



Appeal Decision

Site visit made on 1 October 2024

by C Livingstone MA(SocSci) (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 NOVEMBER 2024

Appeal Ref: APP/G5180/W/24/3346681

1 Fishers Wood Grove, Bromley BR2 8FD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr and Mrs Marler against the decision of the Council of the London Borough of Bromley.
 - The application Ref is DC/24/00527/FULL3.
 - The development proposed is change of use of land from agricultural to residential garden land with associated boundary fencing.
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Decision

1. The appeal is allowed, and planning permission is granted for change of use of land from agricultural to residential garden land with associated boundary fencing at 1 Fishers Wood Grove, Bromley BR2 8FD in accordance with the terms of the application, Ref DC/24/00527/FULL3, subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with Location Plan (Scale 1:1250) and Block Plan (Scale 1:500).
 - 2) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking, re-enacting, substituting, amending, extending, consolidating replacing or modifying that Order), no incidental buildings or enclosures within Schedule 2 Part 1, Class E (a), and no gates, fences or walls within Part 2, Class A of the same Schedule, shall be erected on the land, except in the event that a further planning permission is expressly granted for that development.

Preliminary Matters

2. I have taken the description of the development from the application form but removed reference to permission being sought on a retrospective basis, as this is not an act of development.
3. I noted whilst on my site visit that the boundary fence of the rear garden has been altered and this garden area has been extended. I have no means of knowing whether this change of use accords with the submitted plans and therefore my determination of this appeal is made against the plans before me. These plans form the basis for the planning application in any event.
4. Following the submission of the appeal, a draft revision to the National Planning Policy Framework was issued for consultation alongside a Written Ministerial Statement. They do not introduce issues relevant to the pertinent

considerations in this appeal and therefore I have not sought comments on it from the parties.

Main Issues

5. The main issues are:

- i. whether the change of use of the land is inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the 'Framework') and any relevant development plan policies; and
- ii. whether the proposed development preserves or enhances the character or appearance of the Bromley, Hayes and Keston Commons Conservation Area (CA).

Reasons

Green Belt

6. The London Plan, in policy G2 protects the Green Belt (GB) from inappropriate development. The Local Development Framework Local Plan, London Borough of Bromley Planning Division 2019 (LP) Policy 49 says that permission will not be given for inappropriate development. It sets out a list of forms of development which are not inappropriate in the GB, provided they preserve the openness of the GB and do not conflict with the purposes of including land in GB. A material change of use is not included in the list.
7. However, the Framework now includes in its list of development forms which are not inappropriate in the GB, provided they preserve its openness and do not conflict with the purposes of including land within it, the following additional form, in paragraph 155 (e): *material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds)*. This form of development, absent in the Local Plan, makes LP policy 49, which is the most important policy concerning this issue, inconsistent with the Framework, and therefore out-of-date. While the remainder of the policy is broadly consistent with the Framework, the omission above, which is very much relevant to the issues in this appeal, limits the weight I can give to any conflict with policy 49.
8. While the change of use to residential garden land is not explicitly mentioned in bullet (e), its inclusion of the words 'such as' indicates that the list is not closed. Given the examples given in bullet (e), and the nature, scale, and location of this change of use, I am satisfied that it constitutes a form of development which may be considered under paragraph 155.
9. Paragraph 152 of the Framework states that inappropriate development is, by definition, harmful to the GB. The Framework also states that openness and permanence are the essential characteristics of the GB. Openness has both spatial and visual aspects.
10. No structures or ancillary residential buildings are proposed, and the land is mainly grassed. It is acknowledged that the effect on openness might not be confined solely to permanent physical works and play equipment or other domestic paraphernalia in a garden might have some effect on openness. However, the modest size of the extended area also limits the extent of such ancillary equipment, and its permanence and movability are such that there

would be no material effect on openness in this instance. This also applies to domestic planting which would also be unlikely to have a material effect on openness in the GB given the extent of the appeal site.

11. Paragraph 143 of the Framework includes safeguarding the countryside from encroachment and checking the unrestricted sprawl of large built-up areas as two of the purposes of the GB. The appeal site relates to part of a larger area of agricultural land that surrounds the cul-de-sac at Fishers Wood Grove, that is bound by Fishers Wood Grove and Bromley Common. The boundary with both of these roads is marked by mature trees and hedgerows which limits views of the appeal site from public view. Further, existing boundary treatments around the appeal site screen the extended area from closer views from neighbouring properties.
12. The area of land to which the appeal relates is relatively small, in relation to both the housing development as a whole and the larger area of surrounding agricultural land remaining. The boundary fence clearly contains the garden area as extended. Therefore, in these particular circumstances there would be no conflict with the purpose of the GB to assist in safeguarding the countryside from encroachment or unrestricted urban sprawl.
13. In terms of the three remaining purposes of the GB highlighted within the Framework. The appeal site would not narrow the gap between Bromley and another settlement or result in it merging with a neighbouring town. Also, it is not a reasonable prospect that the appellant could utilise existing derelict or other urban land as external amenity space, remote from the property.
14. For the reasons detailed above the material change of use of the land is not inappropriate development in the GB having regard to the Framework. While it is contrary to Policy 49 of the LP, the Framework is a material consideration against which I afford significant weight in this instance. The change of use is in accordance with Policy G2 of the London Plan 2021 (LonP) which seeks to protect the GB from inappropriate development.

Conservation Area

15. The application site is within the Oakley House, Bromley Common section of the Bromley, Hayes and Keston Commons Conservation Area (CA). Which includes Oakley House a Grade II Listed mansion and the surrounding Bromley Common. The majority of Bromley Common is undeveloped agricultural land and its significance is derived in part by an absence of development as well as mature trees and hedgerows that gives the area a verdant rural feel. The agricultural land that surrounds Fishers Wood Grove is part of Bromley Common and makes an important contribution to this significance.
16. As detailed above the appeal site is largely screened from neighbouring properties, including Oakley House, and public vantage points. Also, the extended garden area is small compared to the existing back garden; it is bound by typical domestic fencing and in the wider context the garden as extended clearly reads as part of the larger housing development. Bearing in mind the extent, nature and location of the development, the character and appearance of the CA to the desirability of the preservation or enhancement of which I am required to pay special attention, is preserved.

17. There is no conflict with Policy 41 of the LP and Policy HC1 the LonP which require proposals for the change of use of land within a CA to respect the layout, scale, form and materials of existing buildings and spaces and conserve the significance of heritage assets. The development is also consistent with the Framework which seeks to conserve and enhance the historic environment, and states that heritage assets should be conserved in a manner appropriate to their significance.

Other Matters

18. It is acknowledged that the Fishers Wood Grove housing development was an area of previously developed land, that formed part of Bromley Common Liveries¹. In the assessment of this appeal the inspector found that the development was not inappropriate on the grounds that the Framework makes an exception for the erection of new buildings on previously developed land. However, this was but one factor of many he considered. His observations and conclusions did not fetter any future decision on applications for different development.
19. My attention has been drawn to an appeal for the change of use of land to extend a garden in Rotherham² which was dismissed by the inspector. Plans for this appeal were not included as part of the evidence before me. However, within the decision the inspector notes that the land level of the appeal site was increased above that of the surrounding countryside, to the height of the existing garden. No notable increase in land level has taken place or is proposed as part of this appeal; as such it does not form a direct comparison to the dismissed appeal.
20. The Council has raised concerns in regard to the cumulative impact of similar proposals for houses in the same terrace as this house³. However, for the reasons discussed above, and given the parallel nature of the gardens, the cumulative effect of rearward garden extensions on neighbouring gardens, should there be any, would not alter my conclusions above, which concern this back garden. In any event, each case must be determined on its own merits.

Conditions

21. A condition requiring compliance with the submitted plans has been included as the proposal has been assessed on those terms and in the interests of visual amenity.
22. The additional area of garden land proposed is sufficient to allow the erection of incidental buildings or enclosures, which would impact on the openness of the GB. A condition removing permitted development rights for incidental buildings, walls, fences and the like has been included in order to ensure the openness of the GB would be preserved.
23. The Council have suggested a condition to remove permitted development rights to allow any additional hardstanding within the appeal site. However, any hardstanding within the extended garden area would not impact on the openness of the GB. It would therefore be unreasonable to remove permitted development rights in this regard.

¹ APP/G5180/W/15/3005057

² APP/P4415/W/20/3253062

³ APP/G5180/W/24/3345141 and APP/G5180/W/24/3345140

Conclusion

24. I have found no conflict from the development with LP policy 41, LonP policy HC1, and the policies of the Framework, which concern the historic environment. There is no conflict with LonP policy G2 which protects the GB. While it conflicts with GB policy 49 of the LP, for the reasons set out above, I give this conflict only limited weight. As this is a relevant policy which is out-of-date, the presumption in favour of sustainable development applies. The application of the historic environment and GB policies of the Framework do not provide a clear reason for refusing permission. There are no adverse impacts from granting permission which significantly and demonstrably outweigh the benefit of an enlarged garden when assessed against the policies in the Framework as a whole. Consequently, this indicates that permission should be granted. The appeal is therefore allowed.

C Livingstone

INSPECTOR