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## Appeal Decision

Site visit made on 27 November 2018

**by Elizabeth Pleasant DipTP MRTPI**

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

**Decision date: 13 December 2018**

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**Appeal Ref: APP/G5180/W/18/3206906**

**Log Cabin, Orchard Cottage, Westerham Road, Keston BR2 6HB**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr & Mrs D Griffiths against the decision of the Council of the London Borough of Bromley.
  - The application Ref DC/18/00887/FULL1, dated 23 February 2018, was refused by a notice dated 24 May 2018.
  - The development proposed is demolition of existing dwelling and garage and erection of new single storey contemporary dwellinghouse of 3 bedroom design with associated parking, access and landscaping.
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### Decision

1. The appeal is allowed and planning permission is granted for demolition of existing dwelling and garage and erection of new single storey contemporary dwellinghouse of 3 bedroom design with associated parking, access and landscaping at Log Cabin, Orchard Cottage, Westerham Road, Keston BR2 6HB in accordance with the terms of the application, Ref DC/18/00887/FULL1, dated 23 February 2018, subject to the following conditions:
  - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
  - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Planning Drawing: 2986-17-PL101 Rev P4 and 2986-17-PL102 Rev P3.
  - 3) Prior to the commencement of the development hereby permitted, a survey of the condition of the access from Westerham Road to the site shall be submitted to and agreed in writing by the local planning authority. Any damage caused to the surface of the access road during the construction phase of the development shall be reinstated to a standard at least commensurate with its condition prior to the commencement of development.
  - 4) Details of a surface water drainage system (including storage facilities where necessary) shall be submitted to and approved in writing by the local planning authority before any development, excluding works of demolition, commences. The approved scheme shall be completed before the dwelling hereby permitted is first occupied and permanently retained thereafter.

- 5) Prior to any development above slab level, details of all external facing materials, including the roof and hard surfaced areas shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in full accordance with the approved details.
- 6) The car parking spaces and turning area shall be provided in accordance with the approved details before the dwelling is first occupied, and shall be kept available at all times for the parking of motor vehicles by the occupants of the dwellings and their visitors and for no other purpose.
- 7) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (or any order revoking and re-enacting that Order with or without modification), no development falling within Classes A, B, C, D or E of Part 1 and Class A of Part 2, Schedule 2 of that Order shall be carried out.
- 8) The development hereby permitted shall be built in accordance with the criteria set out in Building Regulations M4(2) 'accessible and adaptable dwellings' and shall be permanently retained thereafter.

### **Procedural Matters**

2. A revised version of the National Planning Policy Framework (the Framework) has been published since the appeal was lodged. The main parties were given the opportunity to comment on any relevant implications for the appeal and have not therefore been prejudiced. I have had regard to the responses and the Framework in reaching my decision.
3. The Submission Draft Local Plan for the London Borough of Bromley was published in November 2016 (DLP). Paragraph 48 of the Framework states that decision makers should give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of the relevant emerging policies to the Framework. The DLP is at a fairly advanced stage, given that it has now gone through independent examination, albeit the Local Plan Inspector's final report has not yet been issued. In this case emerging Policies 49 and 52 are broadly consistent with the Green Belt policy in the Framework and in relation to the matters relevant to this appeal. I therefore consider that the relevant policies in the DLP should carry moderate weight.

### **Main Issues**

4. The main issues in this case are:
  - Whether the appeal proposal would be inappropriate development in the Green Belt;
  - The effect of the proposal on the visual qualities and openness of the Green Belt; and
  - If it is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

## Reasons

### *Inappropriate development*

5. Paragraph 145 of the Framework states that the construction of new buildings should be regarded as inappropriate in the Green Belt subject to a number of exceptions. Listed exceptions include, the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces.
6. Bromley Unitary Development Plan, 2006 (UDP) pre-dates the Framework. Policy G1 of the UDP states that the construction of new buildings or extensions to buildings on land falling within the Green Belt will be inappropriate unless it is for, amongst other things, the limited extension, alteration or replacement of existing dwellings. Policy G5 of the UDP allows for the replacement of a building in residential use by a new dwelling in the Green Belt providing that: the resultant dwelling (including garaging and any accommodation underground) does not result in a material net increase in floor area compared with the existing dwelling as ascertained by external measurement; and the size, siting, materials and design of the replacement dwelling and any associated works (such as boundary fences or walls) does not harm visual amenities or the open or rural character of the locality. Despite the UDP pre-dating the Framework, Policies G1 and G5 are broadly consistent with the Framework with regard to replacement dwellings. The supporting text to Policy G5 states that in general, an increase of over 10% of the floor area would be considered material, although this may depend of design issues.
7. Policy 7.16 of the London Plan, 2016 seeks to protect London's Green Belt in accordance with national policy. Emerging Policy 49 of the DLP also lists replacement dwellings as not being inappropriate development in the Green Belt provided they are not materially larger than the one it replaces, whilst DLP Policy 52 reiterates the provisions of Policy G5 of the UDP.
8. The appeal site comprises an existing log cabin which is situated within the existing garden area of Orchard Cottage and in use as a self-contained dwelling. The proposed development would replace the cabin with a new single storey flat roofed dwelling. In addition, the existing domestic garage adjacent to Orchard Cottage would be demolished and a new access track would be provided to serve the replacement dwelling with a parking area adjacent to it. The site would be enclosed by a new 1.8m high close boarded fence.
9. The new dwelling would be situated in approximately the same location as the existing dwelling. Although it would have a slightly lower profile than the existing dwelling, its footprint would be significantly larger. It would extend to 172sqm, compared with the footprint of the existing dwelling which is only 95sqm. This would represent a 180% increase in net floor area. Consequently, the proposal would be in conflict with Policies G1 and G5 of the UDP and Policies 49 and 52 of DLP, the aims of which are set out above. Moreover, there is no doubt that the proposed replacement dwelling would be materially larger than the one it would replace and would therefore be inappropriate development in the Green Belt.

### *Visual qualities and openness*

10. Paragraph 133 of the Framework indicates that openness is an essential characteristic of the Green Belt. The existing dwelling is situated within the garden of Orchard Cottage. Despite its use as a single dwelling, its single storey design; materials of construction and open veranda give the building the appearance of an ancillary garden structure which currently overlooks the garden's swimming pool and lawn area.
11. The replacement dwelling would be sited in roughly the same location as the cabin, but its overall footprint would extend to nearly double that of the existing property. In addition, the proposal includes the erection of a substantial length of close boarded fencing to delineate a new curtilage for the dwelling. The increase in footprint of the dwelling and new boundary treatment would lead to a moderate loss of openness to the Green Belt.
12. However, the proposed development would also remove an existing brick garage and timber outbuilding from the site. The garage has a room within its roofspace and attached to its rear is an outbuilding whose roof area is enclosed by a balustrade. An external staircase also leads to the roof area. The removal of the garage and outbuilding would have a positive impact on the openness of the Green Belt. The impact on the openness of the Green Belt as a consequence of the appeal proposal as a whole would therefore be neutral.
13. The footprint of the replacement dwelling would be larger than the existing cabin, however the new dwelling would remain single storey, be constructed in roughly the same location and similarly faced in timber cladding with have a flat green roof. Despite the proposed removal of the garage, the site would remain well screened from the surrounding landscape by existing woodland planting. Taking into account the single storey nature of the new dwelling and its materials of construction, it would not be visually conspicuous from the surrounding landscape or Holwood Estate.
14. I conclude that the appeal proposal would not have a harmful effect on the visual qualities of the area and its effect on the openness of the Green Belt would be neutral.

### *Other considerations*

15. I have found that the proposed development would be inappropriate development which is by definition harmful to the Green Belt. Very special circumstance to justify the inappropriate development will not exist unless the potential harm to the Green Belt by reason of inappropriateness is clearly outweighed by other considerations.
16. In November 2017 the Council granted a Certificate of Lawfulness (CLD) for a single storey front infill extension, single storey side and single storey rear extension for the existing log cabin and for the erection of a 1.8m high fence to form a residential curtilage.<sup>1</sup> I accept that the fallback position is available, and a material consideration in the assessment of the proposal.
17. For significant weight to be afforded to a fallback position, there needs not only to be a reasonable prospect of it being carried out in the event that planning permission were to be refused, but it would also need to be equally or more

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<sup>1</sup> DC/17/03825/PLUD

harmful than the scheme for which permission is sought. The appellant has advised that the replacement dwelling offers a better design solution than the fallback position. However, there is no evidence before me to suggest that the fallback scheme would not be an acceptable alternative. I am therefore satisfied that there is a reasonable prospect of the fallback position being carried out in the event that planning permission were to be refused.

18. There is no dispute that the proposed replacement building would have a slightly smaller footprint than the development permitted by the CLD and its flat roof would be marginally lower than that of the existing log cabin. In addition, the general mass of the two schemes would not be significantly different. The principle difference would be the roof form, which in the case of the appeal proposal would be a flat green roof approximately 500mm lower than the fallback scheme. The replacement dwelling would have a squarer footprint and in both cases a new boundary fence is proposed. In my view the impact on the openness of the Green Belt and its visual qualities when comparing the replacement dwelling with the fallback scheme would be neutral. Furthermore, the appeal proposal would remove an existing garage from the site which would improve openness and the provision of a green roof would also be an enhancement in terms of biodiversity. For this reason, the fallback position is, therefore, a material consideration of significant weight in this case, and in the overall Green Belt balance.

### **Other Matters**

19. I appreciate third party concerns regarding the planning history of the appeal site; however this is not a matter for my consideration in this appeal. Given the unusual circumstances of this case, brought about to an extent by the site's history, it is unlikely that those circumstances would be repeated elsewhere. I do not therefore consider that there is a reasonable prospect of this development being repeated in the Green Belt.

### **Overall Planning Balance and Conclusion**

20. Whilst there would be no harm in terms of visual amenity, the proposed replacement dwelling would, having regard to the development plan and national planning policy, comprise inappropriate development in the Green Belt. The effect on the openness of this part of the Green Belt would be neutral. However, the fallback scheme in this case is a material consideration to which I afford significant weight. Given that any impact in terms of openness of the Green Belt would be improved by the appeal proposal and the visual impact comparable, I consider that the fallback scheme to be an other consideration of sufficient weight to clearly outweigh the substantial harm to the Green Belt by reason of inappropriateness. Thus, very special circumstances necessary to justify the development proposed have been demonstrated. Accordingly, whilst there would be conflict with the development plan, the balance of planning considerations in this case lead me to the view that the appeal should succeed.

### **Conditions**

21. The Council has suggested a number of conditions which I have considered against advice in the Framework and Planning Practice Guide. As a result I have amended some for some for clarity and omitted others.

22. A condition is necessary to secure that approved plans as this provides certainty.
23. A pre-commencement condition is necessary to ensure that the site is suitably drained and to reduce the risk of flooding. It is also necessary to impose a pre-commencement condition relating to the condition and maintenance of the site access in the interests of pedestrian and vehicular safety.
24. A condition relating to materials is necessary to safeguard the character and appearance of the area and a condition to require the car parking space and turning area to be provided is necessary in the interests of highway safety.
25. Given the extent of extensions already permitted by the CLD and in view of the Green Belt, I consider that exceptional circumstance exist to remove some permitted development rights accruing to the proposed dwelling. However, it would be unreasonable to remove permitted development rights for Orchard Cottage. The removal of the garage would provide a positive benefit to the openness of the Green Belt, however, I am not persuaded that its removal was determinative in this case.
26. A condition is necessary to require compliance with Building Regulations M4(2) to ensure the need for accessible and adaptable dwellings in the Borough is met.

### **Conclusion**

27. For the reasons given above and taking into account all other matters raised, I conclude that the appeal should be allowed.

*Elizabeth Pleasant*

INSPECTOR