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# Appeal Decision

Site visit made on 17 April 2024

**by D Szymanski BSc (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 01 MAY 2024**

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**Appeal Ref: APP/G5180/W/23/3332047**

**Littlewood Farm, Jail Lane, Biggin Hill, Bromley TN16 3AX**

- 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 Binfield Place Ltd against the decision of the Council of the London Borough of Bromley.
  - The application Ref DC/23/01741/FULL1, dated 3 May 2023, was refused by notice dated 30 June 2023.
  - The development proposed is Demolition of existing detached dwelling of two storey design and single storey linked outbuilding and erection of replacement detached two storey dwelling, detached garage and detached stable building for personal use.
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## Decision

1. The appeal is allowed, and planning permission is granted for Demolition of existing detached dwelling of two storey design and single storey linked outbuilding and erection of replacement detached two storey dwelling, detached garage and detached stable building for personal use at Littlewood Farm, Jail Lane, Biggin Hill, Bromley TN16 3AX in accordance with the terms of the planning application Ref. DC/23/01741/FULL1, dated 3 May 2023, subject to the conditions set out in the attached schedule.

## Procedural Matters

2. The Council's description in its decision notice is rather descriptive with respect to the features and attributes of the new dwelling. The development proposed is shown on the plans. Therefore, in the banner heading and decision paragraph I have used the description from the application form as originally sought, which adequately describes the development.
3. Since the application was determined the revised National Planning Policy Framework (2023) (the Framework) was published. The Council and Appellant have had the opportunity to comment upon this during the appeal process. The references and paragraph numbering below reflect the revised Framework.
4. The appellant submitted an update to the Preliminary Ecological Appraisal (PEA – Issue 4) with the appeal to address matters relating to badgers, subject of the Council's second reason for refusal. A further PEA revision (Issue 5) was submitted before the final comment's deadline, to reflect an approach for an application upon neighbouring land. The Council is of the view the matter of protected species is addressed and has withdrawn its reason for refusal.

5. Although the revised PEA included only minor changes, I allowed the West Kent Badger Group (WKBG), an opportunity to provide comments. No objection is made by the Council and the WKBG have not offered any further feedback. Given the minor changes within the PEA I am satisfied that no party would be prejudiced by my taking it into account. Therefore, I have considered the appeal based upon the revised PEA and based upon the evidence before me, I have not treated the effect upon protected species as a main issue.

### **Main Issues**

6. The main issues are:
- whether or not the proposed development would be inappropriate development in the Green Belt, including its effect upon openness; and,
  - if the proposed development is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, and if so, would this amount to the very special circumstances required to justify the proposal.

### **Reasons**

#### *Inappropriate development*

7. Paragraph 142 of the Framework states the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Paragraph 152 states that inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances. The construction of new buildings should be regarded as inappropriate, subject to exceptions in paragraphs 154 and 155. Two exceptions are the replacement of a building provided it is in the same use and not materially larger than the one it replaces (154d)), and the limited infilling or the partial or complete redevelopment of previously developed land, which would not have a greater impact on the openness of the Green Belt than the existing development (154g)).
8. Policy G2 of the London Plan (2021) (the LP) states the Green Belt should be protected from inappropriate development and proposals that would harm the Green Belt should be refused except where very special circumstances exist. Policy 49 of the London Borough of Bromley Local Plan (2019) (the LBBLP) states the construction of new buildings in the Green Belt will be inappropriate subject to a list of exceptions, which insofar as is relevant to the appeal proposal, are similar to those in the Framework. Therefore, both policies are considered consistent with the Framework.
9. The appeal site comprises a detached dwelling, its plot with a detached outbuilding within the Green Belt. The proposal is for a replacement dwelling of an increased floor area and volume, a new double garage identical to one approved under an unimplemented Lawful Development Certificate<sup>1</sup> (LDC1), and a replacement of the dilapidated outbuilding.
10. The existing dwelling has a footprint measuring approximately 77 square metres (sqm), a floor area of approximately 133 sqm, and volume of some 274 cubic metres (m3). The replacement dwelling would have an approximately

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<sup>1</sup> Ref. 22/04505/PLUD (11 January 2023).

121 sqm footprint, 208 sqm floor area, with a volume of approximately 579 m<sup>3</sup>. It would have significantly increased scale, bulk, and massing, is materially larger than the existing and would have a marked adverse effect upon visual and spatial openness. Therefore, it would be inappropriate development.

11. The garage would be a new building of approximately 38.5 sqm floorspace, at 2.175m to the eaves and 4m to the ridge, where there is currently no building, adversely affecting visual and spatial openness. It would therefore be inappropriate development. I am informed the existing dilapidated outbuilding has an approximately 71 sqm footprint and 212m<sup>3</sup> volume. It would be replaced by building of approximately 57 sqm floorspace and 171m<sup>3</sup> volume, at a similar height and in a similar position. The Council acknowledges it would be a smaller building and raises no objection to it. I see no reason why it would not meet the exceptions under paragraphs 154d) or 154g).
12. However, the proposal as a whole would result in a greater overall footprint of built development including the hardstanding across the site. A further minor increase might be necessary to provide satisfactory vehicular turning space utilising the stable access and/or garage driveway. The new garage and replacement dwelling would add a greater bulk, mass and scale of development across the site which clearly outweighs any reductions from the stable building. The proposal, as a whole, would have a marked adverse effect upon the visual and spatial openness of the Green Belt, visible in most directions.
13. Therefore, for the reasons set out above, taken as a whole the proposed development would not meet the exceptions under paragraphs 154d) and 154g) of the Framework or their equivalent set out in Policy 49 of the LBBLP. Therefore, it would be inappropriate development which would have a marked adverse effect upon the visual and spatial openness of the Green Belt.

#### *Other considerations*

14. The appeal site benefits from fall-back positions by way of LDCs. An LDC (herein LDC2) confirmed that two single storey side extensions and a two-storey rear extension were lawful at the time<sup>2</sup>. There is nothing before me to suggest this is not still the case. It would result in a significant increase in footprint and floor area of the existing dwelling to approximately 134 sqm, 217 sqm, and a marginally reduced volume of 579 m<sup>3</sup>.
15. LDC2 included detailed internal layout and elevation plans giving a clear indication of an implementable scheme. I see no reason LDC2 could not be implemented, so am satisfied there is a greater than theoretical possibility of the development taking place. It would provide a significantly increased scale of dwelling with good quality accommodation, offering clearly improved living accommodation than offered by the current dwelling. With the submission of technical evidence with this appeal, there appears to be a clear intent to undertake development at this site, irrespective of the outcome of this appeal.
16. LDC1 is also well defined by the plans. Though garages are not essential for protecting, securing or storing cars or other items, I recognise they offer benefits to existing or future occupiers and are often desirable. Based upon

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<sup>2</sup> Ref. 17/03389/PLUD (dated 11 September 2017).

- the evidence before me, overall, I am satisfied that there is a high likelihood LDC1 and LDC2 would be implemented in the future, were this appeal to fail.
17. Like the existing building and fall-back positions, the appeal proposal would be prominent in the landscape. The new appeal dwelling would comprise an approximately 13 sqm footprint reduction, 9 sqm floorspace reduction, and 6 m<sup>3</sup> volume increase. Its form, design, dormers, 'H' type footprint, elongated roof form and height, with more floorspace at first floor level, would result in a greater scale, massing and bulk overall, compared to the fall-back position. It would also appear there is a greater spread of development across the site.
  18. Notwithstanding the 'H' shape layout, the combination of brickwork, render and timber, roof slopes and dormers limit the scale, bulk and massing to some degree. Moreover, the dwelling would have a clearly reduced width at ground floor level and not quite be so deep as the fall-back dwelling. The width would be particularly perceptible to the south of the appeal site, which is open and would afford high visibility of either dwelling. On-balance the overall increased bulk, scale and mass and effect upon openness compared to the fall-back scheme, would be very modest on the proposed dwelling.
  19. As a matter of planning judgement, the composition of the forms, design and appearance of the proposed appeal dwelling is of a high quality. Considered in relation to the existing dwelling or its renovation, and either with or without the LDCs, the appeal scheme dwelling would be a considerable improvement. Landscaping enhancements can be secured by a suitably worded conditions, which would not be the case under the fall-back positions. Furthermore, the reduced scale and significantly improved design and visual appearance from replacing the existing prominent outbuilding with the new stable, is also a significant benefit. Overall, the appeal scheme as a whole would result in considerable benefits to the character and appearance of the area.
  20. As well as it being possible to secure landscaping of benefit to biodiversity, the PEAs identify the opportunity to integrate habitat boxes and bricks. Noting the existing value of the appeal site and likely potential for marked improvements secured by suitably worded conditions, this attracts limited weight in favour of the scheme. It is not clear whether there would be any overall economic or energy efficiency benefits from the appeal scheme compared to the fall-back positions, therefore, I have treated these as neutral matters.
  21. I have noted the Council's to appeal Ref. APP/G5180/W/18/3208604. In that scheme, the tallest building was regarded as a lightweight structure to be replaced with a building of a solid appearance. The new development was understood to be on higher ground than the existing, it removed screening vegetation, and was judged to have an adverse effect upon the rural character and appearance. Therefore, it is not directly comparable to the circumstances to appeal scheme, so while noting its contents, I attribute it moderate weight.

### **Other Matters**

22. The ecological evidence identifies low or negligible potential on the appeal site for most protected species recorded in the wider area, although a badger sett has been identified in the area. The Council's reason for refusal was due to an absence of detailed information relating to its position, extent, population, and uncertainty as to the effects upon the sett and potential licensing requirements.

23. The updated evidence confirms the sett location, extent, its likely population and measures to address and mitigate any effects from the proposal. The widest buffer zone only impinges to a very minor degree on the appeal site, and the plans do not indicate any built development in this location. Best practice measures and guidelines are recommended for site activities to ensure there would be no adverse effects. The Council no longer raises an objection in this regard, subject to the imposition of suitably worded planning conditions.
24. Buildings were surveyed as having a low or negligible potential for bats, and no evidence of bats being present in them was identified by a recent emergence survey. Suitable mitigation and enhancement measures for protected species are secured by the planning conditions below by referring to measures in the PEA. I am satisfied that the conditions would ensure the development could take place without resulting in harm, in compliance with Policies 70 and 72 of the LBBLP which require that development secures mitigation measures to ensure it would not result in an adverse effect upon protected species.
25. The Council concludes the proposed development would not result in harmful effects upon the living conditions of neighbouring occupiers and based upon what I saw and the evidence before me, I see no reason to disagree. The likely number of vehicle movements generated would be very small, and unlikely to be discernibly greater if at all, compared to the existing and fall-back positions. Satisfactory turning arrangements could be addressed by a planning condition to ensure that vehicles could enter and leave in a forward gear.

### **Green Belt Balance**

26. The appeal proposal amounts to inappropriate development and would result in harm to the openness of the Green Belt. This attracts substantial weight. However, the appeal scheme would result in a much more visually attractive and well-designed dwelling when compared to the existing appeal site development and the fall-back scheme. Conditions can secure improved landscaping. Overall, the appeal scheme would result in a considerable improvement to the character and appearance of the area compared to the existing or fall-back positions and there would also be some benefits to biodiversity by way of securing a scheme of ecological enhancements.
27. In this particular case, in combination the benefits attract very substantial weight, such that I consider that the harm by reason of inappropriateness and harm to the openness of the Green Belt, are clearly outweighed by the other considerations identified. These amount to the very special circumstances necessary to justify the proposal. Therefore, the proposed development would be compliant with paragraphs 152 and 154 of the Framework, Policy G2 of the LP and Policy 49 of the LBBLP, the relevant provisions of which I have set out above.

### **Conditions**

28. I have considered the Council's suggested planning conditions in the context of the advice in the Framework and Planning Practice Guidance. Conditions specifying the time limit and plans are necessary in the interests of certainty. In the interests of highway and pedestrian safety, the character and appearance of the area, protected species and the living conditions of neighbouring occupiers a condition to secure a Construction and Environmental Management Plan is necessary. It is necessary this is pre-commencement so

that it encompasses all construction works and should include reference to the latest version of the PEA and the WKBG consultation response.

29. A pre-commencement condition is necessary to demarcate the exclusion area to avoid any works being undertaken during construction that would result in harm to protected species. Further conditions are necessary to prevent harm to protected species stipulating the types of operations within a specified distance of a badger sett and exclude all works within 20m without the prior written approval of the Local Planning Authority. A condition for a detailed surface water drainage scheme, is necessary to ensure satisfactory drainage, prevent any increased risk of flooding, and to protect water quality.
30. In the interests of the character and appearance of the area and the openness of the Green Belt a condition is necessary to approve the detail the proposed slab levels of the development. In the interests of the character and appearance of the area conditions are necessary to secure the approval and implementation of a landscaping scheme, its maintenance and retention, and samples of the materials to be used in the external surfacing of the development hereby permitted. In the interests of highway safety, it is necessary for the landscape condition to include details of hardstandings and the provision of suitable turning areas.
31. To secure the implementation of biodiversity enhancements a condition is necessary for their submission and approval, although given the existing PEA habitat mapping and the scope for their implementation, it is not necessary for this to be a pre-commencement condition. In the interests of the openness of the Green Belt and the character and appearance of the area, a condition has clear justification and is necessary to withdraw permitted development rights for specified Classes under Part 1 of the GPDO<sup>3</sup>. In the interests of the character and appearance of the area and the openness of the Green Belt a condition restricting the use of stable building to the occupiers of the dwelling and on a non-commercial basis is necessary.

## **Conclusion**

32. The proposed development would be inappropriate development in the Green Belt. However, as I consider very special circumstances exist, I find the development is compliant with the development plan read as a whole and the Framework read as a whole. There are no material considerations that indicate the application should be determined other than in accordance with the development plan and the Framework. Therefore, for the reasons given above, the appeal is allowed.

*Dan Szymanski*

INSPECTOR

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<sup>3</sup> Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

**--- Schedule of Conditions ---**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: HA22-21-P201 – Location plan; HA22-21-P203 – Proposed site plan; HA22-21-P206 – Proposed replacement dwelling – floor plans and elevations; HA22-21-P208 – Proposed stables floor plans and elevations; HA22-221-P003 – Proposed garage – floorplans and elevations.
- 3) Prior to the commencement of the development hereby permitted, a Construction and Environmental Management Plan shall be submitted to and approved in writing by the Local Planning Authority. Amongst other things, it shall include:
  - a) Dust mitigation and management measures;
  - b) The location and operation of plant and wheel washing facilities;
  - c) Measures to reduce demolition and construction noise;
  - d) Provision for the implementation of precautionary measures to avoid impacting upon mammals in accordance with paragraphs 4.10 – 4.14 of the Preliminary Ecological Appraisal (Version 5) by Ecology Partnership (February 2024) and point 2 of the consultation response by West Kent Badger Group to application Ref. 23/01741/FULL1;
  - e) Details of construction traffic movements including cumulative impacts which shall demonstrate the following:
    - i) Rationalising travel and traffic routes to, from and within the site;
    - ii) Details of the number and timing of construction vehicle trips with the aim of reducing the impact of construction related activity;
    - iii) Measures to ensure safe pedestrian movements;
    - iv) The full contact details of the site and project manager responsible for day-to-day management of the works;
    - v) Parking for operatives during the construction period;
    - vi) Swept path drawings for any tight manoeuvres on vehicle routes to and from the site including access and egress arrangements at the site boundary;
  - f) Hours of operation;
  - g) Other site-specific highways and environmental protection issues as requested on a case-by-case basis;

The development hereby permitted shall only be undertaken in accordance with the approved Construction and Environmental Management Plan, for the lifetime of the works hereby permitted.
- 4) Notwithstanding the requirements of condition 3 above, prior to any demolition or construction works commencing on site, an exclusion zone

shall be fenced off using temporary heras fencing during construction along the 30m buffer zone to the badger sett. The fencing shall remain in position and maintained in good repair throughout the construction of the development. No vehicles, plant, equipment, goods, materials or other articles shall be stored, repaired, serviced or assembled, and no bonfires shall take place on the excluded fenced off area.

- 5) Notwithstanding the requirements of condition 4 above, construction works that are required to be undertaken within 30m of a badger sett shall only be undertaken between the months of July – November inclusive.
- 6) Notwithstanding the requirements of conditions 3 and 4 above, no buildings, structures, enclosures or other works requiring excavation associated with this approved development shall be carried out within 20m of a badger sett unless otherwise previously agreed in writing by the Local Planning Authority.
- 7)
  - a) No works other than ground clearance and demolition shall take place until a detailed scheme for the provision of surface water drainage and its timescales for implementation has been submitted to and approved in writing by the Local Planning Authority.
  - b) The scheme shall be informed by an assessment of the potential for disposing of surface water by a sustainable drainage system (SUDS) to ground, watercourse or sewer in accordance with the hierarchy contained within Policy 5.13 of the London Plan and the National SUDS Standards.
  - c) where a sustainable drainage scheme is to be provided, the submitted details shall provide information about the design storm period, intensity and the method employed to attenuate and control the rate of surface water run-off discharged from the site as close to greenfield run-off rates (8ls/ha) as reasonably practical, and the measures to be undertaken to prevent pollution of the receiving groundwater or surface water.
  - d) The drainage scheme approved under parts a), b) and c) above shall be implemented in full prior to the first occupation of the development hereby permitted.
- 8) No works other than ground clearance and demolition shall take place until details of the existing ground levels and proposed slab levels of the new buildings have been submitted to and approved in writing by the Local Planning Authority. The development hereby permitted shall be implemented in accordance with the approved levels.
- 9) Prior to the development taking place above slab level, details of proposed hard and soft landscaping, and a timetable for implementation, shall have been submitted to and approved in writing by the Local Planning Authority. Amongst other things the details shall include:
  - a) A scaled plan showing all existing vegetation to be retained, and all new landscaping which shall include a minimum of 30% native plant species of home-grown stock, and no invasive species;
  - b) A schedule detailing the size, location and number of all trees and plants;

- c) A specification to ensure the successful and establishment of all planting;
- d) The proposed hardstanding areas including parking and turning areas with provision of sufficient space for the manoeuvring of vehicles; and,
- e) Proposed boundary treatments.

The hard and soft landscaping works shall be strictly undertaken in accordance with the approved details.

- 10) There shall be no excavation, raising or lowering of land levels within the root protection areas of retained trees unless previously agreed in writing by the Local Planning Authority. Any new trees and other new plants that die, are removed or become severely damaged or diseased, shall be replaced by the same species, specification and in the same location as previously approved within the first available planting season after its failure unless otherwise previously agreed in writing by the Local Planning Authority.
- 11) Prior to development taking place above slab level, details of biodiversity mitigation and enhancements and a timetable for their implementation shall have been submitted to and approved in writing by the Local Planning Authority, integrating the recommended ecological enhancements set out within the Preliminary Ecological Appraisal by The Ecology Partnership (February 2024). The proposed enhancements shall be implemented as approved and shall be permanently retained at the site thereafter.
- 12) Prior to the development hereby permitted proceeding above slab level, notwithstanding any indication of external materials set out in the application, details including samples of the external materials including the roof, wall facing materials and cladding, the windows, doors and decorative features, rainwater goods, and paving shall have been submitted to and approved in writing by the Local Planning Authority. Thereafter, the development hereby permitted shall be carried out in accordance with the approved materials.
- 13) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking or re-enacting that Order with or without modification), no building, structure, extension, enlargement or alteration permitted by Class A, B, C or E of Part 1 of Schedule 2 shall be undertaken without the prior written approval of the Local Planning Authority.
- 14) The stable building hereby permitted shall be used solely by the occupiers of the main dwellinghouse hereby permitted occupying the site and shall not be used on a commercial basis or rented out to third parties.

**End of schedule.**