

---

## Appeal Decision

Hearing held on 23 November 2016 and 7 February 2017

Site visit made on 23 November 2016 and 8 February 2017

**by Tim Wood BA(Hons) BTP MRTPI**

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

**Decision date: 06 March 2017**

---

**Appeal Ref: APP/G5180/W/16/3155275**

**Jackson Road Nursery, Jackson Road, Bromley BR2 8NS**

- 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/16/02067/FULL1, dated 27 April 2016, was refused by notice dated 15 July 2016.
  - The development proposed is demolition of the existing commercial buildings, removal of existing parking areas and hard-standing and erection of 9 detached houses with associated landscaping and tree planting.
- 

### Decision

1. The appeal is allowed and planning permission is granted for demolition of the existing commercial buildings, removal of existing parking areas and hard-standing and erection of 9 detached houses with associated landscaping and tree planting at Jackson Road Nursery, Jackson Road, Bromley BR2 8NS in accordance with the terms of the application, Ref DC/16/02067/FULL1, dated 27 April 2016, subject to the conditions set out in Schedule 1 of this decision.

### Application for costs

2. At the Hearing an application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

### Preliminary Matters

3. The Hearing was adjourned on 23 November 2016 in order that full consideration of, and responses to, additional information could be made. I undertook an accompanied site visit on that day. The Hearing resumed on 7 February 2017 and I undertook an unaccompanied visit to the surrounding area on 8 February.
4. During the adjournment period, following additional information, the Council confirmed that it no longer resists the proposal on highway/access grounds, subject to a suitable condition.

### Main Issues

5. The main issues in this appeal are;

- Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework and any relevant development plan policies
- The effects on the availability of commercial premises
- The effects on local highways and the flow of traffic

## **Reasons**

### ***The effects on the Green Belt***

6. The appeal relates to this irregularly shaped plot of land located at the edge of a residential area, adjacent to open land. The site is within the Green Belt and currently accommodates a number of buildings. Vehicular access is from Jackson Road, between residential properties.
7. The Council refer to Policy G1 of the Unitary Development Plan 2006 (UDP), in their reasons for refusal. This pre-dates the National Planning Policy Framework and is inconsistent with it in a number of respects in relation to the Green Belt. As a consequence, I attach only limited weight to Policy G1, which I consider to be out of date. It is agreed between the Council and the appellant that paragraph 89 of the National Planning Policy Framework (the Framework) is relevant to this appeal. It is stated therein that the construction of new buildings in the Green Belt should be regarded as inappropriate development, unless it is for one of 6 stated exceptions. The final exception is for limited infilling or partial or complete redevelopment of previously developed sites (brownfield land), which would not have a greater impact on the openness of the Green Belt and the purposes of including land within it than the existing development. There is a level of dispute between the Council and the appellant in relation to whether the site can be considered as 'previously developed' or not. Much of the debate relates to the use of the site in its recent history and the definition of previously developed land in the Framework; this states that "...land that is or has been occupied by agricultural or forestry buildings..." are excluded from the definition of previously developed land (amongst other categories of development).
8. In 2015 the Council granted a Lawful development Certificate for land forming much of the site for, *"Use of the site...for a composite use in connection with a bedding plant nursery and a general building and ground works company and in particular comprising use of building A for vehicle maintenance and repair, of building B for storage and maintenance of tools, of area D for car and lorry parking, of building I to store building and fencing materials and of building J to store tractors and excavators and of buildings C, E, F, G and H as a bedding plant nursery..."*. The application for the Certificate was made in different terms by the applicant and the Council issued it with the wording as drawn from, above.
9. I have considered the evidence submitted in support of the Certificate and for the current appeal. The evidence differs in some respects but it can be concluded that the 2 sets of evidence are not necessarily inconsistent; the Certificate evidence refers to the use of some buildings in use for the bedding plant business and the current scheme evidence refers to them as being used for the bedding plant business and for other uses in connection with the ground-works business. The latter is supported by my observations on site

that the greenhouse buildings are also used for storage of other material in connection with the ground-works business. Although the Certificate sets out uses of the buildings and areas, it refers to a 'composite' use and this has a specific meaning. I assume that the Council used this advisedly and in the full knowledge of its implications. I accept that the bedding plant use referred to will be a seasonal one, as the appellant describes. It is highly pertinent in this respect that the Council has chosen to refer to the use of the site as "*composite*" in the Certificate (and not "mixed" as used in the legal opinion submitted by the Council). This was not the term use in the application by the owner but one specifically adopted by the Council. This has a specific meaning when employed to describe the use of land/buildings and refers to a variety of activities being undertaken and where it is not possible to say that one is incidental or ancillary to another, and, where the component activities fluctuate in their intensity from time to time, but the different activities are not confined within separate and physically distinct areas of land. From what I have seen and heard, I consider that this is an accurate reflection of how the site has been used.

10. In relation to the application of the term "agricultural" as referred to in the Framework at Annex 2, the case of *R (Lee Valley Regional Parks Authority) v Broxbourne Borough Council and Britannia Nurseries* clarifies that for a building to be considered as "agricultural" that it should be in use solely for that purpose. My conclusion on this point is that the site and buildings have been used for a composite range of uses; this is confirmed by the wording used in the Certificate and from my observations and consideration of the evidence before me. Therefore, the site does form a "previously developed site" as referred to in the final bullet point of paragraph 89 of the Framework. The proposal is for the complete redevelopment of the site and so its acceptability rests on its effects on openness and the purposes of including land within the Green Belt.
11. In relation to openness, the agreed figures in relation to footprint, site coverage and building volume indicate significant reductions when compared to the existing situation. Even taking account of the fact that the houses would be 2 storeys in height, I consider that this represents a considerable improvement to the openness of the site and this part of the Green Belt. In addition, I consider that the gaps between the proposed houses and the associated landscaped gardens would further enhance the area. In relation to the effects on the purposes of including land within the Green Belt, the beneficial effect on the openness of the site means that it would benefit the sprawl of the built up area and the prevention of merging. The proposal would not encroach on the countryside, would have no effect on any historic setting of towns and would itself result in the regeneration of this run-down site. Consequently, it would not offend any of the Green Belt purposes. As a result, I conclude on this issue that the proposal does not represent inappropriate development in the Green Belt and would accord with the Framework in this respect.

### ***The effect on the availability of commercial premises***

12. The Council refer to Policy EMP5 of the UDP, which states that the redevelopment of business sites will be permitted provided that; (i) the size, configuration, access arrangements or other characteristics make it unsuitable for uses within Classes B1, B2 or B8, and (ii) full and proper marketing

confirms the unsuitability and non-viability of the site for those uses. In relation to the first point, the appeal site has a narrow access from Jackson Road, between 2 houses. The Council's advice from its highways engineers is that it would be unacceptable in its current form for the proposed 9 houses. I have taken account of the likely different pattern of use by a residential development and the possibility that greater pedestrian use would result. I also have to acknowledge that the existing lawful use of the site can operate with the existing access as it currently stands.

13. However, taking these matters into account, as a general principle, I consider that the existing access is far from ideal for commercial uses and those envisaged by Policy EMP5. In addition, the close proximity of residential properties means that there could be some doubt as to whether B2 or B8 uses could satisfactorily assimilate into the area. It is also notable that some of the alternatives suggested by the Council or their advisers would not fall within the use classes in EMP5 in any event.
14. In relation to the second criterion, the appellants include details of the marketing history of the site. The Council has criticised the details as being too negative and suggest that this would discourage prospective users/developers. I have looked closely at the details and I find that they are accurate and realistic. The appellant points out the need for such details to comply with relevant professional standards and the need to avoid unnecessary and fruitless enquiries. Furthermore, the appellant has undertaken financial viability exercises of a number of alternatives, including one put forward by a third party and referred to by the Council. On the basis of the evidence submitted and from what was discussed at the Hearing, I am satisfied that the proper analysis of these demonstrates that these alternatives would not be viable, even with the very low owner's return used for this purpose. In this respect, I am satisfied that both criteria of Policy EMP5 are satisfied by the proposal.

### ***The effects on local highways and the flow of traffic***

15. The Council and others were concerned at the prospect of the use of the narrow access and resultant vehicle movements at the site. The appellant has now sought to address the access issue and has submitted some details of negotiations with the occupiers of adjacent land which would enable a wider access to be provided. In this light, the Council has withdrawn its objection, subject to a suitably worded condition which would require the wider access to be provided prior to commencement of the development. It is worth noting that the negotiations with the adjacent owners were on the basis of the residential development of the site and would not be agreed for any form of commercial development and so, this would not be a matter that could potentially overcome some aspect of the arguments in relation to Policy EMP5. Having also considered the likely number of trips generated by the proposal, I am satisfied that these would be likely to be less and involve smaller vehicles than a commercial use of the site, including the current use when put to a fuller capacity.

### **Other Matters**

16. The appeal submissions included consideration of the other matters which may have a bearing on the appeal, if I had concluded that the proposal included inappropriate development in the Green Belt; not least of these is the

consideration of the housing land supply position that the Council can demonstrate. As I have concluded that the proposal does not represent inappropriate development in the Green Belt, it is not necessary for me to come to a conclusion on these other matters.

17. The appellant has submitted a completed Undertaking which includes obligations relating to local employment, local sales preference, remediation works, provision of an orchard, electric vehicle charging points, demolition of brick latrines and the formation of a community management organisation for the orchard and hedgerow. I am satisfied that the local employment obligation is necessary in order to achieve the Council's Regeneration Objectives and similarly, the restrictions on disposal of dwellings during the priority period; I shall have regard to these in determining the appeal. Remediation appears to be adequately covered by conditions and so duplication in the Undertaking is not necessary and I shall not take this into account.
18. Although the orchard and hedgerow would no doubt be a welcome addition to the area, I cannot conclude that the scheme would be unacceptable without it and so I shall not take this into account. Similarly, I conclude that ensuring access to and enjoyment of the orchard is not necessary to make the scheme acceptable and so, nor is the community management organisation. Vehicle charging points could be required by condition but are not included in the agreed schedule; in these circumstances and in order to achieve the Council's sustainability aims, I shall take account of this.
19. The removal of the brick latrines which are outside the site would enhance the setting of the nearby listed buildings and I shall have regard to this obligation.

### **Conditions**

20. I have had regard to the advice in the national Planning Practice Guidance in relation to the use of conditions. The appellant and the Council have submitted an agreed schedule of conditions with the appeal documents and I have had regard to these. In order to ensure that the access is suitable and safe, I agree that a Grampian style condition is required in relation to its dimensions and for the same reason, conditions relating to the layout of the internal road, lighting and to visibility splays are necessary. In addition, so that suitable parking and cycle parking is provided, conditions requiring their timely provision are necessary. It is also necessary that acceptable storage provision is made for refuse and recycling facilities.
21. So that the proposal has an acceptable effect on the surrounding area it is necessary to require the agreement and use of the external materials, that a suitable landscaping scheme is implemented and that the levels of the buildings are agreed. I shall also include a condition so that the scheme is implemented in accordance with the approved drawings so that there is certainty.
22. In order to limit the effects of the construction process on the area, I shall include a condition requiring adherence to a Construction Method Statement. In order to prevent flooding and to deal with on-site water conditions requiring the submission and implementation of a suitable scheme are justified. There is some likelihood that the site contains contamination and I have included a condition to deal with this. In light of the Green Belt location and the effects on openness, I agree that a condition restricting permitted development is justified. For the sake of vehicle and pedestrian safety I have included a

condition which requires the surfacing material of the drive and parking areas to be agreed with the Council.

**Conclusions**

23. As a result of my findings, the appeal is allowed.

*S T Wood*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

C Rees  
J Escott  
T Hegan  
S Giles  
A Hughes  
A Tutchings  
J Hasell

### FOR THE LOCAL PLANNING AUTHORITY:

D Bord  
C Glavin

### INTERESTED PERSONS (who spoke at the Hearing):

S Clayton  
G Parmar  
B Walker  
L Holland

### **SCHEDULE 1 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: JR/485/SP01D; JR/485/SS01B; JR/485/01B; JR/485/02C; JR/485/03C; JR/485/04B; JR/485/05C; JR/485/06C; JR/485/07C; JR/485/G1B.
- 3) No construction works shall take place until the existing access into the site has been widened in accordance with the access works shown on Plan No 16/1003/SK03 (as appended to the Rebuttal Statement prepared by "Transport Planning and Infrastructure" dated November 2016.
- 4) Notwithstanding the requirements of Condition 3, full details of the layout of the access road and turning area including its junction with Jackson road and dimensions of visibility splays shall be submitted to and approved in writing by the Local Planning Authority and these access arrangements shall be completed before any part of the development hereby permitted is first occupied. There shall be no obstruction of visibility in excess of 1 metre in height within the approved splays except for trees selected by the Local Planning Authority.
- 5) Details of the storage of refuse and recycling materials shall be submitted to and approved in writing by the Local Planning Authority before any part of the development hereby permitted is commenced and the approved arrangements shall be completed before any part of the development is first occupied, and permanently retained thereafter.
- 6) Details of the lighting of the access drive and parking areas shall be submitted to and approved in writing by the Local Planning Authority before the development is commenced. The approved scheme shall be implemented before the development is first occupied and shall be permanently retained thereafter.
- 7) No development shall take place until full details of the finished levels, above ordnance datum, of the ground floor(s) of the proposed buildings, in relation to existing ground levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels.
- 8) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
  - i) the parking of vehicles of site operatives and visitors;
  - ii) loading and unloading of plant and materials;
  - iii) storage of plant and materials used in constructing the development;
  - iv) wheel washing facilities;
  - v) the routes for construction traffic arriving at and leaving the site, including the management of potential traffic conflicts;
  - vi) delivery, demolition and construction working hours.

- The approved Construction Method Statement shall be adhered to throughout the construction period for the development.
- 9) 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 shall be undertaken which falls within Classes A, B, C or E of Part 1 of Schedule 2.
  - 10) No development shall take place until samples of all external facing materials have been submitted to and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved sample details.
  - 11) No development shall commence until an assessment of the risks posed by any contamination shall have been submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include:
    - i) a survey of the extent, scale and nature of contamination;
    - ii) the potential risks to:
      - human health;
      - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
      - adjoining land;
      - ground waters and surface waters;
      - ecological systems; and
      - archaeological sites and ancient monuments.
  - 12) No development shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out [and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority] before the development [or relevant phase of development] is occupied.
  - 13) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried

out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development [or relevant phase of development] is resumed or continued.

- 14) No development shall take place until a monitoring and maintenance scheme to demonstrate the effectiveness of the proposed remediation shall have been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented, and the reports produced as a result, shall be submitted to the local planning authority within 28 days of the report being completed and approved in writing within 28 days of receipt. If any of these reports identifies any discrepancy with the verification report then a protocol, including timescale, for the necessary remediation shall be submitted to the local planning authority within a further 28 days and approved in writing within 28 days of receipt. Thereafter, any necessary remediation and verification shall be carried out in accordance with the approved protocol.
- 15) No development shall commence until there shall have been submitted to and approved in writing by the local planning authority a scheme of landscaping. The scheme shall include all hard surfaced areas, boundary and other enclosures, as well as soft landscaped areas, plants and areas of turfing. The approved scheme shall be implemented in the first planting season following the first occupation of the buildings or the substantial completion of the development whichever is the sooner. Any trees or plants which, within a period of 5 years from the substantial completion of the development dies, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species to those originally planted.
- 16) No dwelling shall be occupied until space has been laid out within the site in accordance with the approved drawings for cars to be parked and for vehicles to turn so that they may enter and leave the site in forward gear and that space shall thereafter be kept available at all times for those purposes. The parking spaces shall measure 2.4m x 5m and there shall be 6m clear space in front of each space (or 7.3m if a garage is provided).
- 17) No dwelling shall be occupied until a scheme for bicycle parking has been submitted to and approved in writing by the Local Planning Authority. The development shall be undertaken in accordance with the approved details and shall be provided prior to occupation of the dwellings. The provision shall thereafter be kept available for the parking of bicycles.
- 18) No building hereby permitted shall be occupied until surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority.

Where a sustainable drainage scheme is to be provided, the submitted details shall:

- i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
  - ii) include a timetable for its implementation; and,
  - iii) provide, a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 19) Details of the drainage system for surface water drainage to prevent surface water from private land discharging on to the highway shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. The drainage system shall be implemented in accordance with the approved scheme prior to the first occupation of any dwelling and shall thereafter be retained.