



Appeal Decision

Site visit made on 13 August 2019

by Rajeevan Satheesan BSc PGCert MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th September 2019

Appeal Ref: APP/G5180/W/19/3228663

Land adjoining 29 Hayes Lane, Bromley, Kent BR2 9EA

- 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 Ms S Richie against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/18/05620/FULL1, dated 19 December 2018, was refused by notice dated 28 March 2019.
 - The development proposed is the erection of a one bedroom bungalow.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - whether the proposal amounts to inappropriate development in the Green Belt;
 - the effect of the proposal on the openness of the Green Belt;
 - the effect of the proposal on the character and appearance of the area;
 - the effect of the existing adjacent commercial uses on the living conditions of future occupiers of the development with regards noise and disturbance; and
 - if the development is inappropriate, whether harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances needed to justify the development.

Reasons

Whether inappropriate development

3. The appeal site comprises an area of overgrown and undeveloped land, approximately 0.05ha¹, within land designated as Green Belt. The site is located between a pair of semi-detached properties² and a single storey building occupied by a garage workshop and a driving school.
4. National policy on Green Belt development is set out in Part 13 of the National Planning Policy Framework 2019 (Framework). Paragraph 143 states that inappropriate development is, by definition, harmful to the Green Belt and

¹ Taken from the appellant's Ground of Appeal Statement.

² No's 29 and 31 Hayes Lane.

should not be approved except in very special circumstances. Of particular relevance to this appeal is Paragraph 145 which states that the construction of new buildings is inappropriate development in the Green Belt subject to a number of exceptions.

5. One of the exceptions is limited infilling, which would not have a greater impact on the openness of the Green Belt than the existing development (criterion g). This exception is also reiterated in Policy 49 of the London Borough of Bromley Local Plan 2019 (LP), which is consistent with the Framework. Reference has also been made by the Council to Policy 7.16 of the London Plan 2016 (London Plan), which is also consistent with the Framework. Accordingly, I have assessed this appeal scheme based upon the Green Belt policies contained in the LP, London Plan and the Framework.
6. With regards to 'limited infilling' there is no definition of infilling in either the Framework or the LP, and therefore it is necessary to consider each proposal on its merits on a fact and degree basis.
7. My attention has been drawn to the planning history of the site, which includes a number of dismissed appeals for the redevelopment of this site for housing³. In the most recent appeal decision for this site⁴, the Inspector considered that *"whilst I accept that the proposal bungalow would sit comfortably between the existing buildings on either side of it, an essential test in paragraph 89 is that the development should not result in a loss of openness of the Green Belt. In this case the site is free from built development. Therefore, although the bungalow would be smaller and less tall than the houses previously considered on appeal it would, nevertheless introduce a substantial building where none currently exists..... the new building would, unavoidably, lead to a material reduction in the openness of the Green Belt"*.
8. In an attempt to overcome the previous Inspector's concerns, a revised layout is proposed with a reduction in the number of bedrooms (one). The proposal would be positioned comfortably between the existing buildings either side of it. However, whilst the proposal would be lower than the adjacent buildings, and not be prominent in the street scene, the new building would nevertheless have a greater impact on the openness of the Green Belt than the existing development. In view of this finding, it has not been necessary for me to reach a view as to whether the proposal would in fact relate to infilling. Even if this were to be the case, it would not overcome my finding relating to openness and hence the conflict with paragraph 145 (g) of the Framework.
9. In conclusion, the development would not satisfy any of the other exceptions in paragraphs 145 and 146 of the Framework, and Policy 49 of the LP. As such the proposal it would amount to inappropriate development in the Green Belt. In reaching this conclusion, it is of note that paragraph 144 of the Framework states that substantial weight should be given to any harm to the Green Belt.

³ Appeal Refs: APP/G5180/A/12/2174626 and APP/G5180/A/12/2174626 both dated 5 October 2012, and APP/G5180/A/13/2203324 dated 9 December 2013.

⁴ Appeal Ref: APP/G5180/A/13/2203324 for the erection of detached two bedroom bungalow with off-street parking.

Effect on the openness of the Green Belt

10. Paragraph 133 of the Framework identifies that one of the essential characteristics of Green Belts are their openness and their permanence. The Courts have held that openness includes both visual and spatial dimensions.
11. The proposed building would have a low pitched roof and would be lower than both adjacent properties. It is also acknowledged that the site is enclosed with a 2m high fence at the front of the site, and a 2.2m high closed boarded fence to the rear of the site⁵. On this basis, I consider that the development would have a limited visual effect on the openness of the Green Belt. However, the building would occupy land which is currently devoid of buildings and hence in spatial terms there would be a significant change to the openness of the site and hence this part of the Green Belt. Overall, I consider that the harm caused to the openness of the Green Belt would be a moderate one.

Character and appearance

12. The site is located within a mixed use area, located directly opposite a school, and adjacent to a pair residential properties and commercial properties. The proposal would be centrally positioned within the plot and would be single storey only with a low pitched roof, such that the building would be subservient to the adjacent buildings. Additionally, the bungalow would be set away from side boundaries such that it would not appear unduly cramped. Although the building would be set forward of the pair of semi-detached properties at No's 29 and 31 Hayes Lane, it would be set back from the adjacent garage building.
13. For the above reasons, I therefore conclude that the development would not have a harmful effect on the character and appearance of the area. In this respect the proposal would comply with Policies 4 and 37 of the LP, and Policy 7.4 of the London Plan. Amongst other things, these require new developments to achieve a high standard of design and layout whilst enhancing the quality of the local places. However, the absence of harm is not a positive factor in the scheme's favour.

Living conditions for future occupiers of the new dwelling

14. The new dwelling and rear garden would be sited directly adjacent to an existing commercial business, in use as a garage/car workshop and a driving school, with an associated off-street car park. Whilst the appellant states that the businesses are open from 0800 to 1730 Mondays to Fridays only⁶, I observed during my site visit that the garage was advertised as also being open on Saturdays from 0900 to 1300. Additionally, the appeal decision⁷ for the garage and driving school, states that the permitted hours of use are Monday to Fridays 0800 to 1800 and from 0800 to 1300 on Saturdays (condition 4). This appeal decision also permits 16 vehicles to be parked within this site any one time.
15. Whilst the appellant considers that the adjacent business is small and that there have been no previous complaints from existing occupiers at No 29 Hayes Lane, the new dwelling would be in closer proximity to the existing commercial uses. The existing undeveloped appeal site provides a reasonable

⁵ Taken from the appellant's final comments statement.

⁶ Taken from the appellant's Ground of Appeal Statement.

⁷ Appeal Ref: T/APP/G5180/A/99/1017558/P2, provided by the appellant in the final comments statement.

separation distance between the existing commercial uses and the residential properties at No 29 and 31 Hayes Lane. However, the proposed dwelling would be close to the commercial site and hence it is possible that this adjacent use would result in noise and disturbance for future occupiers of the new dwelling. Indeed, during my site visit, I witnessed that machinery was in operation from the garage which was clearly audible from within the appeal site.

16. Noise associated with the existing workshop and driving school, with 'comings and goings' of customers, and car engines/machinery running would be particularly noticeable during summer months when future occupiers are likely to have windows open for ventilation, and more likely to be using their gardens for alfresco dining and for play space / relaxation.
17. No noise assessment or noise mitigation measures have been submitted to demonstrate that future occupiers of the site would not be affected by these existing commercial uses. The appellant refers to other residential properties which are in close proximity to existing businesses. However, I do not know the exact circumstances which led to these developments being formed and, and event, the existence of such development does not overcome my concerns about potential adverse noise and disturbance impacts in respect of the appeal development.
18. For the above reasons, I am unable to conclude that the proposed dwelling would be capable of occupied by residents without harm being caused to them as a result of noise and disturbance from the adjacent commercial uses. In this respect, I cannot conclude that the proposal would not conflict with the Policy 37 of the LP, which requires all development to respect the amenity of future occupants, providing healthy environments and ensuring that they are not harmed by noise and disturbance. In addition, I cannot conclude that there would not be conflict with paragraph 127 of the Framework which requires development to create places that achieve a high standard of amenity for existing and future users.

Other considerations

19. Subject to conditions, the Council does not raise any objection with regards to harm to the living conditions of existing neighbouring occupiers in terms of loss of light, outlook, privacy, and noise and disturbance. I find no reason to disagree with this assessment. I have also found that the proposal would not harm the character and appearance of the area.
20. Local residents have referred to the increased traffic likely to be generated, and concerns over access. Given that the proposal is for a one bedroom dwelling only and would utilise the existing access drive at No 29, the proposal would not be expected to result in any access issues or significant increase in traffic. I also note that the Highways Authority raise no objection in these regards, and I have no reason to disagree with that professional assessment.
21. These aforementioned matters are of neutral consequence in the overall planning balance.
22. The appellant contends that the development would follow sustainable construction techniques with efficient heating systems and insulation levels, incorporate renewable energy technologies and built in accordance with

Building Regulations M4(2). These are positive matters which support allowing the proposal.

23. Given scale of the proposal, there would also be some limited social, and economic benefits associated with the proposal. Whilst the development would make efficient use of an existing under-utilised site, the provision of one additional dwelling would make little difference to the overall supply of housing in the Borough and London. I do acknowledge that the proposal would be reasonably well located with regards to services, facilities and public transport. Furthermore, the economic/employment impact from the construction of the development would be a positive albeit a temporary benefit to weigh in the balance.

Planning balance and conclusion

24. I have found that the development would amount to inappropriate development in the Green Belt. This is a matter to which I afford substantial weight. In addition, I have found that moderate harm would be caused to the openness of the Green Belt and that there is potential for the adjacent commercial uses to cause harm to the occupiers of the proposed dwelling in terms of noise and disturbance. Weighed against these adverse findings is the fact that the proposed development would not harm the character and appearance of the area. However, that is a matter of neutral consequence in the overall planning balance. In addition, the adverse impacts needs to be weighed against the identified other considerations, noting that there would not be significant benefits.
25. In conclusion, the substantial weight to be given to Green Belt harm, and the other identified harm arising from the development, is not clearly outweighed by the other identified considerations sufficient to demonstrate very special circumstances. Therefore, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

Rajeevan Satheesan

INSPECTOR