveyed within the Human Rights Act.
22. In respect of the above, a refusal of planning permission is a proportionate and necessary approach to the legitimate aim of avoiding harm to the Green Belt. Therefore, whilst I acknowledge the personal circumstances, I conclude that they constitute a moderate benefit in favour of the proposal.
23. The appellant has referred to a Certificate of Lawfulness¹ that was granted for the appeal property in October 2016 that included a detached outbuilding. I do not have full details of the case to give this significant weight in the appeal. Such an application would, in any event, not have been considered against the development plan or the Framework, unlike the requirement in the determination of the appeal proposal.
24. The appellant has referred to a number of decisions which they consider are precedents. I do not, however, have full details of the cases that have been referred to in order to give them significant weight in the appeal. I have, in any event, determined the appeal on its own individual planning merits.

Planning Balance

25. The proposal would constitute inappropriate development in the Green Belt. When considered as a whole, moderate harm would be caused to the openness of the Green Belt. The substantial weight to be given to Green Belt harm arising from the proposal would not be clearly outweighed by the other considerations as outlined above. Consequently, the very special circumstances necessary to justify the development do not exist. The failure to demonstrate that there would not be harm to nature conservation also weighs against the appeal. Therefore, the proposed development would not accord with the Green Belt and nature conservation aims of the Framework and the Bromley Local Plan.

Conclusion

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

A M Nilsson

INSPECTOR

¹ DC/16/04006/PLUD