
Appeal Decision

Hearing held on 17 March 2017

Site visit made on 17 March 2017

by Alex Hutson MATP CMLI MArborA

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

Decision date: 10 April 2017

Appeal Ref: APP/N5090/W/16/3158426

Leahurst Nursery, 36A Galley Lane, Barnet, Hertfordshire EN5 4AJ

- 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 Lyndon Osborn against the decision of the Council of the London Borough of Barnet.
 - The application Ref B/05073/14, dated 16 September 2014, was refused by notice dated 24 March 2016.
 - The development proposed is erection of agriculturally tied dwelling to serve nursery.
-

Decision

1. The appeal is dismissed.

Preliminary matter

2. The appeal site lies within the Green Belt. Paragraph 89 of the National Planning Policy Framework (the Framework) sets out the categories of development which may be regarded as not inappropriate in the Green Belt, subject to certain conditions. The proposal does not fall within any of these categories. As such, it would represent inappropriate development in the Green Belt. This is not a matter of dispute between the main parties. Paragraph 87 of the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 88 of the Framework states that substantial weight should be given to any harm to the Green Belt.

Main issues

3. I consider that the main issues arising in this appeal are:
 - The effect of the proposal on the openness of the Green Belt; and
 - Whether or not there are other considerations which, together, clearly outweigh the harm to the Green Belt by reason of inappropriateness, and any other harm, and which amount to very special circumstances which would be necessary to justify the proposal.

Reasons

Background

4. The appeal site comprises a broadly rectangular shaped plot of land located to the rear of a row of dwellings which front Galley Lane. It contains a number of
-

glasshouses and polytunnels used for the propagation and growing of a variety of plants associated with the horticultural enterprise, Leahurst Nursery. Access is provided to the northern part of the appeal site via a narrow lane which runs between 36 and 38 Galley Lane. It lies outside the settlement boundary and is therefore within the countryside for planning policy purposes. It is also located within the Green Belt.

5. The proposal seeks consent to erect a dwelling within the southern part of the appeal site for the appellant and his family which would be tied to the nursery enterprise.

Openness of the Green Belt

6. Paragraph 79 of the Framework indicates that openness is an essential characteristic of the Green Belt. The appellant has indicated that, in the past, some structures may have existed within the part of the appeal site where the proposed dwelling would be sited. However, this area is currently free from development and as such, is open in nature. Moreover, I did not observe any remnants of built form on the ground at this location during the site visit. Though it would be located within the context of the existing glasshouses on the appeal site, the introduction of a dwelling where no development currently exists would inevitably affect the openness of the appeal site and surrounding area. It would also display a more solid form than the lightweight and transparent glasshouse structures which characterise the appeal site.
7. Consequently, the proposed dwelling would lead to a material loss of openness within the Green Belt. It would also result in some domestic encroachment into the countryside and as such, would conflict with the purposes of including land within the Green Belt.
8. The appellant makes reference to permitted development rights that would allow the extension of the southernmost glasshouse onto part of the area where the dwelling would be located. However, it was confirmed during the Hearing that any extension permitted in this regard would be of a lesser footprint, height and volume than that of the proposed dwelling. In addition, there is no substantive evidence to demonstrate that any such work would be undertaken on the basis of a dismissal of this appeal. The appellant also suggests that the area where the dwelling would be located could be used for storage or the parking of vehicles. Nevertheless, such uses would be temporary, whereas the dwelling would be permanent. As such, these matters do not alter my opinion in respect of the loss of openness that would arise as a result of the proposal.
9. The proposal would therefore be contrary to the aims of Paragraph 79 of the Framework. In addition, it would conflict with Policies CS1- Barnet's Place Shaping Strategy – Protection, Enhancement and Consolidated Growth – the Three Strands Approach and CS7- Enhancing and Protecting Barnet's Open Spaces, of Barnet's Local Plan Core Strategy Development Plan Document 2012 (Core Strategy); and Policy DM15- Green Belt and Open Spaces, of Barnet's Local Plan Development Management Policies Development Plan Document 2012 (DMP). These policies require, amongst other things, development to protect the Green Belt and to comply with the Green Belt policies of the Framework.

10. The Council's reason for refusal as set out on its Decision Notice cites conflict with Policy CS NPPF- National Planning Policy Framework- Presumption in Favour of Sustainable Development, of the Core Strategy. However, this policy does not refer specifically to matters relating to the Green Belt. As such, it is not particularly relevant to my consideration of this appeal.

Other considerations

11. Paragraph 55 of the Framework seeks to avoid new isolated homes in the countryside unless there are special circumstances. The essential need for a rural worker to live permanently at or near their place of work in the countryside is identified as one such special circumstance. The Council has no specific local policies relating to rural workers dwellings in the countryside. There appears to be no dispute between the main parties that the dwelling would be an isolated home in countryside. On the basis that it would be located within the countryside, within the southern part of the appeal site and beyond the prevailing linear pattern of development along Galley Lane, I am inclined to agree.
12. The appellant's main argument in support of the proposal is the essential need for someone to live on the appeal site to provide supervision, care and attention to the specialist plant stock during the daytime and at night. Furthermore, to allow a rapid response in the case of any emergencies to prevent plant failure and subsequent financial loss to the business. In addition, the appellant considers that a dwelling on the appeal site would enable the growth of his business. I recognise that Paragraph 28 of the Framework seeks to support economic growth in rural areas and to promote the development and diversification of agricultural and other land based rural businesses.
13. The Council refers to Annex A of Planning Policy Statement 7 (PPS7) which sets out a functional and a financial test to determine any essential need for a permanent dwelling. Whilst the appellant points out that this has been revoked and no longer has any status as national planning policy, it remains a useful basis for assessing an essential need in the absence of any substantive guidance within the Framework.
14. The nursery business has been in operation for many years and has, according to the evidence, recorded profits since 2009. Whilst it generates some income from off-site activities, such as landscaping, it seems to me that the on-site plant production and the off-site operations of the business are inextricably linked. Moreover, the appellant suggested at the Hearing that off-site operations account for approximately 30% of the total income of the business and therefore considerably less than on-site operations. I have no substantive reasons to doubt this assertion. On this basis, I consider that the on-site plant production operations are a viable element of the business and are likely to continue to be so into the future.
15. A wide variety of plants, including some unusual species, are grown at the nursery. These are generally sold wholesale and to landscape businesses. They are also sold to the public on the appellant's stall at Colombia Road Market from spring to autumn. I am told that around 70% of the plants produced at the nursery are propagated from seed or cuttings and that the propagation stage is therefore critical to the success of the business. It is also the appellant's intention to make growing systems more complex to meet market expectations.

16. The current propagation system includes four heated propagation beds and a recently constructed mist area. These systems require careful management and are controlled either manually or automatically to vary growing factors such as temperature, light levels and humidity, depending on the requirements of specific plants. Nevertheless, whilst the mist area may have encountered problems during trial runs, such as balancing fluctuations in soil moisture, humidity and temperature, it is not clear that such problems have not been overcome now that this system is permanently up and running. This is notwithstanding that the mist area has different compartments with varying requirements. It also seems to me that any potential for overheating of the propagation beds due to changes in sunlight is a daytime issue and therefore does not require a night time presence. Moreover, there is no compelling evidence before me to demonstrate that there has been any loss of plants at the propagation stage, or indeed at any other stage of their development, that has had any significant impact on the effective functioning of the business.
17. Some of the glasshouses have automatic vents which the appellant alleges can stick or can open in high wind thereby affecting the optimal internal temperature. I note that some damage from wind occurred in December 2015 to the vents of one of the glasshouses. Nevertheless, I am not persuaded that this is such a frequent event that would result in any significant threat to the plant stock. It also seems to me that regular maintenance and testing of the vents would be likely to limit any potential malfunctions.
18. I acknowledge that frost damage can be harmful to plant stock. However, the appellant adopts a number of effective preventative measures during cold weather to protect much of the sensitive plant stock from frost damage, such as wrapping ferns in fleece or manually deploying heaters. In addition, I am not convinced that that all potential remote alarm systems have been fully explored in the event of the failure of some systems, such as the boiler which heats one of the glasshouses and some of the propagations beds. I recognise that the purchase and rental prices of houses in the local area are outside the reach of the appellant, nevertheless, whilst something of an inconvenience, the approximate 15 minute drive to the appeal site from his current place of residence would enable him to respond rapidly to any remote alarm system in response to any emergency situation.
19. I accept that a skilled plantsman is able to identify all sorts of problems early on, including fungal attacks and insect problems before they become infestations. I recognise that such matters are a considerable threat to plant health and visual inspections are required to minimise these threats. I also note the appellant's argument that the provision of a dwelling at the nursery would enable visual inspections to occur on a more frequent basis. However, it seems to me that such inspections could reasonably be carried out during normal working hours. In addition, such inspections are likely to be more effective during hours of daylight rather than at night. Moreover, the appellant acknowledges that these matters do not present an emergency situation in any case.
20. Whilst reference is made to thefts from the nursery in the past, the appellant informed me during the Hearing that the recent erection of gates along the access lane to the nursery has largely alleviated this problem.

21. The appellant clearly works hard and dedicates many hours to the business. I acknowledge that this might impact on family life. It is understandable that he needs to respond to emergencies but does not otherwise want to be sitting around and away from his family just in case. However, the personal life of the appellant has little bearing on my consideration of the essential needs of the business. Moreover, it was brought to my attention during the Hearing that since the date of the submitted Business Plan, there has been an increase in full time staff employed at the nursery during the day which is likely to assist the appellant in this regard.
22. The appellant suggests that decreasing profits between 2009-2014 require a new business approach. Nevertheless, whilst profits in the year 2015 were not as high as in 2009, they were an improvement on the years 2012, 2013 and 2014. This suggests to me that the business has been developing and functioning effectively without an on-site dwelling. I also note the intention to generate greater economic return and to create additional jobs in the future. However, to what extent is not clear. Moreover, there is no substantive evidence to demonstrate that this could not be achieved in the absence of a permanent on-site dwelling.
23. On this basis, whilst I accept that there would be some benefits to the business and particularly to the appellant in having a dwelling on the appeal site, overall, I consider that an essential need for a permanent dwelling has not been demonstrated. Thus, in the context of Paragraph 55, no special circumstances exist to justify the proposal.
24. The appellant has provided me with an appeal decision¹ where the Inspector in that case found an essential need for a dwelling. I recognise that the business the subject of that appeal was also a specialist nursery. However, the appellant in that case employed only two part-time staff and only on a seasonal basis. The circumstances in that appeal are therefore not reflective of the circumstances of the appeal at hand and it does not therefore persuade me to alter my position in respect of essential need.
25. The proposed dwelling would provide a high quality home which would be built to high energy efficiency standards. It would provide some short-term construction jobs. I also note that it would generate some payments to the Council and to the Mayor of London under their respective Community Infrastructure Levy charging schedules. These matters weigh modestly in favour of the development.

Conclusion

26. The Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The proposal would be inappropriate development in the Green Belt as defined by the Framework. In addition, it would cause material harm to the openness of the Green Belt. I afford substantial weight to this harm.
27. As explained above, I have found that the appellant has not adequately demonstrated an essential need for a permanent dwelling in this location. In addition, I only afford limited weight to the other considerations cited in support of the proposal and conclude that, taken together, they do not

¹ Ref APP/J3720/C/13/2200423

outweigh the harm that would arise as a result of the proposal. Consequently, no very special circumstances exist that would justify inappropriate development being allowed. Moreover, had I found an essential need, I am not convinced that such a special circumstance to justify a dwelling in the context of Paragraph 55 of the Framework would, along with the other considerations cited in support of the proposal, amount to the very special circumstances necessary to justify inappropriate development being allowed. This is notwithstanding that the appellant and the Council agree that it could be.

28. For the reasons set out above and having regard to all other matters, including the character and appearance of the area, pollution, emergency vehicle access, ecology, noise and disturbance, highway safety and light pollution, I conclude that the appeal should be dismissed.

Alex Hutson

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Lyndon Osborn	Appellant
Tony Kernon	Kernon Countryside Consultants Ltd
BSc (Hons), MRICS, FBIAC	
Michael Dade	Speer Dade Planning Consultants
BSc, MRICS	
Simon Milner	Employee at Leahurst Nursery

FOR THE LOCAL PLANNING AUTHORITY:

Alistair de Joux	Planning Officer London Borough of Barnet
RTPI	
Richard Tattersall	Chartered Surveyor and Land Management Consultant

INTERESTED PERSONS:

Vincent Sartori	18 Galley Lane EN5 4AJ
-----------------	------------------------

DOCUMENTS SUBMITTED AT THE HEARING

1. London Borough of Barnet Local Plan Supplementary Planning Document: Sustainable Design and Construction 2016
2. Policies 5.2- Minimising Carbon Dioxide Emissions, 5.7- Renewable Energy, 5.13- Sustainable Drainage and 5.15- Water Use and Supplies, of The London Plan, The Spatial Development Strategy for London Consolidated with Alterations Since 2011 March 2016
3. Signed Statement of Common Ground
4. Revised Site Plan
5. Report of the Director and Unaudited Financial Statements for the Year Ended 31 October 2015 for Trademaker Limited
6. Appeal Decision Ref APP/J3720/C/13/2200423