



Appeal Decision

Site visit made on 4 June 2020

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th August 2020

Appeal Ref: APP/H1515/W/20/3246117

Land adjacent to Wyatts Green Road, Brentwood CM15 0ST

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Kirk Monk against the decision of Brentwood Borough Council.
 - The application Ref 19/01339/FUL, dated 24 September 2019, was refused by notice dated 22 November 2019.
 - The development proposed is agricultural buildings for the production of medicinal hemp and parking provision.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The appellant has submitted an amended plan as part of the appeal, and this is to correct an inconsistency on the original plans. The revised block plan removes the existing shed and caravan. I have considered the appeal on the basis of the revised block plan as I consider that this change would not materially alter the nature of the application and would not therefore prejudice interested parties.
3. Although not a reason for refusal, the effect of the development on flood risk is potentially a determinative issue. Therefore, I have elevated this matter to a main issue.

Main Issue

4. The main issue is whether the proposal would be inappropriate development in the Green Belt and the effect of the development on flood risk.

Reasons

Whether the proposal would be inappropriate development in the Green Belt

5. The appeal site is situated in the Metropolitan Green Belt. The National Planning Policy Framework ('the Framework') indicates (para 145) that, other than in connection with a small number of exceptions, the construction of new buildings should be regarded as inappropriate in the Green Belt.
6. Policies GB1 and GB2 of the Brentwood Replacement Local Plan 2005 restrict development within the Green Belt, except in limited circumstances. However, the policies predate the Framework and therefore I have given the policies

limited weight as a result of its more limited list of exceptions, such that it has not altered my overall decision.

7. The parties both agree that the growing of hemp for medical purposes falls within the definition of agriculture as set out in Section 336(1) of the Town and Country Planning Act 1990. Buildings for agriculture and forestry is one of the listed exceptions at paragraph 145 (a). Therefore, I conclude that the development would not be inappropriate development in the Green Belt and as such it should not be regarded as harmful to the openness of the Green Belt or the purposes of including land within it and is in accordance with the Framework.

Flood Risk

8. I have not been provided with any relevant development plan policies and therefore I have applied the policies in the Framework in assessing the potential of impacts from flooding. The Framework and the Planning Practice Guidance (PPG) indicate that inappropriate development should be directed away from areas at risk of flooding into Flood Zone 1, the area of lowest flood risk. The submitted Flood Risk Assessment identifies that the site is within Flood Zone 3a, which has a high probability of flooding.
9. Paragraph 158 of the Framework states that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The proposed development is classified as a 'less vulnerable' development as defined within the PPG. Therefore, the PPG requires the appellant to carry out a sequential test which compares the proposed site with other available sites to show which one has the lowest flood risk.
10. The appellant has advanced a case whereby the proposal will result in the removal of caravan which is highly vulnerable and therefore the proposed development is not a greater risk and that the Environment Agency have suggested conditions to mitigate any risk. However, in the absence of a sequential test, the proposed development is unacceptable in principle, and therefore it is not necessary for me to consider the detailed flood mitigation proposals. It is only if the appellant could demonstrate that there are no reasonably available sites in Flood Zone 1 that I would go on to consider this mitigation as part of the exception test.
11. Whilst the appellant considers the proposed development is necessary to improve the quality of the land and to enable waste clearance and security and therefore it would not be possible to locate the development elsewhere, I have not been provided with any evidence to demonstrate that those outcomes could not be achieved by a development that was appropriate in Flood Zone 3a.
12. As it has not been demonstrated that there are no reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding the proposal is contrary to the Framework and the PPG.

Other matters

13. The Council consider that the land is not currently in agricultural use as defined by Part 6, Paragraph D1 of the Town and Country (General Permitted Development) (England) Order 2015, however this order is not relevant to the consideration of this application which is for full planning permission.

14. I note that the parties also agree that with appropriate landscaping the development would not be harmful to the character and appearance of the countryside. Therefore, there is no need for me to consider this matter further.

Conclusion

15. In conclusion, whilst I have found that the development would not be inappropriate development in the Green Belt, the effect of the development on flood risk leads me to conclude that the appeal should be dismissed.

G. Pannell

INSPECTOR