

Appeal Decision

Site visit made on 22 August 2024

by Tamsin Law BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 September 2024

Appeal Ref: APP/G5180/W/24/3340157

Fox Hollow Rock Hill, Orpington, Bromley, BR6 7PJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) 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 O'Dell against the decision of the Council of the London Borough of Bromley.
 - The application Ref is DC/15/01097/RECON.
 - The application sought planning permission for the demolition of existing stables buildings and erection of single storey 2 bedroom dwelling utilising existing access and parking without complying with conditions attached to planning permission Ref DC/15/01097/FULL1, dated 20th May 2015.
 - The conditions in dispute are Nos 8 and 9 which state the following:

8. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order amending, revoking and re-enacting this Order) no building, structure or alteration permitted by Class A, B, C, or E of Part 1 of Schedule 2 of the 1995 Order (as amended), 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.

9. Notwithstanding the provisions of Class F of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order amending, revoking and re-enacting this Order), no additional hardstanding other than that shown on the approved drawings shall be provided within the curtilage of the dwelling(s) without the prior approval in writing of the Local Planning Authority.
 - The reasons given for the conditions are:

8. In order to comply with Policies BE1, BE8, H7, G1, T18 and NE11 of the Unitary Development Plan, Policy 7.16 of The London Plan and the National Planning Policy Framework, and to prevent overdevelopment of the site, to protect the amenities of neighbouring properties, and the Green Belt and AONB designation of the site.

9. In order to comply with Policies BE1, H7 and G1 of the Unitary Development Plan and in the interest of the visual and residential amenities of the area and the Green Belt designation.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the Council made its decision, Areas of Outstanding Natural Beauty are now known as a National Landscape (NL). Where relevant, I have referred to them as such.

Main Issue

3. The main issue is whether the condition is necessary and reasonable having regard to local and national policies relating to proposals affecting the Green Belt and the character and appearance of the area, including the Kent Downs NL.

Reasons

4. The appeal site comprises a modest single storey I-shaped dwelling, set within a defined plot. The dwelling is set back from the adjacent highway by a long driveway and is bound by a residential dwelling to the north, and open agricultural and equestrian paddocks to its east, south and west. The area is characterised by clusters of dwellings on narrow roads bound by low walls and mature trees and hedgerows. Through gaps in built form there are views of open agricultural and equestrian fields, which combined with the mature landscaping gives the area a rural character.
5. From reviewing the submitted evidence, the dwelling gained planning permission in 2015, replacing a stable building. A recent planning application¹ was granted permission for a rear extension and area of hardstanding, increasing the volume of the dwelling by approximately 16%. During my site visit I noted that the appeal site, building, and garden area was well defined, with low timber fencing delineating the boundary between the garden area and adjoining paddocks. Due to the low height of the fences the appeal site is visually open to the surrounding paddocks.
6. Paragraph 54 of the Framework states that planning conditions should not be used to restrict national permitted development (PD) rights unless there is clear justification to do so. Expanding on this, the Planning Practice Guidance (PPG) advises conditions restricting the future use of permitted development rights or changes of use may not pass the test of reasonableness or necessity. The scope of such conditions needs to be precisely defined, by reference to the relevant provisions in the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO), so that it is clear exactly which rights have been limited or withdrawn.
7. The GPDO sets out the PD rights for development within the curtilage of a dwellinghouse. These rights apply generally to all dwellinghouses, with some exceptions. Given that land within the Green Belt was omitted from these exceptions, land within the Green Belt is regarded as no different in terms of the application of PD rights as land outside of it.

¹ 23/01760/FULL6

8. The Framework denotes openness as an essential characteristic of the Green Belt. The openness of the Green Belt has a spatial aspect as well as a visual aspect. 'Open' can mean the absence of development in spatial terms, and it follows that openness can be harmed even when development is not readily visible from the public realm.
9. The reason for the condition seeks to ensure that the Council retain control over future development in the interest of the openness of the Green Belt and character and appearance of the area. The reason for refusal is clear in that the Council considers that under PD rights the proposed dwelling could be extended to such an extent that it would harm the openness of the Green Belt and the character and appearance of the area.
10. The appeal site's location within the Green Belt, does not, in itself, represent an exceptional circumstance to warrant removal of PD rights. I have considered the particular characteristics of the dwelling and its surroundings. The dwelling sits on a modest plot; however, it is located to the rear of the existing building line along Rock Hill. Whilst the plot is well defined, the use of low timber and post fencing means that there are unobstructed views across the paddock areas and garden. The location of the dwelling, set back from the road, offers some screening, but glimpses of the site are available from nearby gardens and via the associated access from the highway. The potential future development could noticeably and significantly reduce the openness of the Green Belt in spatial terms given the scale of the building and the size of its associated curtilage.
11. Additionally, due to the location of the dwelling to the rear of buildings fronton on to Rock Hill, further extensions, alterations, and outbuildings would encroach on and erode the rural characteristics of the area. This would have a harmful on the character and appearance of the area and in turn the special qualities of the NL.
12. Accordingly, the removal of the conditions 8 and 9 would not comply with Policies 49, 51 and 76 of the London Borough of Bromley Local Plan (2019) which seek, amongst other things, to preserve the openness of the Green Belt and protect, conserve, and enhance the Kent Downs NL.

Other Matters

13. My attention has been directed towards examples of appeal decisions; however, I do not have full details of these matters. Nevertheless, these appear to relate to different settlements and dwelling types. As such, the matters are not directly comparable. In any event, I have dealt with the appeal before me on its own merits.

Conclusion

14. For the reasons given above the appeal should be dismissed.

Tamsin Law

INSPECTOR

