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## Appeal Decision

Site visit made on 14 March 2019

**by Mr M Brooker DipTP MRTPI**

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

**Decision date: 08 August 2019**

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**Appeal Ref: APP/G5180/D/18/3218571**

**Argovia, Cudham Lane South, Cudham, Sevenoaks TN14 7QA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Miss Groombridge and Mr Brown against the decision of the Council of the London Borough of Bromley.
  - The application Ref DC/18/03540/RECON, dated 1 August 2018, was refused by notice dated 2 October 2018.
  - The application sought planning permission for the erection of two storey rear extension and introduction of loft conversion with rear dormer and rooflights, partial demolition of existing garage and conversion to create cinema room, replacement of existing conservatory with single storey side/rear addition, infilling covered front extension and porch, widening of the driveway, front gates set back from highway and roof and elevational alterations without complying with a condition attached to planning permission Ref DC/18/02177/FULL6, dated 9 July 2018.
  - The condition in dispute is No 4 which states that: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (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 2015 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.
  - The reason given for the condition is: In the interests of protecting the character of the area and residential amenity of neighbouring properties in accordance with Policy BE1 of the UDP.
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### Decision

1. The appeal is allowed and the planning permission Ref DC/18/02177/FULL6 for the erection of two storey rear extension and introduction of loft conversion with rear dormer and rooflights, partial demolition of existing garage and conversion to create cinema room, replacement of existing conservatory with single storey side/rear addition, infilling covered front extension and porch, widening of the driveway, front gates set back from highway and roof and elevational alterations at Argovia, Cudham Lane South, Cudham, Sevenoaks TN14 7QA granted on 9 July 2018 by London Borough of Bromley Council, is varied by deleting condition 4 and substituting it for the following condition:

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order amending, revoking and re-enacting this Order) no building, structure or alteration permitted by Class A, B or C of Part 1 of Schedule 2 of the 2015 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.

### **Main Issue and Preliminary Matters**

2. Since the determination of the application the London Borough of Bromley: Local Plan was adopted in January 2019 ("Local Plan"). The Council have confirmed that the policies in the London Borough of Bromley: Unitary Development Plan (2006) cited on the decision notice are no longer part of the development plan and therefore have no weight. Both parties have had the opportunity to comment on the adopted plan in the course of this appeal.
3. The condition referred to in part E of the appeal form and the decision notice is No 6. However, the condition referred to on the application form, in the appellant's appeal statement and the Planning Officer's report is condition No 4, as such I have determined this appeal on the basis that the disputed condition is No 4. The dispute relates to the removal of permitted development rights. The appellant seeks vary this condition to exclude part E permitted development rights from the condition. Notwithstanding the reason given for the condition set out in the decision notice ref DC/18/03540/RECON, the Council state that the reason for the condition is also to protect the openness of the Green Belt.
4. Given the above, the main issues in this appeal are whether or not the condition is necessary in the interests of protecting the character and appearance of the area and the openness of the Green Belt.

### **Reasons**

5. The National Planning Policy Framework (the Framework) details that *planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects*<sup>1</sup>. Furthermore, the National Planning Practice Guidance (NPPG) states that *conditions restricting the future use of permitted development rights or changes of use will rarely pass the test of necessity and should only be used in exceptional circumstances*<sup>2</sup>.
6. Paragraph 145 of the Framework allows extensions and alterations in the Green Belt provided they do not result in disproportionate additions over and above the size of the original building.
7. The thrust of the Council's reasoning is that the condition is required to protect the openness and visual amenity of the Green Belt from the uncontrolled development that could be implemented under permitted development regulations following the approval (18/02177/FULL6) of significant extensions to the dwelling on the site.
8. Policy 51 of the London Borough of Bromley Local Plan (2019) (LP) relates to extensions and alterations to dwelling houses in the greenbelt and seeks to restrict increases in floor area to 10% and to protect the character of the area. The 10% figure was also detailed in saved Policy G4 of the London Borough of

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<sup>1</sup> National Planning Policy Framework (2019) - Paragraph 55

<sup>2</sup> Paragraph: 017 Reference ID: 21a-017-20140306

Bromley Unitary Development Plan (2006) that formed part of the development Plan at the time that the application was determined.

9. The Officer's report details that the additions approved by the Council amounted to a 51.7% increase in floor area and that this significant addition was allowed following a persuasive fall-back argument promoted by the appellant that was based on the permitted development rights that the property enjoyed. Consequently, the Council attached a condition to the planning permission to remove Class A, B, C, and E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order (GPDO) 2015 (the Order).
10. However, the fall-back argument promoted by the appellant did not refer to or benefit from development allowed under Class E.
11. The GPDO places no restrictions on permitted development rights in Green Belts as it does with other designated areas such as National Parks. The fact the GPDO places no specific restriction on dwellings within Green Belts suggests that development carried out under permitted development would not necessarily be inappropriate or harmful to its openness. Paragraph 145 of the Framework is only applicable to development that requires planning permission as is the need to demonstrate very special circumstances. The site being located within the Green Belt therefore does not represent an exceptional circumstance envisaged by the NPPG.
12. I find therefore that the removal of class E from the subject condition would not harm the character and appearance of the area or openness of the Green Belt.
13. For the reasons given above, to include Class E in the disputed condition is neither reasonable nor necessary in the interests of protecting the character and appearance of the area or the openness of the Green Belt and as such fails the tests set out in paragraph 55 of the Framework. Therefore, the removal of Class E from the disputed condition would not conflict with Policy 49 and 51 of the LP.

### **Conclusion**

14. For the reasons given above, having regard to all matters raised, the appeal is allowed.

*Mark Brooker*

INSPECTOR