



Appeal Decision

Site visit made on 12 November 2019

by Caroline Mulloy BSc (Hons) DipTP MRTPI

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

Decision date: 27 December 2019

Appeal Ref: APP/N1920/W/19/3234289

Land and buildings at Elstree Service Station, Elstree Hill South, Elstree WD6 3BL

- 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 Euro Garages Limited against the decision of Hertsmere Borough Council.
 - The application Ref 18/0160/FUL, dated 25 January 2018, was refused by notice dated 16 July 2019.
 - The development proposed is demolition of a car wash and the erection of 1 no, single-storey drive-thru unit (Use classes A1/A3/A5) with circulatory routes, associated car parking, landscaping and other associated works.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The description of the development on the application form refers to the erection of two drive-thru units; however, during the application the scheme was amended to one drive-through unit. There is an error in the Council's decision notice which refers to one, two-storey drive through unit when the plans actually show one, single storey unit. For the avoidance of doubt, I have considered the appeal on the basis of one single-storey drive-through unit and this is reflected in the banner heading above.

Main Issues

3. The main issues in this case are:
 - Whether or not the proposal is inappropriate development in the Green Belt;
 - The effect of the proposal on the openness of the Green Belt and Green Belt purposes;
 - If the proposal is inappropriate development whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

Whether or not the proposal is inappropriate development in the Green Belt

4. The appeal site contains a Petrol Filling Station comprising a single-storey sales building, a canopy with pumps, a car wash and a substation and an area of tree and vegetation. It is proposed to demolish the existing car wash and erect a single-storey drive-thru unit with circulatory routes, associated car parking, landscaping and other associated works.
5. By virtue of paragraph 145 of the National Planning Policy Framework (the Framework) construction of new buildings in the Green Belt is inappropriate subject to a number of specified exceptions. The proposal would be a new building in the Green Belt and should, therefore, be considered under paragraph 145.
6. One of the exceptions (clause g) at paragraph 145 relates to 'limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings) which would not have a greater impact on the openness of the Green Belt than the existing development'. The second criterion relates to affordable housing and would not, therefore, apply to this case.
7. The glossary to the Framework defines previously developed land as land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole curtilage should be developed) and any associated fixed surface infrastructure.
8. The proposed drive-thru would be situated on land within the same ownership as the developed land consisting of the Petrol Filling Station and associated structures. It would also be adjacent to the developed site; could be directly accessed from the developed land; and would be at a similar topographical level.
9. Nevertheless, the land in question is currently comprised of trees and vegetation and appears not to have been previously developed. It is physically separated from the petrol filling station land by a fence and there is no functional link between the land and the Petrol Filling Station. Indeed, the land is part of a wider treed area which surrounds the site to the north and west. The site would be perceived by a casual observer to form part of the extensive treed area as opposed to the developed petrol filling station. Consequently, I do not consider that the site proposed for the drive-thru would fall within the curtilage of the developed land.
10. Attention is drawn to an appeal decision¹ which the appellant considers supports his case that the site is previously developed. However, from the limited information before me the case relates to the curtilage of a residential property and is, therefore, not directly comparable to the appeal proposal which limits the weight which I can attach to in my decision. Moreover, each case must be decided on the site-specific circumstances of each case. Consequently, I conclude that the proposal does not meet any of the exceptions set out in paragraph 145 of the Framework.

¹ Appeal reference: APP/W0530/W/19/3229685 160 Histon Road, Cottenham, Cambridgeshire

11. Paragraph 146 states that certain other forms of development are not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. The appellant considers that the proposal falls within the exception set out at criterion c) 'local transport infrastructure which can demonstrate a requirement for a Green Belt location'.
12. However, the phrase "certain other forms of development are also not inappropriate..." must mean forms other than the construction of buildings. That would give the sentence its ordinary meaning and would indicate that the categories listed (a) to (f) in paragraph 146 were forms of development other than the construction of buildings. As paragraph 145 is a closed list addressing all circumstances where the construction of buildings is not inappropriate and, since the appeal proposal involves the construction of a building, paragraph 146 would not apply.
13. The Framework does not define 'local transport infrastructure'. However, paragraph 104 of the Framework states that planning policies should, amongst other things, provide for any large-scale transport facilities that need to be located in the area and the infrastructure and wider development required to support their operation, expansion and contribution to the wider economy. Footnote 42 goes on to clarify that examples of such facilities include ports, airports, interchanges for rail freight, public transport projects and roadside services. The primary function of roadside services should be to support the safety and welfare of the road user.
14. The description of the proposal is a drive through unit and specifically refers to Use Class A1 (shops); Use Class A3 (restaurants and cafes) and Use Class A5 (hot-food takeaways). Consequently, the primary function of the proposal is as a restaurant and hot-food takeaway, incorporating some retail, not as a roadside service or 'local transport infrastructure'.
15. The existing petrol filling station provides petrol, toilets and food for the safety and comfort of motorists. I acknowledge that a proportion of the proposal's customers would be passing trade and that motorists would be able to use the toilet facilities and provide food to motorists; however, this would duplicate facilities at the existing petrol filling station and would be incidental to its main use as a restaurant/hot food takeaway/retail. Consequently, in my view, the proposal would not represent local transport infrastructure in the context of paragraph 146 c) of the Framework.
16. Attention is drawn to an appeal decision² in which the Inspector concluded that paragraph 31 of the previous 2012 Framework regards motorists' facilities as capable of being transport infrastructure. However, this case relates to a petrol filling station and so is not directly comparable to the appeal proposal.
17. Attention is also drawn to an appeal decision³ at Baynard's Green in which the Inspector considered a free-standing drive-thru restaurant, adjoining an existing petrol filling station to provide roadside facilities for motorists on the A43. However, I note that the Inspector in this case also refers to the development being categorised as a town centre use. Furthermore, this case is not situated within the Green Belt. I am not aware of the evidence before the

² Appeal reference: APP/W1525/W14/3001905 Land at Fenn Road, Burnham Road, South Woodham Ferrers, Essex

³ Appeal reference: APP/C3105/W/16/3151655

Inspector in this case; however, on the limited information before me, I do not consider that the case is directly comparable to the appeal proposal.

18. Even if I were to accept that the proposal was classed as local transport infrastructure; the proposal would need to demonstrate a requirement for a Green Belt location. The Planning Statement summarises the assessment of alternative sites outside the Green Belt within the surrounding area. However, whilst referred to in the Planning Statement, the assessment of alternative sites outside the Green Belt is not before me. Furthermore, it would appear that the assessment has been undertaken on the basis of the original proposal for two drive-thru units which would have required a larger site. Consequently, I cannot be sure that a thorough search has been conducted or that there is not an alternative smaller site available. The requirement for a Green Belt location has not, therefore, been demonstrated. For all the reasons stated above, the proposal would not meet the exception set out at paragraph 146 c).
19. The proposal would not meet the exceptions set out at paragraphs 145 and 146 of the Framework and is, therefore, inappropriate development. Inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances.
20. Even if I am wrong on this point, and the land were to be deemed previously developed land or the proposal deemed to be 'local transport infrastructure', exceptions 145g and 146c are both qualified exceptions. In these circumstances, whether the proposal would be inappropriate would be dependent on the outcome of my reasoning below

Openness of the Green Belt and Green Belt Purposes

21. There is no definition of openness in the Framework but, in the Green Belt context, it is generally held to refer to freedom from, or the absence of, development. The essential characteristics of Green Belts are their openness and their permanence, and the fundamental aim of Green Belt policy is to keep land permanently open.
22. The appeal site is around 0.75 hectares and consists of a Petrol Filling Station including a single-storey sales building, a canopy with pumps, a car wash and a substation. There is an area of trees and vegetation to the north and west of the site.
23. To the south of the appeal site is the A41 and to the east of the site is a composting and biomass site which is bounded by a large woodland buffer fronting the road. To the west of the site, beyond the area of trees and vegetation, is Centennial Park, a large employment area.
24. The existing car wash would be demolished and replaced with an area of car parking to serve the drive-thru unit. A new building would be constructed on the treed area of land to the west of the existing car park, beyond the existing fence. It would have a maximum height of 5.2m and a gross external area of 246m² with a plant/refuse area measuring 186m². In total the whole building would be 432m² with an approximate volume of 1166.4m³. In addition to the building, a large area of hardstanding would provide car parking for 39 cars. The additional hardstanding area would equate to around 136.70m² on currently open Green Belt land.

25. Some of the car parking would be provided on land currently occupied by the existing car wash. However, the proposal would result in a new building and hardstanding area on land which is currently free from development. Whilst the existing car wash would be demolished, this is significantly smaller than the proposed building. The net increase in the footprint of the built form and subsequent mass and bulk would inevitably lead to a loss of spatial openness.
26. The area of trees and vegetation and the elevated topography would assist in screening the building in views from the north and west. However, there would be a significant increase in built development incurring into land which is currently open. Furthermore, despite the proposed planting scheme the proposed building would be readily visible from the A41 and A5183. Consequently, there would be a loss of visual openness. Due to the increase in built development the proposal would have a greater impact on the openness of the Green Belt than the existing development.
27. The area of trees and vegetation forms part of a wider network of open space in and around the built form. The incursion of built form into the area of trees and vegetation and would result in encroachment into the countryside, albeit to a very limited degree, contrary to the third Green Belt purpose. The proposal would also conflict with the fundamental aim of keeping land permanently open.
28. Consequently, even if the land were to be deemed previously developed land or the proposal deemed to be 'local transport infrastructure' – the proposal would be inappropriate development.
29. I, therefore, conclude that the proposal would lead to a loss of Green Belt openness and conflict with Green Belt purposes. I give substantial weight to this harm. The proposal would, therefore, conflict with Policy CS13 of the Core Strategy (CS) 2013 and Policy SADM22 of the Site Allocations and Development Management Policies Plan (SADMPP) 2016 which together establish the boundary of the Green Belt and contain a presumption against inappropriate development in the Green Belt reflecting the advice in the Framework.
30. Whilst not cited in the decision notice, Policy SADM26 is also relevant to the appeal proposal which sets out principles for the consideration of development in the Green Belt. The proposal conflicts with criterion iv of Policy SADM26 which requires development to not harm the openness of the Green Belt. Conflict also arises with the Framework.

Other Considerations

31. Paragraph 143 of the Framework sets out the general presumption against inappropriate development within the Green Belt. It states that such development should not be approved except in very special circumstances. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
32. I acknowledge that the proposal would have some economic benefits in terms of creating employment opportunities and also enhance the provision of restaurant/drive-thru facilities in the area.

Conclusion

33. Whilst there may be some economic benefits of the proposal and it would enhance the provision of restaurant/drive-thru facilities in the area; I consider that the substantial weight to be given to the Green Belt harm is not clearly outweighed either individually or cumulatively by other considerations sufficient to demonstrate very special circumstances.
34. I have found that there would be a loss of openness to the Green Belt, harm to Green Belt purposes and harm to the Green Belt by reason of inappropriateness. There are no other considerations that clearly outweigh the harm I have identified and that the very special circumstances necessary to justify the development do not exist. The proposal is, therefore, contrary to Policy CS13 of the CS and Policies SADM22 and SADM26 of the SADMPP and the Framework. For the reasons given above and taking all other considerations into account the appeal should be dismissed.

Caroline Mulloy

INSPECTOR