

Appeal Decision

Hearing held on 26 February 2020

Site visit made on 26 February 2020

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 May 2020

Appeal Ref: APP/D5120/C/19/3223853

Land at Woollett Hall Farm, Water Lane, Sidcup, Kent DA14 5ET

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Beck Evans Ltd against an enforcement notice issued by the Council of the London Borough of Bexley.
 - The notice was issued on 31 January 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission;
Operational development including:
 - i) Erection of gates and fencing (enclosing the remainder of the unauthorised development below) in the approximate location shown by the red line on Plan B;
 - ii) Erection of column mounted floodlights, shown in the approximate locations as denoted by circles on Plan B;
 - iii) Laying of hardstanding throughout the Land, marked 'Hardstanding' on Plan B;
 - iv) Erection of a small breezeblock building in the approximate location shown marked 'Small Breezeblock Building' on Plan B;
 - v) Erection of a large metal building/stationing of a structure, on brick piers, in the approximate position marked 'Storage/Offices' on Plan B;
 - vi) Laying of concrete foundation to accommodate and partial erection upon it of a large building marked 'Servicing Building' on Plan B;
 - vii) Laying of concrete foundation to accommodate large building marked 'Valeting Building' on Plan B.
 - Material change of use including:
 - viii) Car storage to the north west of the large buildings/structures.
 - The period for compliance with the requirements is two (2) months from the date this Notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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Formal Decision

1. It is directed that the enforcement notice be varied by the deletion of two months and its substitution with eight months as the period for compliance. Subject to this variation the appeal is dismissed and the enforcement notice is upheld, and
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planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Background

2. The site is located at the rear of Woollett Hall Farm, and lies within the Metropolitan Green Belt. The farmhouse, known as Cedar House, remains, but in recent years the farm has diversified with the demolition of original outbuildings and their replacement with larger, modern buildings and the establishment of a farm shop and café. Another building erected, known as the 'Crayzee Barn', accommodates an indoor children's adventure play centre.
3. The part of the site affected by the enforcement notice was, in 2004, granted planning permission (04/02159/FUL) for, amongst other things, the use of the land for Class B1 purposes. In 2010, planning permission (10/00684/FUL) was granted for the variance of the 2004 permission, approving the introduction of a Class B8 storage element within one of the site's buildings.
4. Each of the above permissions was personal to the applicants, and conditioned to that effect. A condition was also imposed on both prohibiting open storage.
5. In October 2018 the Council was alerted to development taking place at the site, and, at the outset of the enforcement investigation, it was found that vehicles would be stored at the site. Beck Evans, the user, operates a car sales dealership and it also became apparent that, in addition to the office/store building utilised by the business, the intention was to erect two additional substantial buildings; one a relatively high, metal-framed 'servicing building' and the other, a wide structure to be used for valeting purposes.
6. The Council then considered it expedient to issue an enforcement notice requiring for the discontinuation of the unauthorised use and the removal of the facilitative buildings, structures and all other associated instalments.

The Appeal on Ground (a) and the Deemed Planning Application

Main Issues

7. These are:
 - 1) whether the building constitutes inappropriate development in the Green Belt and, if so, the effect on the Green Belt's openness;
 - 2) whether the development would be acceptable in respect of a risk of flooding, having regard to advice within the National Planning Policy Framework (the Framework) and the Planning Practice Guidance (PPG); and
 - 3) if it 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.

Whether inappropriate development, and the Green Belt's openness

8. The appeal site is effectively a separate compound having been demarcated from the wider part of Woollett Hall Farm by metal gates and fencing. Although the site has direct access onto Water Lane, Beck Evans uses the ingress and egress point

common to rest of the site the appeal site. The compound now appears, though, as a separate planning unit unrelated to the wider site.

9. The Framework indicates that the construction of new buildings in the Green Belt is inappropriate development, unless it is for one of a number of specified purposes, as set out in paragraph 145 of the document. Exceptions as to certain limited uses not seen as inappropriate are set out in paragraph 146. The crucial factor is whether the development is harmful to the openness of the Green Belt.
10. Openness in terms of the Green Belt, which is recognised as relating to the absence of built form, can have a spatial as well as a visual aspect, although the Supreme Court has held that a consideration of openness is essentially a matter for the decision maker on a case by case basis. The open storage of vehicles has resulted in a significant change of character, and this would only be accentuated by the not insignificant dimensions of the proposed servicing and valeting buildings.
11. In both spatial and visual terms the development has a significant impact on the openness of the Green Belt. As such, the proposal fails to safeguard the countryside from encroachment, one of the five purposes of the Green Belt, and does not comply with the fundamental aim of Green Belt policy to prevent urban sprawl by keeping land permanently open.
12. Leaving aside the appeal site itself the other uses and activities at Woollett Hall Farm, along with the associated buildings thereto, which I understand all enjoy planning permission, have resulted in the creation of a substantially sized hard-surfaced car park to serve the enterprises. Here there is a multitude of marked out bays and, together this all impacts on the Green Belt's openness. The development enforced against adds significantly to this. I also noted from the evidence put forward at the Hearing that there is an intention to expand the car park further. This, though, will be a matter of discussion between the two main parties.
13. Reinforced by examining the aerial photographs provided I therefore find that the development enforced against has given rise to a material loss of openness to the Green Belt, with a greatly increased deleterious impact from that which was previously was the case. Such consequential harm to the Green Belt, contrary to relevant advice within the Framework, would be further compounded should the proposed buildings be erected.
14. In the above connection paragraph 144 of the Framework says that substantial weight should be given to any harm to the Green Belt and that '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.
15. In light of the circumstances I have described, the development does not meet any of the exceptions set out in the Framework. Indeed, neither party disagrees with this assessment. Given this, I conclude that the use, the office building present, and the proposed servicing and valeting buildings, constitute inappropriate development, which is, by definition, harmful to the Green Belt.
16. I further conclude that this is harmful to the Green Belt's openness and contrary to the aims of Policy 7.16 of the London Plan (LP) which reflects the Framework, saying that inappropriate development will be refused, except in very special

circumstances. The development thereby materially conflicts with the objectives of policy CS17 of the Council's Core Strategy (CS) and policies G12, ENV2, ENV3, ENV4 and ENV13 of the Council's Unitary Development Plan (UDP).

Flood Risk

17. It is acknowledged by both main parties that the site falls mainly within Flood Zone 2, but with sections in Zones 3 and 1. Following consultation the Environment Agency (EA) raised objections to the development indicating that works carried out to the land could result in a loss of flood water storage, and the EA has requested that a flood risk assessment (FRA) should be carried out. This approach is in accordance with paragraph 163 of the Framework which, by way of its footnote 50, requires for a site specific FRA for all development proposals (including minor development and changes of use) in Flood Zones 2 and 3. The EA has also flagged up that the vehicles stored on the hard-surfacing laid could give rise to the risk of oil pollution to surface water.
18. In response, the appellant has produced a very brief analysis which is somewhat dismissive of the flood risk probability from the River Cray that flows adjacent to the site. In essence, the assessment relies on the fact that the land is being used mainly for open storage with consequential minimum safety issues.
19. The PPG explains what a FRA should establish including the risks of flooding from all sources, and paragraph 155 of the Framework says that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere. For a specific development proposal this might involve applying a Sequential Test and then, only if this passed, an Exception Test. Accordingly, the FRA should include evidence in order to allow the Council, in the first instance, to apply the Sequential Test. In this context, and from the limited extent of the assessment provided by the appellant, the assessment produced is insufficient in this regard.
20. Notwithstanding the fact that I am dismissing this appeal on the substantive Green Belt issue, in view of the particular circumstances and the EA's concerns it would not be good practice to leave flood related matters to chance by imposing a retrospectively worded condition in an attempt to resolve this matter. Moreover, in instances where no meaningful FRA has been provided it is recognised, procedurally, that this, in itself, is sufficient to lead to dismissal of an appeal.
21. I thereby conclude that, in the absence of any comprehensive FRA with compelling evidence to suggest otherwise, nor any details of mitigation measures in this regard, the risk of flooding weighs heavily against the proposal, and is contrary to relevant advice in both the Framework and the PPG.

Other considerations

22. At the Hearing the appellant explained that attempts to find alternative sites over a five year period had proved unsuccessful. Nothing had proved suitable and some documented evidence was provided to this end.
23. The appellant, in support of the appeal, has drawn to my attention a previous appeal decision (*APP/P1805/W/17/3175713*) from 2017 whereby an Inspector allowed a new factory on Green Belt land at a site in Bromsgrove, Worcestershire.

I have no knowledge of this site but, from the decision letter, the Inspector makes comments that the site was completely enclosed visually from the surrounding countryside. In the circumstances the Inspector found that the site played no role in maintaining the character of the wider Green Belt.

24. Each proposal for new development must be determined in accordance with the particular circumstances involved and the individual planning merits and impacts arising. As such, parallels are not easily drawn. As a comparison, though, despite the appellant's comments, the high frame of the servicing building, whose construction was halted, is visible from the busy North Cray Road, which is some distance from the Farm's main cluster of buildings, but is on higher land and is located beyond the site entrance on Water Lane.

Planning Balance

25. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that, if regard is to be had to the Development Plan for the purpose of any determination to be made under the planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise.
26. I have taken into account that Beck Evans employs 21 persons overall, of which some 6 or 7 staff are employed at the appeal site. Clearly, therefore, the use holds economic benefits. The appellant also mentioned, in evidence, that the wider Woollett Hall Farm enterprise is being subsidised by Beck Evans to some 70-80%. Accordingly, should the firm be required to vacate the site the survival of the shop and café would be in jeopardy. However, I am also aware that the commercial enterprises, along with the Crayzee Barn, pre-date Beck Evans moving to the site.
27. From the evidence put forward at the Hearing, I have some sympathy with the appellant given the apparent unsuccessful search for alternative sites to date, and what could likely result in significant disruption to the business, or worse, should the use be disallowed. Beck Evans took control of the site on the basis of it being a brownfield site previously used for business and storage use, albeit within the Green Belt.
28. However, although planning permissions were previously granted for the land by the Council no such use rights remain and it was the appellant's responsibility to research the planning position and the restrictions and limitations that the Council had imposed against these previous permissions. There is also a substantial material difference between the character and intensity of the current use against that of a showroom for stained glass artwork and windows. No external storage was permitted unlike that which is required by Beck Evans, for which open storage is an essential element of its operation.
29. The current use is inappropriate development within the Green Belt which is greatly compounded by such an intensive degree of vehicle storage at the site. Further, the proximity of the intended servicing and valeting buildings to the nearby dwellings, Telham and also Cedar House, and the installation of floodlights at the site, is not an ideal arrangement, and I feel that the requirements of the operation go beyond what is proportionate to the size of the site and its particular constraints.
30. I am also mindful that the plans illustrating the proposed buildings have not been subject to formal consultation. Although in 2019 retrospective applications were

submitted to the Council in an attempt to regularise the planning position, as the enforcement notice had already been issued, the Council, quite reasonably and in accordance with the legislation, used its powers under s70C to decline to determine these.

31. Although the appellant is insistent the car park's surfacing is sufficiently permeable so as to allow for a reasonable degree of drainage, in having walked around the compound during my site visit, I am not convinced as to the effectiveness of the hardsurfacing laid in this regard. No compelling evidence has been provided otherwise.
32. Accordingly, whilst I have balanced the economic factors with the harm to the Green Belt, and I have noted the sizeable parking area associated with the other uses outside the compound, I am not convinced, from the evidence heard, that the development at issue could be conditioned so as to restrict the number of vehicles stored without what would effectively amount to a restraint of trade. It is a difficult use to regulate or thereafter enforce, and this is further inhibited by the site being fenced off. In illustration, I noted at my site visit that vehicles presumably connected with the use were parked/stored on a piece of land beyond the eastern limit of the identified compound.
33. The absence of an appropriate FRA, and given the Environment Agency's objection to the use, is an additional factor influencing and, moreover, reinforcing my decision.
34. I conclude that this inappropriate development in the Green Belt, for the purposes of the Framework, with the consequent adverse effects of the use and its facilitative buildings on the openness of the Green Belt, would not help secure the objectives of improving the Green Belt, as set out in national guidance and is thereby unacceptable. This is further compounded by the absence of any cogent site specific FRA. As such, the development is in material conflict with the relevant advice in paragraphs 134, 143, 144, 155 and 163 of the Framework, LP policy 7.16, CS policies CS01 and CS17 and UDP policies G12, ENV2, ENV3, ENV4 and ENV13.
35. For the above reasons, and the fact that the very special circumstances necessary to outweigh the policy objection have not been demonstrated, and having also had regard to all matters raised, the appeal fails and the planning application deemed to have been made under section 177(5) of the 1990 Act as amended is refused.

The Appeal on Ground (g)

36. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The enforcement notice, as corrected, requires the cessation of the use and the removal of all facilitative buildings, structures and associated installations within two months of it taking effect. At the Hearing the appellant requested, instead, a period up to twelve months.
37. Given the fact that Beck Evans employs up to seven persons at the site, and the extent of the demolition and removal of materials from the site that is required, I find the stated period of two months to be wholly unreasonable and unrealistic, and without any proper forethought as to the implications of such, both practicably and humanely. The firm's survival could be at risk along with the livelihoods of all its employees threatened, and not just those employed at the site itself.

38. The Council indicated that a more appropriate location for the use may be in the north of the borough where a vacant site might be found to accommodate the business. Indeed, it was indicated at the Hearing that the Council's economic development team may be able to assist in this regard.
39. In light of this, and to allow for meaningful dialogue to now take place between the two main parties as to possible relocation, for other enquiries that might prove necessary, and also in the interests of the welfare of the staff employed at the site, I intend to extend the period for compliance to eight months.
40. In extending the compliance period I have taken into account that the business is largely passive in nature, and the reasons that the Council issued the enforcement notice makes no reference to any considered impact on the living conditions of neighbouring occupiers. At the Hearing a series of interested parties spoke against the development. I have given due regard to the individual concerns raised here and, in reaching my decision on this particular ground, I have weighed up and balanced the various arguments. In the circumstances, and taking into account the precarious state of the economy, I am, though, satisfied that such an extension is justified in this instance.
41. Accordingly, I consider that the appeal on ground (g) should succeed to that extent and I shall vary the terms of the notice to allow a compliance period of eight months from the date the notice takes effect.

Overall Conclusion

42. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation, as described, and refuse to grant planning permission on the deemed application.

Timothy C King

INSPECTOR

APPEARANCES

For the Appellant

Jim Tarzey Pegasus Group

Daniel Evans Appellant

For the Local Planning Authority

David Bloom London Borough of Bexley

Richard Turek " " " "

Other Interested Parties

Samuel Evans

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Steve Brown

Cllr Alan Downing

Cllr Val Clarke

Cllr Alex Sawyer

Documents

1. Council's notification letters of appeal and the Hearing.
2. Appeal decision ref: APP/Q4625/W/19/3237026 – Oak Farm, Hampton Lane, Solihull.