

Appeal Decision

Hearing held on 10 August 2016

Site visit made on 10 August 2016

by Richard S Jones BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 26th October 2016

Appeal Ref: APP/G5180/W/16/3145669

Potters Yard, Turpington Lane/Bromley Common, Bromley BR2 8JN

- 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 Langford Walker Ltd against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/15/05147/FULL1, dated 25 November 2015, was refused by notice dated 10 February 2016.
 - The development proposed is the demolition of existing buildings and removal of existing yard area and other structures. Erection of seven, two storey 2/3 bedroom terraced houses with 14 car parking spaces. Retention of existing open areas, new landscaping and tree planting.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. Since the date of the Council's decision, the Mayor of London published in March 2016 Minor Alterations to the London Plan (MALP) in respect of Housing Standards and Parking Standards. As planning appeals must be determined on the basis of the development plan that exists at the time of the Inspector's decision, I invited the parties at the hearing to raise any issues arising from the MALP which are relevant to my determination. No such issues were raised and I find no reason to take a contrary position.

Main Issues

3. The main issues are:
 - whether the proposal is inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the Framework) and development plan policy, and whether it would have a greater effect on the openness of the Green Belt and the purpose of including land within it than the existing development;
 - the effect on the character and appearance of the area;
 - whether the proposal would lead to the loss of an existing viable small business site; and
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- if the development is inappropriate development, 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 necessary to justify the development.

Reasons

4. The appeal site (Potters Yard) is located on the corner of Bromley Common (A21) and Turpington Lane within the Metropolitan Green Belt. It is occupied by two single storey commercial buildings set back within the site with associated hard standing located to the front of the buildings and a parking area on the south western side. The remainder of the site, which is enclosed by chain link fencing and patchy boundary tree planting and hedgerows, largely comprises overgrown grassland and mounds of earth. The site is not currently in operational use. It adjoins the sea cadet site to the south east, beyond which lies school playing fields.
5. Established residential development faces the site beyond a footpath and grass verge to the north east and dense residential development exists to the north west, forming a recent residential development referred to as the Blue Circle scheme. Beyond Bromley Common, a busy road, to the west are largely undeveloped open fields.

Whether inappropriate development and the effect on openness

6. Paragraph 79 of the Framework highlights that the Government attaches great weight to the importance of Green Belts and says that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, and that "the essential characteristics of Green Belts are their openness and their permanence". Paragraph 87 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 89 of the Framework advises that local planning authorities should regard the construction of new buildings as inappropriate, subject to a number of specified exceptions.
7. Policy G1 of the Council's Unitary Development Plan 2006 (UDP) is consistent with this approach. However the Council accepted at a hearing concerning an appeal¹, which hereafter I shall refer to as the previous appeal, at this and the adjoining Bromley Sea Cadets site on 23 February 2016, that the exceptions to inappropriate development contained within the Framework offered more flexibility than UDP Policy G1. In this respect, none of the exceptions in UDP Policy G1 are applicable to this appeal proposal whereas the final exception listed in paragraph 89 of the Framework relates to limited infilling or the partial or complete redevelopment of previously developed sites, whether redundant or in continuing use, which would have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development.
8. As it is agreed between the Council and the appellant that the whole of the site comprises previously developed land in accordance with the definition in Annex 2 of the Framework, this inconsistency amounts to an important material consideration when considered in the context of paragraph 215 of the Framework. In the circumstances of this case therefore the more recent

¹ Appeal Ref: APP/G5180/W/15/3129314

- approach set out in paragraph 89 of the Framework garners greater weight in respect of whether the development may be deemed inappropriate or otherwise.
9. The Statement of Common Ground (SoCG) signed by the Council and the appellant confirms that in light of the judgement of the High Court² on 15 February 2016 that the Council regards the appeal proposal as constituting inappropriate development in the Green Belt solely on the basis of its impact on openness. I agree and this main issue therefore turns on whether the appeal proposal would have a greater impact on the openness of the Green Belt and the purposes of including land within it than the existing development.
 10. In considering the effect on openness, I have considered the two Court of Appeal Judgements³ and the appeal relating to land at the rear of the former Dylon International Premises⁴, as referred to by the appellant. In this regard, I agree that the concepts of openness and visual impact are distinguishable. As set out in paragraph 7 of the Lee Valley Regional Park Authority judgement, "openness means the state of being free from built development, the absence of buildings – as distinct from the absence of visual impact." Nevertheless, as set out in paragraph 25 of the John Turner Judgement, "The openness of the Green Belt has a spatial aspect as well as a visual aspect, and the absence of visual intrusion does not in itself mean that there is no impact on the openness of the Green Belt as a result of the location of a new or materially larger building there. But...it does not follow that openness of the Green Belt has no visual dimension."
 11. With regard to the previous appeal, it was the Inspector's view that although there has been significant development in the vicinity of the site and within the Green Belt, the site nonetheless is a contributor to the openness of the Green Belt, particularly in respect of the transition it provides between the undeveloped Green Belt and the dense urban form beyond. I find that these comments are equally applicable in considering the smaller site of the current proposal.
 12. Although the two existing single storey storage buildings on site undoubtedly have an impact on openness, they are relatively low level and their effect outside of the site is relatively limited. The appeal proposal would replace these buildings with seven terrace dwellings, four of which would be two storeys whilst three would incorporate a third storey within the roof space.
 13. The Council's evidence includes a comparison table which shows that the building footprint would be increased from 234m² to 402m², the volume increased from 878m³ to 2,820m³ and the maximum building height increased from 4.5m to 9.4m. These figures, which are not disputed by the appellant, other than by reference to an existing building footprint of 248m² in the supporting Design and Access Statement (DAS), demonstrate that the proposed building would be significantly larger than those presently on the site in terms of height, volume and footprint.

² The London Borough of Bromley v (1) Secretary of State for Communities and Local Government; (2) Rookery Estates Company [2016] EWHC 595 (Admin)

³ Lee Valley Regional Park Authority v Epping Forest District Council [2015] EWHC 1471 (Admin)
John Turner v Secretary of State for Communities and Local Government and East Dorset Council [2016] EWCA Civ 466

⁴ Appeal Ref: APP/G5180/W/16/3144248

14. Therefore, even though I recognise that the appeal proposal is substantially reduced from the previous appeal, it would, nonetheless, result in a significantly greater physical presence on the site. It would obstruct views into and through the site and appear as a dominant feature more akin to the neighbouring residential development.
15. The appellant's DAS seeks to highlight that the existing hard standing and lorry parking area has a footprint of 778m² and that in combination with the footprint of the existing buildings, results in a developed area of 1,026m². Even though the proposed building would not spread development beyond the area that comprises the developed area, it is material that approximately 75% of this area contains no building above ground level and therefore remains substantially open. For the site as a whole, the buildings only occupy an area of approximately 10%.
16. Although having a comparable developed area coverage, and not encroaching into the overgrown areas fronting onto Bromley Common and Turpington Lane, the appeal proposal would increase the volume and spread of mass and bulk into areas currently absent of buildings.
17. I accept that the parking of HGV's on the parking area to the west of the existing buildings would in itself affect openness, however, the scale and permanence would be substantially less in combination with the existing buildings than that currently proposed.
18. The appellant's evidence also draws my attention to three appeal decisions. For the Bromley Common Liveries site⁵ the Inspector notes that the proposal would bring about a reduction in the footprint of the buildings on site of around 41% and a reduction in the volume of buildings of around 17%. For the Priam Lodge site⁶, it was agreed between the parties that the proposal would result in a significant reduction in both the building footprint as well as the developed area, and a very small decrease in the volume of buildings on site. Similarly, for the Westerham Riding School site⁷ the Council has confirmed that again there would be a reduction in the level of built development on the site. Accordingly, these appeal decisions relate to schemes which are not directly comparable to that currently before me where there would be a substantial increase in amount of built development within the site.
19. I therefore conclude that the proposed development would have a significantly greater impact on the openness of the Green Belt and the purposes of including land within it than the existing development. As a consequence, the development would not meet the sixth criteria of the exceptions set out in paragraph 89 of the Framework and therefore would amount to inappropriate development, which by definition is harmful to the Green Belt, contrary also to UDP Policy G1, and Policy 7.16 of the London Plan (2016). I attach substantial weight to this harm.
20. Although this site is not undeveloped countryside and is closely related to built development, I find that the proposal would also erode the wider openness of the Green Belt and this would be at odds with the Green Belts essential characteristics of openness and permanence. In addition, the development

⁵ Appeal Ref: APP/G5180/W/15/3005057

⁶ Appeal Ref: APP/P3610/W/14/3000143

⁷ Appeal Ref: APP/G5180/W/15/3137709

would conflict with the defined purposes of the Green Belt as defined in paragraph 80 of the Framework, specifically to assist in safeguarding the countryside from encroachment and check unrestricted sprawl of large built-up areas.

Character and appearance

21. At the hearing the Council raised no particular concern regarding the design of the proposals and taken in isolation I find no reason to reach a different conclusion. However, the appeal site is situated in a prominent corner location and the new dwellings would be significantly more conspicuous within the street scene than the existing level of development. Whilst reduced in scale from the previous appeal proposal, the same conclusions reached by the previous Inspector would be applicable here in that the introduction of the buildings and the erosion of the site's open nature would affect character and appearance, particularly the transition between the open Green Belt and the urban settlement.
22. Although this in itself would be harmful, like the previous appeal scheme, the proposed design would reflect its context, particularly the relatively recent development on the Blue Circle site on the opposite side of Turpington Lane. Moreover, the existing buildings on site are of no architectural merit and are in a poor visual condition, as are their grounds. I therefore reach the same conclusion as the previous Inspector that, on balance, the proposed development would result in a slight benefit to the character and appearance of the area.
23. Accordingly, I do not find conflict with Policies BE1 or H7 of the UDP, which, amongst other things, seek a high standard of design and layout and set out detailed housing density and design criteria, or Policies 7.1, 7.4, 7.5 and 7.16 of the London Plan (March 2016), which seek to create good quality spaces, a sense of place and reinforce local character. I also do not find conflict with UDP Policy G1 insofar as this policy seeks to prevent injury to the visual amenity of the Green Belt by proposals for development within or conspicuous from the Green Belt which might be visually detrimental by reasons of scale, siting, materials or design. It follows therefore that I do not find conflict with paragraphs 56 and 58 of the Framework which require high quality design that responds to the character of the area. Whilst the absence of harm and so conflict with development plan and national policy may be considered neutral in the planning balance, the modest benefits the scheme would bring to the character and appearance of the area may reasonably attract moderate weight in favour of the proposal.
24. As highlighted in the Council's Statement of Case, the appeal site is situated opposite the eastern boundary of the Bromley, Hayes and Keston Common Conservation Area. Although not raised by either party, paragraph 132 of the Framework makes clear that great weight should be given to the conservation of designated heritage assets, and to their setting. However, given the intervening busy A21 and the level of screening alongside the western side of this road, I am satisfied that the proposal would preserve the setting of the Conservation Area.

Business site

25. UDP Policy EMP5 states that the redevelopment of business sites or premises outside the Designated Business Areas will only be permitted where the site is no longer suitable for a use within Classes B1, B2 or B8 and full and proper marketing of the site confirms the unsuitability and financial non-viability of the site or premises for those uses. The policy amplification explains that this is in recognition of the diminishing number of such uses due to pressure for residential development in the Borough and recognises the benefits to meeting the needs of local business's, as well as the sustainability benefits of allowing people to work close to home.
26. Although paragraph 22 of the Framework seeks to avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose, as per the Inspector for the previous appeal, I see no inconsistency between this policy and the requirements of Policy EMP5, which simply requires that the prospects of being used for a business use are tested.
27. In response to deficiencies highlighted by the Inspector for the previous appeal, an updated marketing report and amended property particulars have been submitted in support of this appeal proposal. A specific concern expressed by the Inspector was that the marketing exercise had focused on finding an occupier that could utilise the existing buildings on the site and comply with the requirements of the existing planning permission and that this would have significantly narrowed the market.
28. Whilst I note that the property particulars have been amended following this decision, the "Town Planning" section still highlights that the property was previously used for the storage and distribution of turf and agricultural produce and that it is understood that this remains the lawful use. In my view this still has the effect of narrowing the market and somewhat downplays the fact that the planning history of the site demonstrates that the building is not restricted to a use in connection with agriculture.
29. Although this section now includes reference to the consideration of B1, B2 and B8 uses, I am not convinced that the four months between the time of amending the particulars and the date of the hearing, is sufficient time to properly test the market for such wider uses.
30. I note that the marketing report confirms that the revised details of the property were mailed to parties who the commercial agent considered may be interested, however, it remains unclear, on the basis of the information provided, as to the number of people directly mailed or otherwise approached, and the detail of any queries and feedback given is limited. Nevertheless, both reports identify a range of queries that were received in respect of potential business and employment uses, as well as Class D uses. Moreover, as per the previous appeal proposal, a letter has been submitted from a local businessman who has apparently been attempting to purchase the site for some time for use as small business centre. This interest was again reaffirmed during the hearing.
31. I appreciate that no formal offers may have been made but the report effectively dismisses all such queries primarily because it is perceived that planning permission would not be forthcoming. Although in this respect I

sympathise with the appellant's frustrations that queries remain unanswered by the Council as what uses would be acceptable, the Council reaffirmed at the hearing that it would be happy to consider alternative uses within Use Class B1 and B2. Despite this and the clear policy support, the Council's stance has yet to be formally tested with a planning application for anything other than a residential redevelopment of the site. These factors therefore cast significant doubt on any assumption that planning permission could not be achieved for wider business uses.

32. The report also appears to cast doubt on the ability of the site to be let for Class B8 uses, despite the Statement of Common Ground confirming that the site would appear to have a lawful use for storage purposes and for the use of the hard surfacing by heavy goods vehicles for purposes ancillary to this use.
33. In response to the previous Inspector's concern over the lack of any financial information to demonstrate non-viability, the current appeal proposal is also supported by a financial analysis and appraisal of the property and the works that would be required to refurbish the premises and to create accommodation which is suitable for modern business use. This concludes that the refurbishment costs would almost equate to the consequential capital value and that, in the opinion of the commercial agent, it is highly unlikely that such investment would be made on the basis of the return indicated.
34. Whilst in this regard I accept that significant investment in the buildings would be required, the extent of such enabling works relevant to facilitate an end user is not clear, and little information is provided in terms of the precise nature and necessity of the required works. This therefore limits the weight I am able to afford to the conclusions.
35. A planning history statement has also been provided in response to the Inspector's comments for the previous appeal that he remained unconvinced why wider B1, B2 or B8 uses should not be marketed for the site.
36. The statement makes reference to a linked decision relating to three appeals⁸ to the Secretary of State dated 19 October 1993 including that against the issuing of an Enforcement Notice (EN). For the appeal against the EN I acknowledge that under ground (a) the Secretary of State found the use operating at that time to be inappropriate in the Green Belt and that the use resulted in harm to the living conditions of the occupiers of the nearby flats by reason of dust problems.
37. I also acknowledge that the EN precluded a number of activities at the site, but this does not preclude a number of other activities within Use Classes B1, B2 and B8 which could operate from the site, without undue harm to the living conditions of nearby residents. Consequently, I am not convinced that the EN necessarily translates to a position whereby a wider use of the site has been found to be unacceptable.
38. Moreover, the Council confirmed at the hearing that there had been no further enforcement action concerning this site since 1994. This therefore supports the previous Inspector's position that, although residential properties are located in close proximity to the site, a business use had successfully operated

⁸ Appeal References: APP/D/93/G5180/1; APP/C/92/G5180/623815 and APP/G5180/A/93/219927

for a number of years and there is no reason why some form of business use could not remain compatible.

39. I appreciate that the planning permission granted on appeal⁹ in December 1996 restricted the use of the area of hard surfacing in front of the buildings solely to loading, unloading and manoeuvring of vehicles. However, I note that the Inspector in response to the Council's suggestion to a limitation of the hours of use of the hard surfacing highlighted that no such restriction applied to the use of the building and that there was no evidence to suggest that the use of the hard surfacing, in connection with the permitted use of the site had resulted in significant difficulty. Accordingly such a wide restriction was considered to be unnecessary and unreasonable.
40. Therefore, whilst I am not precisely aware of what information was provided on the planning history of the site for the previous appeal, having regard to the comments of the Inspector, which align with my findings on the planning history provided to me, I do not agree with the suggestion that this had been misinterpreted.
41. Also on this issue, it is the appellant's position that little weight should be attached to the loss of employment argument if the site can be changed to a residential use under permitted development rights which exist by virtue of Class P (storage or distribution centre to dwellinghouses) of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). During the hearing, the appellant also provided plans to demonstrate (**Document 3**) how this could be achieved.
42. Although I have no evidence to demonstrate that the use of the buildings for residential purposes would not amount to permitted development, it was confirmed by the parties that no such application had been made to the Council. Despite the SoCG confirming that the floor area of the existing buildings is less than 500m² and that Class P permits the aforementioned change of use, it stops short of confirming that the permitted development rights could be achieved for the appeal site. Furthermore, at the hearing, the Council's view was that the position was inconclusive.
43. I cannot therefore be certain that the proposal benefits from such permitted development rights or that if prior approval is required, whether it would be forthcoming. Also, on the basis of the evidence before me, I am not convinced that if this appeal were to be dismissed, that there would be a realistic prospect that such permitted development rights would be pursued. These factors therefore reduce the weight I can attach to the argument that the business site could be lost to a residential use under permitted development rights.
44. On balance therefore, I do not consider that the new information adequately addresses the concerns expressed by the Inspector for the previous appeal. Accordingly, I am unconvinced that the proposal would not lead to the loss of an existing viable small business site. As such, the proposed development would be in conflict with Policy EMP5 of the UDP. This unjustified loss of local employment space weighs against the development and I attach moderate weight to this matter.

⁹ Appeal Ref: T/APP/G5180/A/95259687/P5

Other considerations

45. Further to the aforementioned appeal decision relating to the former Dylon International Premises, the Council accepted at the hearing that it cannot presently demonstrate a five-year supply of deliverable housing sites. In such circumstances, paragraph 49 of the Framework is invoked insofar as relevant policies for the supply of housing should not be considered up-to-date. Within this context, the appellant has referred to a recent Court of Appeal judgement¹⁰ which considered that Green Belt policies could be relevant policies for the supply of housing if they affected the supply of the same. This judgement postdates the previous appeal and therefore amounts to a material change in circumstances. However, the judgement explains that it will always be for the decision-maker to judge, in the particular circumstances of the case in hand, how much weight should be given to conflict with policies for the supply of housing that are out-of-date.
46. In the circumstances of this case therefore, Policy G1, as a policy relevant to the supply of housing should, in the context of paragraph 49 of the Framework not be considered up-to-date. This therefore suggests a reduction in the weight to be apportioned to it, and requires that paragraph 14 of the Framework is, at this stage, engaged. However, notwithstanding this point and noting that I have identified a modest divergence of Policy G1 with paragraph 89 above, its overarching purpose remains broadly consistent with that of the Framework in respect of the Green Belt. As such, and in accordance with paragraph 215 of the same, I am therefore still able to afford it a substantial measure of weight. More significantly still however, the second strand of the fourth bullet point of paragraph 14 makes clear that the presumption in favour of sustainable development set out therein should not apply where 'specific policies of the Framework indicate development should be restricted'. Here, footnote 9 appended to this last statement makes specific reference to Green Belt policy in this regard.
47. So, notwithstanding the absence of a five year supply of housing and the diminution of weight afforded to the development plan policy, the last strand of bullet point four of paragraph 14 disapplies the presumption in favour of the development that might otherwise exist.
48. That said, although the contribution to housing supply is relatively modest, the boost to housing supply in a sustainable and accessible location is a matter which weighs in favour of the proposal. However, Planning Practice Guidance¹¹ is clear in that unmet housing need is unlikely to outweigh the harm to the Green Belt and other harm to constitute the "very special circumstances" justifying inappropriate development on a site within the Green Belt. Therefore, in these circumstances, this benefit would attract only limited weight.
49. Lastly here I note the appellant's disappointment in how the application was determined and that the Council's decision was taken without any engagement with the appellant. These though, are not matters for this appeal, which I have

¹⁰ Suffolk Coastal District Council v Hopkins Homes Ltd; Richborough Estates Partnership LLP v Cheshire East, SSCLG [2016] EWCA Civ 168

¹¹ Planning Practice guidance Reference ID: 3-034-20141006

determined afresh and on its planning merits and having regard to all matters raised.

The Green Belt balance

50. I have found that the proposal would constitute inappropriate development that would conflict with national and local policy to protect the Green Belt, and this is a matter to which the Framework requires me to attach substantial weight. I have also found that the proposal would be harmful to the openness of the Green Belt. As openness is one of the most important attributes of the Green Belt, this constitutes substantial additional harm that further weighs against the proposals. In addition, I am unconvinced that the proposal would not lead to the loss of an existing viable small business site and this is also a matter of moderate weight against the proposed development.
51. I have though found, on balance, that the proposed development would result in a modest benefit to the character and appearance of the area and this is a matter of moderate weight in its favour. As explained, within the context of the Green Belt, the modest contribution the development would make to housing supply attracts only limited weight in favour of the proposal.
52. In the final balance therefore, the considerations advanced in support of the proposals cannot be seen as sufficient to clearly outweigh the harm to the Green Belt that would arise as a result of the development. The very special circumstances necessary to justify the proposal do not therefore exist.

Conclusion

53. For these reasons, and having regard to all other relevant matters raised, I conclude that the appeal should be dismissed.

Richard S Jones

INSPECTOR

Appearances

FOR THE APPELLANT:

Mr John Escott	Agent (Robert Escott Planning LLP)
Mr Bob McQuillan	Robert Escott Planning LLP
Mr Adrian Tutchings	Linays Commercial Limited
Mr Bruce Walker	Langford Walker

FOR THE LOCAL PLANNING AUTHORITY

Mr David Bord	Principal Planning Officer
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INTERESTED PERSONS:

Mr Gary Parmar	Interested party
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DOCUMENTS SUBMITTED AT THE HEARING

1. Enforcement Notices dated 9 July 1992 and 14 November 1993.
2. Annotated plan relating to planning history.
3. Drawing numbers: TL/479/BP20; TL/479/SP20; TL/479/20 and TL/479/21 relating to permitted development rights conferred by Class P of Part 3 of Schedule 2 of the GPDO.