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## Appeal Decision

Site visit made on 15 November 2024

**by G Sylvester BSc (Hons) MSc MRTPI**

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

**Decision date: 09 December 2024**

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**Appeal Ref: APP/G5180/W/24/3345441**

**12 Crossley Close, Biggin Hill, Bromley TN16 3BL**

- 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 Max Donohue against the decision of the Council of the London Borough of Bromley.
  - The application Ref is DC/81/02614/RECON.
  - The application sought planning permission for a detached four bedroom dwelling without complying with a condition attached to planning permission Ref 19/81/2614, dated 17 December 1981.
  - The condition in dispute is No 5 which states that: *"No further development shall be carried out within the curtilage of the dwelling house (other than with planning permission previously granted by the Local Planning Authority) notwithstanding the provisions of Class I, 3 of Schedule 1 of the Town and Country Planning General development Orders 1977-81"*.
  - The reason given for the condition is: *"To enable the Council to exercise control over any further development of the site which would otherwise be permitted by the provisions of the Town and Country Planning General Development Orders 1977-81"*.
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### Decision

1. The appeal is allowed and planning permission is granted for a detached four bedroom dwelling at 12 Crossley Close, Biggin Hill, Bromley TN16 3BL in accordance with the application Ref DC/81/02614/RECON, without compliance with condition No 5 previously imposed on the planning permission Ref 19/81/2614, dated 17 December 1981, subject to the conditions in the attached schedule.

### Background and Main Issue

2. Paragraph 54 of the National Planning Policy Framework ("the Framework") states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. Framework Paragraph 56 states that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
3. The Planning Practice Guidance ("the PPG") states that 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) Order 2015 as

amended ("the GPDO") so that it is clear exactly which rights have been limited or withdrawn. Area-wide or blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity.

4. The evidence before me indicates that the disputed condition prevents the carrying out of any development within the curtilage of the dwellinghouse that would otherwise not require an application for planning permission under the provisions of the GPDO. I see no basis on the evidence before me to disagree. The Council considers the disputed condition to be necessary to safeguard the living conditions of the occupiers of Number 11 Crossley Close (Number 11).
5. The main issue in this appeal is whether the disputed condition is necessary and reasonable in the interests of safeguarding the living conditions of the occupiers of Number 11.

### **Reasons**

6. Based on the legislative context set out above, the starting point is that national permitted development rights in the GPDO should not be removed unless there is clear justification to do so.
7. The appellant is not seeking the removal of permitted development rights under Class AA of the GPDO, which provides for additional storeys on a dwellinghouse, and which he says could be harmful. As such, there is no disagreement between the main parties on this matter and I see no basis on the evidence before me to reach a contrary view. The removal of Class AA permitted development rights by condition is therefore necessary and reasonable.
8. Aside from Class AA, the evidence indicates that the GPDO would permit the erection of side and rear extensions to the appeal dwelling, enlargements to its roof such as a rear dormer, and the erection of outbuildings within its curtilage, amongst others. Such development within the curtilage of a dwellinghouse would be subject to certain size limitations and locational restrictions, and in specific circumstances the GPDO would require windows to be fitted with obscure glazing to prevent overlooking.
9. The appellant's undisputed evidence indicates that the GPDO would allow for single storey height extensions to the sides and rear of the appeal dwelling, including on the land between its side wall and the common boundary with Number 11, and for two storey rear extensions where set in 2 metres from the boundary. In respect of outbuildings, the appellant indicates that the GPDO would restrict their height and the area of curtilage covered by them.
10. Given their relationship, extensions to the appeal dwellinghouse and the erection of outbuildings within its curtilage under the provisions of the GPDO, would be visible to the occupiers of Number 11 in views looking out of the rear facing rooms in their property or from their garden. The Council's evidence suggests that the appeal dwelling was built in this position relative to Number 11, to overcome the refusal of an earlier application in 1981 for a dwelling that was considered to harm the living conditions of the occupiers.
11. However, extensions and outbuildings beyond the rear wall of the appeal building, including two storey extensions and roof dormers, would be set well

away from the area of garden closest to the rear wall of Number 11, which is likely to be of greatest value for relaxation and recreation by the occupiers. Given the limitations and restrictions imposed by the GPDO, I am not persuaded on the evidence before me that extensions to the appeal dwelling, and the erection of outbuildings within its curtilage, even on the narrow tract of land between its side wall and the common boundary, would be of a size that would be overbearing and harmful to the outlook of the occupiers of Number 11.

12. Furthermore, given the relationship between the appeal dwelling and Number 11, relative to the sun as it moves through the sky from east to west, I am not persuaded that the size and position of extensions to the appeal dwelling or outbuildings within its curtilage that could be erected under the GPDO, would result in a harmful loss of light and overshadowing of Number 11. The GPDO would control overlooking through obscure glazing as set out above.
13. I have taken all the evidence into account, including the relationship between the appeal property and Number 11, which is different to that between the terraces to the west. However, for the reasons given, I am not persuaded that development carried out within the curtilage of the dwellinghouse under the provisions of the GPDO, would, except for development under Class AA, cause harm to the living conditions of the occupiers of Number 11.
14. Consequently, except for Class AA development, I find no clear justification, including on the grounds of safeguarding the living conditions of the occupiers of Number 11, to restrict national permitted development rights for development within the curtilage of the appeal property.
15. The disputed condition, which was broadly reasoned on the grant of the original planning permission, therefore amounts to the unreasonable and unnecessary blanket removal of the freedoms to carry out development within the appeal property's curtilage, contrary to the tests for conditions in the Framework.

### **Other Matters**

16. The visibility splays required by Condition 4 of the original planning permission appear to have been provided as the frontage to the appeal site is largely devoid of any above ground obstructions. I have therefore reimposed the part of this condition that I consider remains relevant.

### **Conclusion**

17. Without the disputed condition, but with the addition of a condition restricting permitted development rights under Class AA, I conclude that the development would comply with the provisions of Policies 6 and 37 of the London Borough of Bromley Local Development Framework Local Plan, January 2019, which require development, including residential extensions, to respect the amenities of neighbouring occupiers. The appeal succeeds and I shall grant a new planning permission in the terms set out above.

*G Sylvester*

INSPECTOR

### **Schedule of conditions**

- 1) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development permitted by virtue of Class AA of Part 1 of Schedule 2 to the Order shall be undertaken.
- 2) No obstruction over 600mm in height shall be permitted with the 1.5m x 1.5m visibility splays to the vehicular access.