



Appeal Decision

Site visit made on 30 August 2023

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8TH SEPTEMBER 2023

Appeal Ref: APP/G5180/C/22/3308749

Land at 52 Cudham Lane North, Cudham, Sevenoaks TN14 7RA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by Mrs E Smuts against an enforcement notice issued by the London Borough of Bromley Council.
- The notice was issued on 12 September 2022.
- The breach of planning control as alleged in the notice is: Without planning permission, the construction of a single storey rear extension.
- The requirements of the notice are to: Permanently remove from the land the rear extension. Permanently remove from the land all materials associated with the removal of the extension.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Ground (a) and the deemed application for planning permission

Main Issues

1. The main issues relevant to the ground (a) appeal and the deemed application for planning permission are:
 - Whether the extension is inappropriate development in the Green Belt, with regard to local and national policies;
 - The effect of the extension on the openness of the Green Belt; and
 - If the extension is inappropriate development, whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the extension.

Reasons

Whether Inappropriate

2. The appeal site is one half of a pair of semi-detached houses on the edge of a cluster of housing in a rural area. It is located within the Green Belt.
3. Paragraphs 147 and 148 of the National Planning Policy Framework (the Framework) advise that substantial weight should be given to any harm to the Green Belt and that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 149 of the Framework advises that the construction of new buildings

should be regarded as inappropriate in the Green Belt, but exceptions include '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'.

4. Policy 49 of the Bromley Local Plan (2019) (LP) reiterates paragraphs 147 to 149 of the Framework. It is wholly consistent with the Framework and I assign substantial weight to this policy.
5. Policy 51 of the LP states extensions or alterations to dwellinghouses within 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%, amongst other things. The supporting text to Policy 51 explains that it seeks to ensure there is no incremental harm to the Green Belt by excessive extensions to dwellings that collectively may jeopardise the open nature of the countryside. This is broadly consistent with the aims of the Framework. However, the Framework does not set any specific limits on increases to building floor areas in the Green Belt or the countryside. This limits the weight I assign to Policy 51.
6. I do not take the 10% limit to increases in floor areas referred to in Policy 51 as a strict guideline as to what may constitute a disproportionate addition to a dwelling in the context of paragraph 149 of the Framework. Indeed, I note the Council's suggestion that a 13% increase in floor area over that of the original dwelling may be acceptable in this instance. It is necessary to consider the overall size of the extension in comparison to that of the original building when assessing whether it is a disproportionate addition. In this regard I concur with the view expressed by another Inspector in an appeal decision¹ I have been referred to, where it was suggested that an extension which does not meet this 10% limit is not automatically disproportionate in relation to the original building.
7. In the other appeal decision referred to above, an extension comprising an approximate 30% increase in floor area over and above that of the original building was found to not constitute a disproportionate addition to the original building in that instance. However, these matters need to be assessed on a case-by-case basis.
8. The single storey rear extension in this case has a mono-pitched roof and has been described as having a depth of 5 metres and a height of 3.7 metres. I have not been provided with detailed plans or sizes relating to the original building, but the Council states that the extension has resulted in a net increase in floor area over that of the original dwelling of 21.4%. This has not been disputed by the appellant.
9. Although the extension is confined to the rear elevation of the dwelling and is single storey in height, it is a large addition to the building. It stretches the full width of the dwelling and is of significant depth, with sizeable floor area and volume in comparison to those of the rest of the dwelling. Taking all of these matters into account, it is a disproportionate addition to the rest of the dwelling, which I understand to be the original building.
10. As a disproportionate addition to the dwelling over and above the size of the original building, the development does not benefit from the exception to inappropriate development provided at paragraph 149(c) of the Framework. It

¹ Appeal decision APP/G5180/D/22/3291586

is inappropriate development contrary to Policy 49 of the LP and the Framework. As it has resulted in a net increase in floor area over that of the original dwelling by more than 10% in the Green Belt, the development is also contrary to Policy 51 of the LP.

Openness

11. Paragraph 137 of the Framework states: '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'. Openness is an essential characteristic of the Green Belt, which has spatial and visual aspects.
12. The single storey rear extension is seen from limited viewpoints confined to the appeal site and neighbouring rear gardens. The rear of the appeal site is skirted by tall planting which restrict views into it. The extension is set at a slightly lower level than the rear garden, which rises gently towards the rear boundary. It is seen as part of the 2-storey appeal dwelling and directly alongside a similar, but slightly smaller single storey rear extension to the other half of the semi-detached pair.
13. It has been suggested that another Inspector² confirmed that the extension would not cause any harm to the openness of the Green Belt, when assessing the impact of what may have been the same extension at the appeal site before it was erected. That Inspector did not provide a clear conclusion on the impact of the proposed extension on the openness of the Green Belt, and stated that any perception of a loss of openness would be minimal and in a location entirely physically and visually precluded from the public realm.
14. In my view, taking all of the above into account, the extension has a minimal impact on the openness of the Green Belt, visually and spatially. This is not an absence of harm, but it is a very low level of harm.

Other Considerations

15. I have identified harm which is caused to the Green Belt on account of the extension being inappropriate development as described by the Framework, and on account of it having a minimal impact on the openness of the Green Belt. As set out above, the Framework advises that any harm to the Green Belt should be assigned substantial weight and that inappropriate development should not be approved except in very special circumstances, which will not exist unless such harm is clearly outweighed by other considerations.
16. Age is a protected characteristic under the Equality Act 2010 (the EA). As my decision has the potential to affect an elderly person, I must have due regard to the Public Sector Equality Duty (PSED). The aims of the PSED are to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the EA; advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
17. The extension has provided a replacement kitchen which is claimed to have enabled the appellant to live at ground floor level with modern facilities. I am

² Appeal decision APP/G5180/D/17/3191507

unconvinced that appropriate modern kitchen and dining facilities could not otherwise be provided at ground floor level either within the original building or within a different form of extension which may not be disproportionate to the original building.

18. I am aware of the planning history relevant to the appeal site, as outlined in the main parties' submissions. I note that the appellant incorrectly concluded that the extension would be 'permitted development' under the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO), following the submission of an application for prior approval. I am also aware that various large extensions are authorised in the Green Belt under the provisions of the GPDO, and that a previous appeal³ relating to the lawfulness of the extension was dismissed on account of a pre-existing small projecting bay window on the rear elevation of the appeal dwelling. However, I do not accept that any extensions to dwellings in the Green Belt which are authorised by the GPDO should be taken as not being disproportionate to the original building.
19. It has been suggested that if the extension is demolished, the appellant intends to erect an outbuilding of the same dimensions as the extension but with a 1 metre separation gap from the back wall of the house, under the provisions of the GPDO. This would be on account of the appellant's requirements to have kitchen and dining facilities of a modern standard at ground floor level. That fallback position would require the appellant to regularly exit the house and step across a 1 metre gap in any weather conditions and at any time of day or night.
20. In the caselaw⁴ I have been referred to it was confirmed that there should be a 'real prospect' of a fallback position being carried out for it to be assigned weight in the planning balance. Aside from whether modern kitchen and dining facilities would be more likely to be provided by other appropriate alternative measures, I do not consider there to be more than a theoretical possibility, or a real prospect, that such development might take place. This is on account of how inconvenient it would be for the appellant to use an outbuilding, which I am also unconvinced could provide the relevant facilities which would need to be for purposes incidental to the enjoyment of the dwelling to be authorised by the GPDO.
21. The purposes served by Green Belts are set out at paragraph 138 of the Framework, which includes to assist in safeguarding the countryside from encroachment. The appeal site is abutted either side by residential plots, in a rural area surrounded by countryside. In a very small way, as inappropriate development in the Green Belt, the extension consolidates development at the appeal site which is an encroachment into the countryside. This leads me to assign minimal weight to the appellant's claim that the extension does not conflict with any of the purposes of the Green Belt.
22. The Council has suggested that an extension with a smaller floor area, which could be achieved through a reduction in the depth of the extension, may be acceptable at the appeal site. Be that as it may, the extension which exists is inappropriate development in the Green Belt and has an impact on the openness of the Green Belt. The very real possibility that an alternative

³ Appeal decision APP/G5180/X/21/3267241

⁴ *Mansell v Tonbridge and Malling BC & others* [2017] EWCA Civ 1314

extension to the appeal dwelling may not be disproportionate to the original building, and not inappropriate development in the Green Belt, does not suggest to me that less than substantial weight should be assigned to the harm the existing extension causes.

23. The Council has not alleged any harm is caused by the extension to the character or appearance of the area, and I see no reason to find otherwise. This lack of harm is not a benefit weighing in favour of the development.
24. Taking all matters raised into account, there are no other considerations constituting very special circumstances which clearly outweigh the substantial weight the Framework advises I must assign to the harm the extension causes to the Green Belt. With particular regard to the PSED, the harm the extension causes to the Green Belt outweighs its benefits in terms of eliminating discrimination against persons on account of their age, advancing equality of opportunity for those persons and fostering good relations between them and others.
25. Dismissal of the appeal on ground (a) and the refusal of the deemed application for planning permission is therefore necessary and proportionate and there are no material considerations that would lead me to a decision other than in accordance with the development plan as a whole in this case.

Ground (f)

26. To succeed under this ground of appeal the appellant would need to demonstrate that the steps required by the notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
27. The purpose of the notice is to remedy the breach of planning control. Demolishing the extension and removing all resultant materials from the land would achieve that purpose. There are no lesser steps which would achieve that purpose.
28. It has been suggested that the extension could be reduced in depth to accord with the policies referred to above. No detailed plans have been provided to show how this could be achieved. In any case, this would not remedy the breach of planning control. It would be a separate matter for the main parties to consider whether planning permission could be sought/approved for any alterations to the extension to make it compliant with the above policies. The provisions of section 180 of the Act would become relevant if any such permission was sought and granted.
29. The appeal under ground (f) therefore fails.

Ground (g)

30. To succeed under this ground of appeal the appellant would need to demonstrate that the period specified in the notice for its requirements to be complied with falls short of what should reasonably be allowed. The notice provides 6 months for its requirements to be complied with. The appellant has requested that this is varied to allow 12 months.
31. The planning history indicates that the appellant proceeded with the unauthorised development after seeking professional advice. Attempts were

therefore made by the appellant to obtain planning permission for an extension, and then to build an extension in accordance with a planning permission granted by the GPDO. I sympathise with the appellant's position, where they had appointed an agent and sought to obtain the necessary planning permission before commencing works, but they misunderstood the provisions of the GPDO.

32. Compliance with the enforcement notice in this case will take longer than the demolition of similar extensions may take in other cases on account of the personal circumstances of the appellant. I therefore consider 12 months would be a reasonable period of time in this particular instance to allow the appellant to comply with the notice, which will require the extensive rearrangement of their ground floor living facilities.

33. The appeal under ground (g) therefore succeeds.

Conclusion

34. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decision

35. It is directed that the enforcement notice is varied by deleting the text 'six (6)' at section 5 of the enforcement notice and substituting the text '12'. Subject to the variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

L Douglas

INSPECTOR