



Appeal Decision

Site visit made on 7 May 2025

by A Knight BA PG Dip MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st of May 2025

Appeal Ref: APP/G5180/W/24/3354149

Yew House Barnet Wood Road, Hayes, Bromley BR2 8HJ

- 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 Grant Weston against the decision of the Council of the London Borough of Bromley.
 - The application Ref is DC/98/02500/RECON.
 - The application sought planning permission for demolition of existing dwelling and outbuildings and erection of 4 bedroom house with detached double garage without complying with a condition attached to planning permission Ref DC/98/02500/FUL, dated 1 Nov 1999.
 - The condition in dispute is No 11 which states that: *"Notwithstanding the provisions of Town and Country Planning (General Permitted Development Order) 1995 (or any order amending, revoking and re-enacting this order) no buildings, structures, alterations, walls or fences of any kind 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"*.
 - The reason given for the condition is: *"To prevent overdevelopment of the site"*.
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Decision

1. The appeal is allowed, and planning permission is granted for the demolition of existing dwelling and outbuildings and erection of a 4 bedroom house with detached double garage at Yew House Barnet Wood Road, Hayes, Bromley BR2 8HJ in accordance with the terms of application Ref DC/98/02500/RECON dated 27 May 2024, without compliance with condition 11 previously imposed on planning permission Ref DC/98/02500/FULL1 dated 1 Nov 1999 subject to the conditions in the attached schedule.

Background and Main Issues

2. The appeal site (the site) includes a detached dwelling (the dwelling). Condition 11 of the original planning permission for the dwelling removes permitted development rights for buildings, structures, alterations, walls or fences of any kind within the curtilage of the dwelling without the approval of the Council (the condition). The reason for the condition was to prevent overdevelopment of the site.
3. The Council has elaborated on the original reason, contending now that the condition is reasonable and necessary to prevent overdevelopment of the site to the detriment of the openness and visual amenities of the Green Belt, the Bromley, Hayes & Keston Commons Conservation Area (the CA), and the River Ravensbourne, Ravensbourne Valley Woodlands, Keston Common and Hayes Common Site of Importance for Nature Conservation (the SINC), each of which the site is within.

4. The main issues in this appeal are, therefore, whether removal of the condition is likely to result in development that would impact detrimentally on the openness and visual amenities of the Green Belt, or otherwise harm the CA, or the SINC.

Reasons

5. The site is a generously sized residential plot on the northern side of Barnet Wood Road. The surrounding area comprises a mix of suburban development, open fields, rural land, and woodland. The dwelling and an outbuilding at the site (the outbuilding) are set back from the road and partially screened from it by mature greenery. The site is enclosed by woodland to the north, west, and east.
6. Paragraph 57 of the National Planning Policy Framework (the Framework) states that planning conditions should be kept to a minimum and only imposed where they are, amongst other things, necessary, and reasonable in all other respects. Paragraph 55 says that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. Planning Practice Guidance (PPG) advises that the 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.

Green Belt

7. The Council acknowledges that permitted development rights are not withdrawn as a matter of course from dwellings in the Green Belt, indicating that domestic development flowing from such rights is, as a general point of principle, acceptable in the context of Green Belt policy. I see no reason to find otherwise. Notwithstanding the above, the Council contends that the degree to which the dwelling has been extended since it was first built provides, site-specific justification for the control imposed by the condition, given the Green Belt context.
8. The Council has not contested the appellant's assertions that, contrary to suggestions in the planning officer's report, only a single storey rear extension (the SSRE) has been added to the dwelling, or that it would have been lawful at the time of its erection if not for the condition. I saw nothing during my site visit to lead me to a different conclusion. The SSRE is the subject of a certificate of lawfulness, granted on the basis of its age.
9. Whilst I have no indication that the appellant desires such an outcome, the greatest potential implication of the appeal succeeding is for the site to be developed as fully as possible, to the limits of what is allowed by the General Permitted Development Order (GPDO).
10. The pertinent parts of the GPDO permit various domestic developments subject to restrictions. Many of these are related either to the *existing* dwellinghouse (i.e. as it exists immediately before the permitted development is undertaken) or to the *original* dwellinghouse (i.e. as it was on 1 July 1948 or, if built after that date, on the day it was built).
11. The GPDO states that for any proposed enlargement, improvement or alteration to a dwellinghouse to qualify as permitted development, the height of its roof and its eaves must not exceed those of the *existing* dwellinghouse. Otherwise, whether any proposed enlargement, improvement or alteration to a dwellinghouse, including

the provision of outbuildings, is permitted by the GPDO depends on how it relates to the *original* dwellinghouse.

12. The SSRE has a lower roof and eaves than the dwelling and, as such, has not increased the permitted development potential at the site in those respects. Furthermore, the Order requires that where a proposed extension is to be joined to an existing extension such as the SSRE, the total enlargement must meet the pertinent limits in the Order. Overall, I have no evidence that the presence of the SSRE has any bearing on the degree to which the site could, if the appeal were to succeed, be developed using permitted development rights.
13. As permitted development in the Green Belt has not been restricted by regulation, I cannot find development flowing from it to be inherently harmful to Green Belt openness. As the SSRE neither exceeds nor increases the permitted development potential of the site beyond that provided by the GPDO, it does not introduce or make likely development above and beyond that which is inherently acceptable and, as such, does not provide clear justification for the condition.
14. I have been provided with very little detail as to how the proposal would affect visual amenity within the Green Belt. I am mindful that permitted development rights permit very little to take place forward of the building line. Given the above, and the significant extent to which the site is screened from view by mature greenery, I find no evidence that harm to the visual amenity of the Green Belt would arise.
15. I recognise that the size of the plot would potentially lend itself to the provision of larger outbuildings than would be possible elsewhere. Outbuildings are no more restricted in the Green Belt than any other form of permitted development and, as such, the potential for their provision at the site is addressed by my findings above. That said, I am also mindful that any outbuildings would, in addition to meeting the dimensional stipulations in Schedule 2, Part 1, Class E of the GPDO, also need to be required for a purpose incidental to the enjoyment of the dwellinghouse as such, imposing a restriction on the extent of any such development.
16. I recognise that the condition does not necessarily prevent development at the site but, instead, requires that it be subject to assessment. That is true of any condition restricting permitted development, and the Framework and the PPG are nevertheless clear that such conditions are unlikely to meet the tests of reasonableness and necessity and require clear justification. That the appellant could avail themselves of the planning process has, therefore, carried very little weight in my determination.
17. I find that the condition is unnecessary and unreasonable as it is not required to protect the openness and visual amenity of the Green Belt. Its removal would not conflict with Policy 49 of the London Borough of Bromley Local Plan (2019) (the Local Plan) which seeks to ensure the protection of the Green Belt.

The CA

18. The site is in the Barnet Wood Road sub area of the Bromley, Hayes and Keston Commons Conservation Area (the CA). The statutory duty set out in Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of a conservation area.

19. I have been provided with very little from the Council to guide me as to the significance of the CA, or how the proposal would harm it. From the evidence before me the significance of the CA is in the gradual, increasing blend from east to west between detached houses of varying but largely traditional design on Barnet Wood Road, and the woodland beyond.
20. Even if permitted development rights were used to significantly alter the dwelling, it would remain a detached house in a large plot, on a street characterised by the range and variety of such dwellings. I have no evidence that the proposal would affect the existing, significant, tree coverage at or near the site; Indeed, three trees to the front of the site, the woodlands to the western side of it, and beyond it to the east, are all subject to a Tree Preservation Order (TPO), preventing any such outcome.
21. I find no reason to believe that removal of the condition is likely to result in development that would impact detrimentally on the openness and visual amenities of the CA. As such, the proposal would comply with the requirements of Policy 41 of the Local Plan, which requires development to respect and incorporate existing landscape or other features that contribute to the character, appearance or historic value of the area.

The SINC

22. The site is within the River Ravensbourne, Ravensbourne Valley Woodlands, Keston Common and Hayes Common Site of Importance for Nature Conservation (the SINC). Policy 69 of the Local Plan applies to development that may significantly affect the nature conservation interest or value of a SINC and sets out the criteria such development must satisfy to attain approval.
23. I have been provided with very little supporting evidence to guide me as to the nature conservation interest or value of the SINC, or how the utilisation of domestic permitted development rights may significantly affect them. In visiting the site, I found much of the land around the dwelling and outbuilding to be in residential condition; a substantial forecourt area is laid to hardsurface or gravel, and a large rear patio opens onto extensive areas of mowed lawn. If these parts of the site possess particular nature conservation interest or value, then it is not self-evident.
24. The western part of the site is wooded and closer to the River Ravensbourne. The northern and eastern edges of the site have tree coverage in places, marking the beginning of the woods beyond. The inherent potential for nature conservation interest or value is more obvious in these parts of the site.
25. Even so, the western part of the site and the woods beyond it to the north and east are covered by Woodland TPOs, inferring protection upon any tree therein, including those planted or growing naturally after the Order was made. Furthermore, condition 15 of the original permission for the dwelling requires a development-free 4m buffer zone alongside the river to provide a wildlife refuge. These factors significantly restrict the potential for development in the western part of the site and restrict it near to the northern or eastern edges where conflict with the roots of protected trees may occur. In any event, the availability of permitted development rights would not override the protection provided by the Wildlife and Countryside Act 1981, to the degree that it may be applicable to circumstances at the site.

26. Overall, whilst the availability of permitted development rights would increase the chances of development occurring within the SINC, the extent of it would be limited firstly by the constraints within the GPDO and, furthermore, by the specific restraints inherent at the site. In the absence of a robust argument to demonstrate otherwise, I can find no evidence that the proposal may significantly affect the nature conservation interest or value of the SINC, and therefore find no conflict with Policy 69 of the Local Plan, which seeks to restrict and mitigate such development.

Other Matters

27. I note assertions by third parties that work has been undertaken to extend the outbuilding. I have nothing from the Council to confirm that this is so and, in the absence of anything to show the design of the outbuilding as originally permitted, cannot form a firm view as to whether it has, in fact, been extended. In any event, there is no suggestion that these cited works are so old as to be immune to enforcement action if, indeed, they have taken place in breach of planning control and such action is conserved expedient by the Council. Given the above, the prospect that the outbuilding may have been extended has not been material in my determination.

Conditions

28. The PPG explains that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. The development has been completed and I have been provided with no reason to think that any pre-commencement/pre-occupation conditions which were imposed remain relevant, save for those addressed in the following paragraphs. As such, I have not restated conditions 1, 2, 3, 4, 5, 6, 13, or 16 from the original permission.
29. Condition 7, 8, 9, and 14 pertain to drainage arrangements, requiring the agreement of appropriate details and their permanent maintenance thereafter. I have no information as to whether acceptable drainage designs were supplied to discharge these conditions, and so cannot impose them in such a way as to require ongoing compliance with any previously approved details. For this reason, I have restated them in their original form, thereby providing a mechanism for appropriate details to be agreed if necessary.
30. Conditions 10 and 17 pertain to parking arrangements and the position of the garage relative to the dwelling. Given the absence of on-street parking locally, I see no reason not to restate the former. I shall restate the latter in the absence of any argument that it has become unnecessary.
31. The effect of condition 15 is material in my determination as set out above, though I have no information as to whether acceptable details were supplied to discharge the relevant element of the condition. For that reason, I have again restated it in its original form.
32. Condition 12 requires the development to accord with the original approved plans. I have restated this as it provides certainty. I recognise that the SSRE will not feature on the pertinent plans, but I have received no argument that its presence at the site cannot be addressed by the existing certificate of lawfulness pertaining to it.

33. I recognise that some restated conditions require agreement over details before commencement of development or site occupation. Though both of these have already occurred, they have occurred in relation to the original permission. This decision comprises a new, separate permission which cannot be used until the details required by the requisite conditions have been discharged.

Conclusion

34. For the reasons set out above I conclude that the appeal should be allowed. I will grant a new planning permission without the disputed condition, but retaining those conditions from the previous permission that appear still to be relevant.

A Knight

INSPECTOR

Schedule of conditions

- 1) Details of a surface water drainage system (including storage facilities where necessary) shall be submitted to and approved in writing by the or on behalf of the Local Planning Authority before any part of the development hereby permitted is commenced and the approved system shall be completed before any part of the development hereby permitted is first occupied, and permanently maintained thereafter.
- 2) The surface water drainage system to serve the development shall incorporate an outlet restricted to a 100mm diameter pipe to the surface water sewer and such work shall be completed before any part of the development hereby permitted is first occupied, and permanently maintained thereafter.
- 3) Details of a foul water drainage system shall be submitted to and approved in writing by or on behalf of the Local Planning Authority before any part of the development hereby permitted is commenced and the approved scheme shall be completed before any part of the development hereby permitted is first occupied, and permanently maintained thereafter.
- 4) Before commencement of the use of the land or building hereby permitted parking spaces and/or garages and turning space shall be completed in accordance with approved details and thereafter shall be kept available for such use and no permitted development whether permitted by the Town and Country Planning (General Permitted Development Order) 1995 (or any order revoking and re-enacting this Order) or not shall be carried out on the land or garages indicated or in such a position as to preclude vehicular access to the said land or garages.
- 5) The development hereby approved shall not be carried out otherwise than in complete accordance with the plans approved under this planning permission unless previously agreed in writing by or on behalf of the Local Planning Authority.
- 6) No soakaways shall be constructed such as they penetrate the water table and they shall not in any event exceed 3 metres in depth below existing ground level.
- 7) A buffer zone 4 metres wide alongside the River Ravensbourne shall be established within the application site in accordance with details which shall be submitted to and approved in writing by or on behalf of the Local Planning Authority before the development commences. No other form of development shall take place within the said zone at any time thereafter without the written consent of the Local Planning Authority. The zone shall be planted with locally native species only.
- 8) The garage hereby permitted shall be sited 6 metres from the dwelling hereby permitted as shown on the approved plan 11702B.

Schedule ends