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## Appeal Decisions

Inquiry Opened on 30 April 2019

Site visits made on 29 April and 3 May 2019

**by Nick Fagan BSc (Hons) DipTP MRTPI**

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

**Decision date: 25 June 2019**

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### **Appeal Ref: APP/G5180/W/18/3206947**

#### **Hayes Street Farm, Hayes Lane, Bromley BR2 7LB**

- 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 The Rookery Estates Company against the decision of the Council of the London Borough of Bromley.
  - The application Ref DC/17/05543/FULL1, dated 29 November 2017, was refused by notice dated 27 March 2018.
  - The development proposed is the demolition of existing buildings with the exception of the listed farmhouse; erection of 9 no. dwellings with associated works.
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### **Appeal Ref: APP/G5180/Y/18/3206949**

#### **Hayes Street Farm, Hayes Lane, Bromley BR2 7LB**

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
  - The appeal is made by The Rookery Estates Company against the decision of the Council of the London Borough of Bromley.
  - The application Ref DC/18/00137/LBC, dated 10 January 2018, was refused by notice dated 27 March 2018.
  - The works proposed are demolition of existing buildings with the exception of the listed farmhouse; erection of 9 no. dwellings with associated works.
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### **Decision**

1. The appeals are allowed. Planning permission and listed building consent are granted for the demolition of existing buildings with the exception of the listed farmhouse and erection of 9 no. dwellings with associated works at Hayes Street Farm, Hayes Lane, Bromley BR2 7LB in accordance with the terms of the applications DC/17/05543/FULL1, dated 29 November 2017 and DC/18/00137/LBC, dated 10 January 2018, subject to the conditions in the Schedules below.

### **Procedural Matters**

2. The Inquiry sat for four days from 30 April to 3 May inclusive. I conducted an unaccompanied site visit on the afternoon of 29 April and an accompanied one on the morning 3 May.
3. On the morning of 2 May the appellant alleged that, in seeking to rely on National Planning Policy Framework (NPPF) paragraph 74 to establish that it has a five-year housing land supply (5YHLS), the Council sought to deliberately mislead me. I address the issue of HLS briefly in Other Matters below. But this

allegation led to a considerable lengthening of the Inquiry; it meant that the Inquiry had to be adjourned to enable this matter to be addressed further in writing, as well as the subsequent submission of the main parties' closing statements in writing. This process was not completed until 31 May, as per the agreed timetable.

4. The Council's refusal reasons refer to policies in the Unitary Development Plan (UDP) as well as those in the London Plan (LP). But the Statement of Common Ground between the appellant and the Council confirms that the UDP has been superseded by the Bromley Local Plan (BLP), which was adopted by the Council on 16 January 2019; consequently, it is the policies in the BLP as well as the LP that apply.
5. The Council has confirmed that it is not contesting the second refusal reason of the planning application, which related to the loss of employment generating uses on the site.

### **Main Issues**

6. Therefore, main issues are:
  - (a) The effect of the proposed development on the significance of the listed Farmhouse and the Hayes Village Conservation Area, specifically in terms of the statutory tests in Sections 16, 66 & 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).
  - (b) Whether the proposed development would have a greater impact on the openness of the Green Belt than existing development on the site and, if so, whether other considerations exist that amount to 'very special circumstances' sufficient to outweigh inappropriateness and loss of openness.

### **Reasons**

#### Effect on Designated Heritage Assets

7. Sections 16(2) and 66(1) of the Act state that in considering whether to grant listed building consent and planning permission respectively the decision maker "*shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses*". Section 72(1) of the Act requires that "*with respect to any buildings or other land in a conservation area....special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area*".
8. NPPF paragraph 190 requires an assessment of the particular significance of any heritage asset affected by a proposal including by development affecting its setting. Paragraph 193 states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Legal precedent has confirmed that considerable importance and weight should be given to this requirement.
9. The relevant BLP Policies are Policies 38, 41 and 42. Policy 38 states that proposals involving a listed building (LB) or its setting will be permitted providing that the character, appearance and special interest of the LB are

- preserved and there is no harm to its setting. Policy 41 requires that development proposals within a conservation area (CA) preserve and enhance its characteristics including by respecting or complementing the layout, scale, form and materials of existing buildings and spaces. Policy 42 states that proposals adjacent to a CA will be expected to preserve or enhance its setting and not detract from views into or out of the area. LP Policy 7.8 requires development affecting heritage assets and their settings to conserve their significance, by being sympathetic to their form, scale, materials and architectural detail.
10. The main parties agree that the NPPF and development plan policies are essentially synonymous although I note that BLP Policy 41 requires preservation and enhancement rather than the statutory test's preservation or enhancement (my emphases). To the extent that this difference is relevant here it would seem unreasonable and contrary to the wording of the Act that development in a CA in Bromley must enhance rather than simply preserve a CA's character and appearance, notwithstanding that the BLP has been adopted very recently.
  11. BLP Policy 38 not only requires the preservation of a LB's character, appearance and special interest but that "*there is no harm to its setting*". Whilst the preservation of setting is said to be desirable by S16 and S66 of the Act it is apposite to stress that setting is not itself a heritage asset or designation and that its importance lies in what it contributes to the significance of the heritage asset or to the ability to appreciate that significance.<sup>1</sup>
  12. The Council considers that the proposed development would be at the upper end of the scale in terms of 'less than substantial harm' to the LB and the CA as defined by NPPF paragraph 196. The appellant considers that there is no significant harm to either or that, if I conclude there is, such harm would be outweighed by public benefits of the proposed scheme.
  13. The appellant has drawn my attention to the *Bohm* judgement<sup>2</sup>, which it maintains holds that the question of impacts on heritage assets requires consideration of both demolition and proposed redevelopment. I have read the whole of that judgement. That case related to the demolition of a non-designated heritage asset (a locally listed building in Camden). There are differences in policy within the NPPF as regards designated and non-designated heritage assets. However, it appears to me that this judgement's conclusion (in paragraph 36) in respect of the statutory duty under S72(1) of the Act, that there is no two stage process by which the demolition part of an application has to be considered separately from the proposed new development, is applicable to this case. It also appears to me that this principle equally applies in respect of the statutory duties under S16(2) and 66(1) of the Act here. The Council has not challenged the appellant's evidence in this regard.
  14. The LB at issue here is the Grade II listed early nineteenth century Hayes Farmhouse, a two-storeys plus attic house, whose 5-bay symmetrical front elevation faced with knapped flints and red brick window dressings and quoins faces Hayes Lane. Apart from mention of its slate roof that is all the description

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<sup>1</sup> As set out in Historic England Good Practice Advice in Planning Note 3 (Second Edition): The Setting of Heritage Assets, paragraph 9 – PM Appendix 6

<sup>2</sup> *Dorothy Bohm & Others v SoS CLG [2017] EWHC 3217 (Admin)*

- that is given in its listing from 1973, albeit that is not unusual in listings from this period.
15. The Farmhouse is situated near the north western corner of the site and the Hayes Village CA. Immediately behind this building and its 1980s single-storey extension is a two-storey former agricultural barn, whose ground floor is used as a farm shop, and its eastern extension comprising a run of single-storey stables; this is referred to as Building 1 in the appeal documents. Running south perpendicular to the farm shop is a single-storey long narrow building comprising a range of small storage rooms (Building 2). Opposite Building 2 is a twin range of buildings whose eastern gable ends face it and whose western ends abut Hayes Lane (Building 3). The southern taller building is used as a vehicle workshop, the northern building being used for various commercial storage uses.
  16. The main parties agree that the space between these buildings formed the original farmyard, all of which appear to have existed in some form by the date of the 1839 tithe map. These buildings are listed by being located within the curtilage of the Farmhouse and are also within the CA. The CA, as its name suggests, encompasses the heart and generally oldest buildings within Hayes Village including the Grade II\* St Mary the Virgin Church, the old rectory (now the local library), village hall, former school house and The George Inn – all of these buildings are located some distance away to the south of the site.
  17. The site used to be part of a larger agricultural holding but the agricultural tenancy ceased in 2016. The 0.9 hectare appeal site and the adjacent land to its east (essentially the extent of the modern farmyard as shown on the aerial photograph in submitted drawing P202) is subject to a mix of uses including the farm shop, various commercial storage including by builders, various contractors and car repairers, but principally as a large livery yard with 30 DIY stables and a sand school.

#### *Effect on Significance of the Listed Farmhouse*

18. I agree with the appellant that the main significance of the listed Farmhouse is the architectural interest of its symmetrical front elevation, which addresses the street. These are the features set out in the listing description. The appellant acknowledges that the original farmyard is an aspect of the House's setting and contributes, to a degree, to its significance. That must be right because the Farmhouse, Buildings 1-3 and its original yard were all developed in the early nineteenth century, albeit almost certainly not contemporaneously since the latter are built of yellow stock bricks unlike the Farmhouse, which is mainly built of red bricks.
19. However, apart from framing the north western end of the yard the Farmhouse has only a limited relationship with it and with Buildings 1-3 because its southern side elevation is blank. Its principal elevation is with the street.
20. Buildings 1-3 are curtilage listed buildings and the default position would be to retain them. But they have all been extensively altered as documented in the appellant's Heritage Statement and evidence, which is uncontested by the Council in this regard. Building 1 has a corrugated fibre/cement roof and what appear to be twentieth century roof timbers, which I was able to see on my first visit, and its rear elevation has been partially rebuilt. Building 2 has a similar modern roof and has been extensively rebuilt and altered including with

- new openings and Crittall windows. Building 3 retains its slate roofs but the southern range's elevations have been heavily altered including by the introduction of a large vehicle opening with a concrete lintel on its eastern gable; it is this southern range that the Council consider should be retained.
21. These buildings are of utilitarian appearance, have been heavily altered and partially rebuilt and are in poor condition, especially Buildings 2 and 3. Their fabric has only a limited heritage value, as acknowledged by the Council. None of them would be worthy of listing in their own right.
  22. The Council draws my attention to the 2005 appeal decision at the site, which concerned the demolition of Building 3 and its replacement with a detached single storey Army Cadet Centre building.<sup>3</sup> The Council maintains that the building contributes positively to the character and setting of the listed farmhouse and the CA, as the Inspector in his 2005 report to the Secretary of State (SoS) said. But the Inspector concluded and the SoS agreed that the replacement building would be acceptable in terms of its impact on both the LB and CA. In this case the Council has no objections to the design of the terrace of three cottages that are proposed to front the road. I consider they would frame the western edge of the site but would be slightly lower than the Farmhouse and set back from the road frontage and would therefore be subordinate to the LB and respect its setting.
  23. The Council is more concerned about the loss of the Buildings 1-3's function in framing the original farmyard. The appellant argues that the proposed scheme recreates a similar yard. That is so to the extent that the houses would be built around the periphery of a central open space. But I agree with the Council that the proposed layout does not replicate the original farmyard because it is in a different location further to the east. Buildings 1 and 2 have a continuous form that fully enclose the eastern side and, with the Farmhouse itself, most of the northern side of the original yard whereas the proposal is for a series of large detached houses, which evidently would not create a fully enclosed 'yard'.
  24. However, whilst the original farmyard framed by Buildings 1-3 is clearly within the setting of the Farmhouse, this setting does not markedly contribute to the significance of the LB because the latter 'turns its back' on the yard. Although its connection to the farmyard is historic, the loss of such a setting in my judgement would not harm its overall significance which is mainly attributable to its architectural interest – principally its front elevation.
  25. This means that there is no prerogative to retain the yard in its current position or for replicating the form or location of Buildings 1-3 in the proposed new development. For these reasons I conclude that the layout of the new houses would not adversely affect the significance of the LB, whose important architectural features of interest would be untouched by the proposals.

#### *Effect on the Conservation Area*

26. The Farmhouse and original farmyard are a relic of the former agricultural use of the site and have a recognisable agricultural appearance and ambience. They comprise the northernmost part of the CA, which extends as far south as the listed cottages south of Hayes Street's junction with West Common Lane. As such they are part of the CA's character and appearance.

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<sup>3</sup> PM Appendix 4

27. There are views into the site adjacent to and opposite the access and views up and down the main road of the gables of Building 3, albeit the two mature trees on the western boundary of the site partially obscure such views when they are in leaf. From these locations the site is undoubtedly perceived as a relic or survivor farmyard.
28. However, this area only comprises a relatively small part of the CA, which is centred on the heart of Hayes village. There is no specific reference to the importance of the site in the Council's adopted Supplementary Planning Guidance for the CA apart from in its paragraphs 3.17 (with accompanying photograph of the Farmhouse with Building 1 behind) and 3.27, which state that listed buildings and other detailed characteristics of the area should be retained and repaired wherever possible.
29. The appellant's evidence in regard to the viability of converting Buildings 1-3 to some beneficial use was partial because it only considered the conversion of Building 1 to two residential flats, although that evidence established that such a scheme would clearly be financially unviable. However, I accept that residential use of some sort would be likely to attract the highest net value in any conversion scheme given the site's location in this predominantly residential area of south London.
30. I also accept that there would need to be substantial alterations to the external elevations of these buildings to enable adequate sunlight and daylight for residential occupants, probably including the demolition of either the northern or southern range of Building 3. Such alterations may be acceptable in principle but, for the reasons set out above, these buildings have little merit in themselves and are in a poor physical condition and so there is no impetus or requirement to convert them. Their loss and replacement by the new development in a different position would of course lead to the loss of the original farmyard.
31. However, further to the *Bohm* judgement the proposed development should be considered in terms of both the demolition and removal of all the buildings (apart from the LB itself) on the wider site and the effect on the CA of the proposed new houses. The Council has no objection to the design of the road frontage cottages in Plots 1-3, albeit it considers the southern range of Building 3 should be retained. I consider that the design of the proposed cottages would provide an appropriate reference to the historic agricultural use of the site on the prominent street frontage in this part of the CA and therefore a suitable replacement for Building 3 in the same location.
32. The development at Plots 4-9 must be considered in relation to the removal of the existing development on site to the east and south of Building 2. To the south is the unused and redundant polytunnel with associated open storage including broken old vehicles between it and Building 3. To the south east are stables, the two Dutch barns and the sand school and to the east more stables. Further east are an assortment of storage containers and open storage mainly used by local contractors, such as builders, landscapers and tree surgeons. Most of this is situated outside the CA but clearly affects its setting adversely because much of it, especially the eastern part of it abutting the open countryside, is messy and resembles a dumping ground for old vehicles and containers.

33. It is no doubt true that the appellant could tidy up this part of the site by removing many of these redundant vehicles and storage containers but it has little incentive to do so and there is no suggestion by the Council that there is any breach of planning control or, if there is, that enforcement action has been taken against it. Consequently, it would appear that the most likely scenario, should the appeals be dismissed, would be the continued unkempt character and appearance of the site, which mars the north eastern setting of the CA especially in views from the public footpath to the east.
34. Turning to the design of the new houses, the Council states that all of them would be taller than the height of any of the buildings that would be demolished. That is correct but must be considered in the context of the overall impact they would have on the CA as a whole. The houses at Plots 1-3 and 5 would be 7.3m high and Plots 6-9 would be 7.5m high, similar to the height of the retained LB at 7.41m high. Only Plot 4 would be higher at 9.7m maximum height. But that house would be situated behind the existing pair of semi-detached houses at 3-5 Hayes Lane, which abut the site's southern boundary and would only be seen in glimpsed views from the public highway.
35. The new dwellings may well be described as suburban in appearance but that is not a slur on their individual designs, which the Council makes no specific criticism of. In my opinion their design would be quite acceptable in the context of the suburban residential development on the other side of Hayes Lane and is the predominant characteristic of the inter-war development of this part of the Borough. The layout, elevational design including fenestration and materials of all the new houses would match the character of the area, including that part of it within the CA.
36. Furthermore, the proposed development would replace the assortment of ramshackle buildings, storage containers and dumped vehicles on the eastern part of the site with four well designed houses (Plots 5-8) as well as restoring the rest of the land to the east to open countryside in perpetuity, as provided for via a suitably worded planning condition. These dwellings would be higher than the Dutch barns but not substantially higher. They would be sited further west than the eastern extent of the current storage uses and they would be viewed from the public footpath to the east against the backdrop of the rest of the suburban development on the other side of Hayes Lane. Overall the new houses would have a beneficial effect on the setting of this part of the CA.
37. For these reasons I conclude that the proposed development would at least preserve, if not enhance, the overall character and appearance of the Hayes Village CA.

#### *Heritage Conclusion*

38. For the reasons set out above I conclude that the proposed development would preserve the significance of the listed Farmhouse, albeit that it would result in some harm to its setting. It would at least preserve, if not enhance, the character and appearance of the CA despite the loss of Buildings 1-3 and the original farmyard. In reaching this conclusion I have fully taken into account the views of Historic England as expressed in its letter of 17 January 2018<sup>4</sup>, but disagree with them for these reasons. The proposed scheme would therefore

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<sup>4</sup> RB Appendix 6

comply with BLP Policies 38, 41 and 42 and LP Policy 7.8 and with NPPF paragraphs 193 and 194.

39. Even if 'less than substantial harm' would arise to the LB or the CA under NPPF paragraph 196, I consider that the public benefits of the proposal would be sufficient to outweigh such harm. The public benefits in this case are confined in my opinion to the benefit of providing nine new dwellings because the other benefits suggested by the appellant have already been taken into account above or will be in consideration of Green Belt issues below.
40. The appellant considers that the extent of this public benefit is affected by whether the Council can demonstrate a 5YHLS. I disagree because BLP Policy 1 states that the Council will make provision for a minimum average of 641 additional homes per annum over the 10-year plan period and LP Policy 3.3 states that Boroughs should seek to achieve and exceed (my emphases) such minimum borough annual average housing targets. I cannot give full weight to the new draft LP requirement for Bromley of 1,424dpa (set out in the 2017 SHLAA) because this figure has not been moderated or tested at Examination (or no conclusion has yet been reached on such), but the trend for the Borough is only ever likely to be upwards, and probably considerably upwards, of the current minimum figure of 641dpa.
41. This means that any provision of new housing in the Borough should be treated as a significant or substantial benefit or be given significant or substantial weight as a benefit. I give short shrift to the Council's argument that because only nine new houses would be provided, such a benefit would be less than substantial. That is because the NPPF seeks to boost significantly the supply of housing, which signals that any new houses must command substantial weight as a benefit. It would be nonsensical to consider otherwise, because if only a large amount of housing would be considered substantially beneficial then an equal cumulative benefit arising from a number of smaller sites would not have been afforded the same weight as a benefit.
42. In my opinion any such 'less than substantial harm' would be at the lower end of the scale for the reasons set out above and would not outweigh the substantial benefit of providing nine additional dwellings to a Borough that has struggled in recent years to even deliver its minimum annual housing requirement of 641dpa, and that largely as a result of proposals allowed on appeal.

#### Effect on Openness of the Green Belt

43. The site lies in the metropolitan Green Belt and the main parties agree it is previously developed land (PDL). NPPF paragraph 145 states that the construction of new buildings in the Green Belt (GB) should be regarded as inappropriate, with a number of exceptions. One of these is "*g) limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings)*". This exception is qualified by two requirements. Only the first is relevant to this appeal: "*that such redevelopment would not have a greater impact on the openness of the Green Belt than the existing development*". BLP Policy 49 follows NPPF policy.
44. Temporary structures and buildings are excluded from exception g) and so I do not consider them when comparing the footprint and volume of existing and

proposed structures on the site. It is agreed that the proposed development would result in a reduction of the footprint of the permanent buildings on site by 30.2% and a slight increase in volume of 2.7%. It is also agreed that the tallest existing building to be lost on site is shorter than the shortest of the proposed new buildings. This is essentially because the houses are bulkier than the majority of the existing buildings as a result of their proposed two-storey heights.

45. The *Turner* judgement<sup>5</sup> was referred to by both parties, in particular paragraphs 14, 15 and 25 of that judgement. To paraphrase, what the judgement states is that 'openness' is an open-textured concept and a number of factors are capable of being relevant in applying it to a particular case. Indeed, the latter half of paragraph 14 of the judgement states:

*"Prominent among these will be factors relevant to how built up the Green Belt is now and how built up it would be if redevelopment occurs (in the context of which, volumetric matters may be a material concern, but are by no means the only one) and factors relevant to the visual impact on the aspect of openness which the Green Belt represents."*

46. The Council refers to six factors it considers relevant to openness in the context of *Turner*: visual impact, height, volume, footprint and extent, mass/bulk, and character. The appellant does not accept that character is a relevant factor to be taken into account into assessing openness. I disagree because paragraph 14 of *Turner* does not provide an exhaustive list of factors relevant to openness, merely some examples of what they might be. Anything that can reasonably be said to impact on openness is therefore a relevant factor to be considered.
47. In terms of character the Council argues that that the site's character and appearance would change from what looks like a farmyard to a suburban housing estate. There is no doubt that this would be the case, albeit the site is no longer in agricultural use and is PDL. It would change from a sprawling collection of largely poorly maintained buildings and other structures and a ramshackle collection of dumped redundant old vehicles and be replaced by a two-storey terrace of three cottages and six large detached houses all with garages and adjacent open car parking spaces. This would clearly lead to a much lower footprint of development. It would also result in a better maintained site, which also affects its visual impact on the Green Belt.
48. Bromley Common is a large area of GB to the to the north, south and east of the site. As indicated above, a public footpath runs north from George Lane and there are wide views of the site from this footpath and from other paths nearer to the site, which I was able to see from my visits are well used by local joggers and dog walkers. Users of these paths have good views of the site.
49. I disregard the temporary buildings/structures and dumped vehicles on the site in terms of comparing the existing and proposed footprint and volumes. But I do not disregard them in terms of their visual impact on the GB. As explained above, these structures and vehicles are part and parcel of the current use of the site. Their location extends further east into the GB than the eastern-most houses in the development would, including the rear gardens of Plots 6 and 7. This includes the majority of the land occupied by the high Dutch barns. The

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<sup>5</sup> *John Turner v SoS CLG [2016] EWCA Civ 466*

land within the 'blue' line on drawing P202 would be secured as open green countryside free of any development by condition. The rear boundaries of the gardens of Plots 5-8, the easterly houses in the development bounding this open land, would be landscaped with a tree screen.

50. The proposed houses would be higher than the existing buildings to be demolished including the Dutch barns, but they would be viewed from the wider GB to the north and east against the backdrop of two-storey houses of a similar height on the other side of Hayes Lane. They would also be bulkier (i.e. have a greater volume) and be more solid than the existing buildings on the site; but, conversely, there are larger gaps between them than the existing buildings and their eaves heights are generally low, which would be a visual benefit of the scheme.
51. The houses may well have domestic sheds and other paraphernalia in their gardens, but these would be unlikely to be large or high structures and would likely occupy less space than the structures that currently occupy the site. The site as a whole would be tidier and less cluttered, and the ground would be more open overall. All these factors convince me that there would be a considerable improvement to the visual amenity of the site, especially the eastern part of it, including important views from the public footpath further east within the wider GB.
52. I have considered the relevant factors here in terms of assessing openness to be all those raised by the Council including the proposed change in the character and appearance of the site. As is clear from my above consideration of these issues they are inevitable inter-linked; height, bulk, overall footprint and volume clearly influence visual impact and character, and character, as is the case here, can have an effect on visual impact. These factors must therefore be considered as a whole, in terms of their inter-linked effect on overall openness.
53. In summary, for the above reasons, I conclude that despite the slight increase in volume and increased height of the proposed houses compared to the existing buildings, the proposed development would not have a greater impact on the openness of the Green Belt than existing development on the site. Consequently, it would not be inappropriate development within the GB. It would therefore comply with NPPF paragraph 145 g) and with BLP Policy 49.
54. Both parties have cited various appeal decisions to justify their cases. But an assessment of the effect of development on GB openness is specific to each location and case and I have arrived at my above conclusion based on the specific context and facts of this case.

### **Other Matters – Housing Land Supply (HLS)**

55. For the reasons set out in my conclusions on the heritage issues above, HLS is not a main issue in this case. Despite the significant amount of time devoted to it at the Inquiry it is unnecessary to determine whether the Council does or does not have a 5YHLS because the proposed development would comply with the development plan and national policy and therefore, by definition, comprises sustainable development. The case advanced by the appellant regarding the applicability of the tilted balance was unnecessary because it is irrelevant in this context.

### **Conditions**

56. The Council has suggested a list of twenty conditions that should be attached to any grant of planning permission, and the appellant has agreed to these conditions including any that restrict commencement of development. The reasons for these conditions are included in Schedule 1 below. They would all meet the policy tests in NPPF and Planning Practice Guidance. The Council has not suggested any conditions for the listed building application, although I consider the standard commencement condition is necessary as well as a condition requiring a contract for the redevelopment works to be carried out prior to demolition for the reasons indicated in Schedule 2.

### **Conclusion**

57. For the reasons given above I conclude that the appeals should be allowed, subject to the conditions in the Schedules below.

*Nick Fagan*

INSPECTOR

Schedule 1 – Conditions attached to Planning Permission

<b>Condition</b>
<p><b>1.</b> The development to which this permission relates must be begun not later than the expiration of 3 years, beginning with the date of this decision notice.</p> <p><b>REASON: Section 91, Town and Country Planning Act 1990.</b></p>
<p><b>2.</b> The development permitted by this planning permission shall not commence until a surface water drainage scheme for the site based on sustainable drainage principles, and an assessment of the hydrological and hydro geological context of the development has been submitted to, and approved by, the Local Planning Authority. The surface water drainage strategy should seek to implement a SUDS hierarchy that achieves reductions in surface water run-off rates to Greenfield rates in line with the Preferred Standard of the Mayor's London Plan.</p> <p><b>REASON: To reduce the impact of flooding both to and from the proposed development and to surrounding properties.</b></p>
<p><b>3.</b> The development hereby permitted shall not be carried out otherwise than in complete accordance with the following plans approved under this planning permission unless previously agreed in writing by the Local Planning Authority:</p> <p>16012 S101 16026 C101B</p> <p>16026 C102A 16026 P104 16026 P101A 16026 P102A 16026 P103A 16026 P105 16026 P106 16026 P107A 16026 P108 16026 P109 16026 P110 16026 P111 16026 P201</p> <p><b>REASON: In the interests of visual and residential amenity.</b></p>
<p><b>4.</b> Prior to commencement of development (excluding demolition) details of the proposed slab levels of the building(s) and the existing site levels shall be submitted to and approved in writing by the Local Planning Authority. The development shall be completed strictly in accordance with the approved levels.</p>

**REASON: Required prior to commencement in order to ensure that a satisfactory form of development can be undertaken on the site in the interest of visual amenity.**

5. No part of the development hereby permitted shall be commenced prior to a contaminated land assessment and associated remedial strategy, together with a timetable of works, being submitted to and approved in writing by the Local Planning Authority.
- a) The contaminated land assessment shall include a desk study to be submitted to the Local Planning Authority for approval in writing. The desk study shall detail the history of the site's uses and propose a site investigation strategy based on the relevant information discovered by the desk study. The strategy shall be approved in writing by the Local Planning Authority prior to investigations commencing on site.
  - b) The site investigation, including relevant soil, soil gas, surface water and groundwater sampling shall be approved in writing by the Local Planning Authority.
  - c) A site investigation report detailing all investigative works and sampling on site, together with the results of analysis, risk assessment to any receptors, a proposed remediation strategy and a quality assurance scheme regarding implementation of remedial works, and no remediation works shall commence on site prior to approval of these matters in writing by the Authority. The works shall be of such a nature so as to render harmless the identified contamination given the proposed end-use of the site and surrounding environment.
  - d) The approved remediation works shall be carried out in full on site in accordance with the approved quality assurance scheme to demonstrate compliance with the proposed methodology and best practise guidance. If during any works contamination is encountered which has not previously been identified then the additional contamination shall be fully assessed and an appropriate remediation scheme submitted to the Authority for approval in writing by it or on its behalf.
  - e) Upon completion of the works, a closure report shall be submitted to and approved in writing by the Authority. The closure report shall include details of the remediation works carried out, (including of waste materials removed from the site), the quality assurance certificates and details of post-remediation sampling.
  - f) The contaminated land assessment, site investigation (including report), remediation works and closure report shall all be carried out by contractor(s) approved in writing by the Local Planning Authority.

**REASON: In order to prevent harm to human health and pollution of the environment.**

6. (i) The recommendations outlined within the Preliminary Ecological Appraisal, including the suggested biodiversity enhancements including bat boxes, shall be incorporated into the permission hereby granted.

(ii) Prior to commencement of above ground works details of biodiversity enhancements shall be submitted to and approved in writing by the Local Planning authority and shall be included within construction works and permanently retained at the site thereafter.

**REASON: In order to preserve and enhance the biodiversity value of the site.**

**7.** Details of a scheme of landscaping, which shall include the materials of paved areas and other hard surfaces, as well as boundary treatment, shall be submitted to and approved in writing by the Local Planning Authority before the commencement of the development (excluding demolition) hereby permitted. 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 die, 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.

**REASON: In order to secure a visually satisfactory setting for the development.**

**8.** The development shall be implemented in accordance with the Arboricultural Survey and Planning Integration Statement (AR/3533/rg) approved as part of the planning application, under the supervision of a retained arboricultural specialist in order to ensure that the correct materials and techniques are employed.

**REASON: To ensure that works are carried out according to good arboricultural practice and in the interests of the health and amenity of the trees to be retained around the perimeter of the site.**

**9.** No trenches, pipelines for services or drains shall be sited under the spread of the canopy of any tree or tree group shown to be retained on the submitted plans without the prior agreement in writing by the Local Planning Authority.

**REASON: In order to ensure that all existing trees to be retained on the site are adequately protected.**

**10.** Details of the external materials and windows to be used for the external surfaces of the buildings shall be submitted to and approved in writing by the Local Planning Authority before any work (excluding demolition) is commenced. The works shall be carried out in accordance with the approved details.

**REASON: In the interest of the appearance of the building and the visual amenities of the area.**

**11.** Details of arrangements for storage of refuse and recyclable materials (including means of enclosure for the area concerned where necessary) shall be submitted to and approved in writing by the Local Planning Authority before any part of the development (excluding demolition) hereby permitted is commenced and the approved arrangements shall be completed before any part of the development hereby permitted is first occupied, and permanently retained thereafter.

**REASON: In order to provide adequate refuse storage facilities in a location which is acceptable from the residential and visual amenity aspects.**

**12.** Before any part of the development hereby permitted is first occupied, bicycle parking (including covered storage facilities where appropriate) shall be provided at the site in accordance with details to be submitted to and approved in writing by the Local Planning Authority, and the bicycle parking/storage facilities shall be permanently retained thereafter.

**REASON: In order to provide adequate bicycle parking facilities at the site in the interest of reducing reliance on private car transport.**

**13.** Details of a scheme to light the access drive and car parking areas hereby permitted shall be submitted to and approved in writing by the Local Planning Authority before the development (excluding demolition) hereby permitted is commenced. The approved scheme shall be self-certified to accord with BS 5489 - 1:2003 and be implemented before the development is first occupied and the lighting shall be permanently retained thereafter.

**REASON: In the interest of visual amenity and the safety of occupiers of and visitors to the development.**

**14.** Before commencement of the use of the land or building hereby permitted parking spaces and/or garages and turning space shall be completed in accordance with the details as set out in this planning permission and thereafter shall be kept available for such use and no permitted development whether permitted by the Town and Country Planning (General Permitted Development) Order (England) 2015 (or any Order amending, revoking and re-enacting this Order) or not shall be carried out on the land or garages indicated or in such a position as to preclude vehicular access to the said land or garages.

**REASON: In order to comply with Policy T3 of the Unitary Development Plan and to avoid development without adequate parking or garage provision, which is likely to lead to parking inconvenient to other road users and would be detrimental to amenities and prejudicial to road safety.**

**15.** The garages hereby permitted shall be used solely for the accommodation of private motor vehicles and for purposes incidental to the dwellings and shall not be converted to living accommodation without the prior approval in writing of the Local Planning Authority.

**REASON: The conversion of the garage to living accommodation would deprive the property of adequate parking facilities.**

**16.** Prior to the commencement of the development hereby permitted a Construction Management Plan (including provision to accommodate operatives and construction vehicles off-loading, parking and turning within the site) shall be submitted to and approved in writing by the Local Planning Authority. The Plan shall include measures of how construction traffic can access the site safely and how potential traffic conflicts can be minimised; the route construction traffic shall follow for arriving at and leaving the site and the hours of operation, but shall not be limited to these. The Construction Management Plan shall be implemented in accordance with the agreed timescale and details.

**REASON: In interest of the amenities of the adjacent properties.**

**17.** The development hereby permitted shall incorporate measures to minimise the risk of crime and to meet the specific needs of the application site and the development. Details of these measures shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of the development hereby permitted (excluding demolition), and implemented in accordance with the approved details. The security measures to be implemented in compliance with this condition shall seek to achieve the "Secured by Design" accreditation awarded by the Metropolitan Police.

**Reason: In the interest of security and crime prevention.**

**18.** Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order amending, revoking and re-enacting this Order) no building, structure or alteration permitted by Class A, B, C, or E of Part 1 of Schedule 2 of the 2015 Order (as amended), shall be erected or made within the curtilage(s) of the dwelling hereby permitted without the prior approval in writing of the Local Planning Authority.

**REASON: In the interest of the visual amenities and openness of the Green Belt and to allow the Council to assess future development proposals at the site.**

**19.** 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.

**REASON: To comply with Policy 3.8 of the London Plan 2015 and the Mayors Housing Supplementary Planning Guidance 2016**

**and to ensure that the development provides a high standard of accommodation in the interests of the amenities of future occupants.**

- 20.** No development shall commence until a scheme has been submitted to and approved in writing by the Local Planning Authority for:
- (a) the removal of all development from the Area hatched in green (as per drawing no P201); and
  - (b) the landscaping of the Area to be implemented and retained permanently thereafter as open countryside free from development save as may be approved subsequently by the Council.

**REASON: In the interest of the visual amenities and openness of the Green Belt and to allow the Council to assess future development proposals at the site.**

Schedule 2 – Conditions attached to Listed Building Consent

- 1) The works authorised by this consent shall begin not later than 3 years from the date of this consent.

**Reason: To comply with the Planning (Listed Buildings and Conservation Areas) Act 1990.**

- 2) The works of demolition authorised by this consent shall not be carried out before a contract for the carrying out of the works of redevelopment of the site has been made and planning permission shall have been granted for the redevelopment for which the contract provides.

**Reason: To ensure that the curtilage listed buildings are only demolished as part of the overall redevelopment scheme for the site, to prevent a cleared site adversely impacting on the setting of the listed Farmhouse and preserve the character and appearance of the Hayes Village Conservation Area.**

## APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY: Luke Wilcox, Landmark Chambers  
*instructed by Greg Ullman, Solicitor to the Council*

He called

-Robert Buckley MSc, MRTPI, Principal  
Conservation Officer, London Borough of Bromley  
(LBB)  
-Gill Slater BSc (Hons) DipTP, MRTPI, Joint  
Acting Planning Policy Manager, LBB (for HLS  
round-table discussion)  
-David Bord BA (Hons), PG Dip, MRTPI, Principal  
Planner, LBB

FOR THE APPELLANT: Jonathan Clay, Cornerstone Barristers *instructed by John  
Escott of RE Planning*

He called

-Jon Etchells MA B Phil CMLI (Landscape), Jon  
Etchells Consulting  
-Roger Beach Dip Arch RIBA RMaPS, OSP  
-Nicholas Bignall MA MRICS, Turner Morum  
-Patrick Maguire MA M.St (Oxf), Asset Heritage  
-John Escott BA, DipTP, MRTPI, RE Planning

## INTERESTED PERSONS:

Robert Indge  
Sarah Rayfield

Local Resident  
Field Officer, London & South East, British Horse  
Society

## **DOCUMENTS SUBMITTED AT OR AFTER THE INQUIRY**

- 1 List of appearances for the Council
- 2 List of appearances for the appellant
- 3 Note on farming history, Hayes Street Farm
- 4 Letter from Nicola Brown, local resident
- 5 Second letter from Nicola Brown
- 6 APP/X1545/W/17/3185429 appeal decision cited by Council in regard to NPPF para 74 issue
- 7 Email dated 29/4/19 from Roger Beach clarifying heights of existing & proposed buildings on the site
- 8 Email from Sarah Rayfield dated 5/4/19
- 9 3 Documents regarding ongoing legal challenge to BLP
- 10 *John Turner v SoS CLG [2016] EWCA Civ 466*
- 11 List of agreed conditions with plan attached to condition 20
- 12 Response by LBB officers to Lichfields' 5YHLS matters
- 13 Revised table of identified sites re 5YHLS
- 14 Email from Iain Hutchinson of Overstrand dated 1/5/19 re. NPPF para 74 issue
- 15 LBB submissions in response to appellant's allegation of misleading Inspector re NPPF para74 issue dated 2/5/19
- 16 Appellant's response to above document dated 8/5/19
- 17 LBB response to above document dated 17/5/19
- 18 Email from Gill Slater to PINS dated 10/5/19 commenting on attached Lichfields' analysis of windfall delivery in London Boroughs
- 19 LBB opening submissions
- 20 Appellant opening submissions
- 21 LBB closing submissions
- 22 Appellant closing submissions