



Appeal Decision

Site visit made on 1 December 2020

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th December 2020

Appeal Ref: APP/L5240/W/20/3246855

Land Between 39 and 63 Kenley Lane, Kenley CR8 5ED

- 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 O Lazar against the decision of the Council of the London Borough of Croydon.
 - The application Ref 19/04466/FUL, dated 18 September 2019, was refused by notice dated 11 November 2019.
The development proposed is erection of stable block adjacent to northern boundary, post and wire fencing around the field, and access gate and post and wire fencing along the Kenley Lane frontage.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - i) whether or not the proposal would be inappropriate development in the Green Belt;
 - ii) the effect of the proposal on highway safety;
 - iii) the effect of the proposal on features of nature conservation interest; and
 - iv) the effect of the proposal on the character and appearance of the area, including with regard to the effect on trees.

Reasons

Whether Inappropriate Development in the Green Belt

3. The appeal site is located on Kenley Lane and is within the Green Belt. This part of Kenley Lane comprises a narrow road which is for the most part lined by mature trees and established vegetation, including within a fairly wide strip across the frontage of the appeal site and adjacent land to the south. Beyond this, the site predominantly comprises an area of open grassland with some further scattered individual trees and groups of trees, including running along the boundary to the north of the site. The immediately surrounding land is similarly open, and while there are some buildings beyond, those closest to the site are typically set on spacious plots. Overall, these factors result in a verdant and distinctly open and rural character to the appeal site and area.
4. Policies SP7 and DM26 of the Croydon Local Plan 2018 (CLP) outline that the extent of the borough's Green Belt will be safeguarded, and refer in this regard to the provisions of National planning policy. Policy 7.16 of the London Plan -

The Spatial Development Strategy for London Consolidated with Alterations Since 2011 (LP) further states that the strongest protection will be given to Green Belt in accordance with national guidance, and that inappropriate development should be refused, except in very special circumstances.

5. The National Planning Policy Framework (the Framework) advises that the fundamental aim of Green Belt policy is to keep land permanently open. Within the Green Belt, it identifies that the construction of new buildings is inappropriate, although specified exceptions include buildings for agriculture; and the provision of appropriate facilities for outdoor sport or outdoor recreation as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it. Certain other forms of development are also not inappropriate provided that they preserve openness and do not conflict with the purposes of Green Belt. These include engineering operations and material changes of use of land such as for the purposes of outdoor sport or recreation.
6. The appellant's evidence refers to the use of the site for personal horticultural purposes (such as the planting of fruit trees and vegetables) and for grazing of up to 2 horses. Associated with this, the appeal proposes access from Kenley Lane, fencing, and an outbuilding for the stabling of horses and for storage.
7. The keeping of horses would enable an outdoor recreational activity to take place, and from the information before me, I see no reason that such activity need be for public, rather than private, enjoyment. Horticulture is a form of agriculture. There is limited detail before me of the nature of the proposed horticultural use. Even so, while the Council suggests that agriculture commonly relates to use of land for production, I have not been directed to any requirement that such production should be demonstrated to be necessary, nor that it could not be to meet personal needs or to simultaneously provide for recreation. I am therefore satisfied that the use of the site for horticulture, and for horse grazing and the provision of appropriate facilities associated with such a use, are capable of comprising exceptions to inappropriate development in the Green Belt.
8. In my view, grazing use or the planting of fruit trees or vegetables on the site would have no appreciable effect on the openness or purposes of Green Belt, and the site would remain noticeably open land. Accordingly, even if I were to consider that the site currently has a 'nil use' as asserted by the Council and that the proposal would result in a material change of use of the land, I find that this would not be inappropriate.
9. The stable building would occupy land that is currently undeveloped, and any building here would therefore inevitably have some impact on the openness of the area. Nevertheless, in light of the exceptions within the Framework which allow for buildings in the Green Belt, it is also relevant to consider its function. In this regard, neither the 2 stables which make up the largest part of the building, nor the small store area seem to me to be excessive or to go beyond what would be appropriate to support the maintenance and keeping of horses on the site for recreation. Furthermore, the modest footprint and height of the stable building would significantly limit its mass and bulk. It would also be discreetly positioned close to the boundary to the north of the site. As a result, it would be screened from many viewpoints by established boundary vegetation, and where it would be seen, this would be against the backdrop of

the adjacent trees and vegetation limiting the visual impact. Taking these factors into account, I find that the building would preserve the openness of the Green Belt and would not conflict with its purposes. As a consequence, it would comprise an exception to inappropriate development in the Green Belt.

10. The fencing around the site would predominantly comprise widely-spaced slender posts, between which would be lightweight wire mesh and strings which would retain significant views through the majority of the boundary. The minimal design of the gate with substantial gaps between bars would similarly allow views through. In combination with their low height, I therefore find that the fencing and gate, both individually and cumulatively, would be low-key and unobtrusive features and their visual presence and enclosure of the site would be minimal. Similarly, the narrow width and fairly short length of the access from Kenley Lane would limit visual impacts and it would also be unsurfaced, avoiding an overly engineered appearance. To all intents and purposes, I therefore find that these elements of the development would not materially affect the openness or purposes of Green Belt.
11. The site is subject to an Article 4 Direction which removes permitted development rights including for the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure; and for the formation, laying out and construction of a means of access to a highway. Nevertheless, for the reasons above, I conclude on this main issue that the proposal would comprise an exception to inappropriate development in the Green Belt. It would therefore accord with the Framework and Policies SP7 and DM26 of the CLP and Policy 7.16 of the LP, and no very special circumstances need be demonstrated in order to justify it.

Highway Safety

12. Few properties are served by the section of Kenley Lane which passes the appeal site. There is also a 20mph limit, and I do not doubt that levels and speeds of vehicular traffic are therefore likely to be low. However, interested parties refer to the popularity of the route past the site to provide access to Kenley Common, an impression supported by the number of pedestrians and cyclists that I observed using the lane during my visit.
13. The close proximity of the gate to the proposed access to Kenley Lane would require vehicles to stop outside the site to open and close it. Given how narrow Kenley Lane is at this point, this would present an obstacle to other highway users. The width of both the lane, and the access onto the site between retained trees, may also make manoeuvring vehicles to and from the site difficult, particularly for larger vehicles, resulting in potential for further obstruction. However, such occurrences would be likely to be of short duration, and in view of the low levels of vehicular traffic past the site, I do not consider that there would be serious detriment to other highway users.
14. Be that as it may, I observed that while this part of Kenley Lane is fairly straight, views from the proposed access in either direction were notably obscured by the fairly dense vegetation which extends close to the edge of the highway along the front of the appeal and neighbouring sites. This would not be worsened by the open fencing proposed, but visibility for vehicles exiting the site would still be severely limited until a point where they would have travelled some way onto the highway. In the absence of firm evidence to demonstrate otherwise, I am not persuaded that there would be satisfactory visibility from

the access to avoid conflict with pedestrians, cyclists, and other users of the highway. I have no firm information on levels of future use of the access, but even if movements were infrequent as suggested by the appellant, this is not a compelling justification for development that I consider would adversely affect the safety of pedestrians and users of the highway.

15. I therefore conclude on this main issue that the proposal would cause unacceptable harm to pedestrian and highway safety. Accordingly, it would conflict with Policies DM29 and DM30 of the CLP and Policies 6.3 and 6.12 of the LP. Amongst other things, these policies require that development does not have a detrimental effect on highway safety or the transport network. It would also be contrary to the Framework which advises that development should not result in unacceptable impacts on highway safety.

Nature Conservation

16. The site is part of a recognised Site of Nature Conservation Interest (SNCI) which I am advised is designated for its grassland habitats. The appellant has pointed to a description of this part of the SNCI as 'Kenley House Pastures', and I acknowledge that grazing on the land may not in itself be incompatible with what is usually understood by the term pasture. I also note the materials and construction methods of the stable building and fencing and their fairly small scale, and that some elements of the proposal may not in themselves require planning permission.
17. Even so, in light of the designation of the site, I consider there is a reasonable likelihood that protected species and habitats could be present, and that they could be affected by the proposal. Without substantive information on the condition of the site, any species that it may support, or how the development as a whole may affect these, I can therefore give little weight to the appellant's assertion that nature conservation interests would not be harmed. There are also no firm details to demonstrate that suggested enhancements, including through the use of the site for grazing and horticulture or through additional habitats on the site, would be realised.
18. Accordingly, I am not satisfied that features of nature conservation interest would be suitably protected, far less enhanced, and I conclude on this main issue that the development would conflict with Policy DM27 of the CLP and Policy 7.19 of the LP. Broadly, these policies protect biodiversity and land designated for biodiversity value, and seek enhancement where possible. For similar reasons, there would also be conflict with requirements within the Framework seeking the protection and enhancement of biodiversity.

Character and Appearance

19. I have already found that the proposed boundary fencing, gate and access from Kenley Lane would not harm the openness which is characteristic of this area. I accept that there are few other accesses onto this part of Kenley Lane, but the access itself would be fairly narrow and the gate to it of even lesser width, minimising its visual impact. The materials, low height and lightweight design of the gate and fencing would also serve to limit the enclosure of the site visually. Moreover, neither the boundary treatment or unsurfaced access would be out of keeping with similar nearby examples that I observed on Kenley Lane and they would reflect features commonly found within rural locations. From my visit and the information before me, I also agree with the

Council that the stable building would not be an uncommon feature, and I find that it would not be a prominent or out of character on the site.

20. A number of trees on the appeal and neighbouring sites are protected by a Tree Preservation Order (TPO). The TPO identifies a Horse Chestnut tree noted as T2 fairly close to the location of the proposed stable building, but the appellant comments that this tree was struck by lightning and the stump removed. It was apparent at my visit that the tree was no longer present on the site, and I consequently see no necessity to further consider any effects of the proposal on T2.
21. The proposed access would run through the strip of trees along the frontage of the site. These are protected by the TPO as part of woodland group W1 and contribute to the verdant character of the area. However, the appellant has submitted details of consent for works to trees on the site including the removal of 2 trees along the frontage broadly at the point of the access. At my visit, I saw that there is an existing gap between the trees here, and I have no compelling basis to disregard the appellant's statement that no trees would be removed. Given the nature of the boundary treatment and unsurfaced access, I also see no reason that the retained trees would be detrimentally affected by the proposal. Nonetheless, the trees to the site frontage contribute to the restricted visibility for vehicles leaving the site that I have identified above.
22. For these reasons, I am satisfied that the proposal would not be incongruous or unduly urbanising, and that mature trees and the verdant and rural character of this part of Kenley Lane would not be unacceptably harmed. I therefore find no conflict with Policies DM10 or DM28 of the CLP or Policy 7.21 of the LP which, amongst other things, seek development that respects the character and appearance of an area including the contribution made by trees. I similarly find no conflict with requirements within the Framework which broadly seek development that is sympathetic to local character, which conserves and enhances the natural environment, and which recognises the intrinsic character and beauty of the countryside and of trees and woodland.

Other Matters

23. The proposal would facilitate use and maintenance of the site. I note support within the Framework for enhancing the beneficial use of Green Belt which may include providing opportunities for outdoor sport and recreation. However, this is alongside requirements which also seek the protection and enhancement of biodiversity and to avoid unacceptable impacts on highway safety, and for the reasons set out above, I do not consider that the proposal achieves those aims.
24. Although provision of fencing and an access may ordinarily be permitted development, the Article 4 direction which applies to the appeal site means that permission is required in this case, and I have considered the proposal on its merits with regard to relevant policies of the development plan.
25. Given the fundamental role of the access to the development as a whole, I do not consider that the proposal could proceed without it. Accordingly, I am not satisfied that it would be appropriate to consider further issuing a split decision.

Conclusion

26. Although I have found that the proposal would not be inappropriate in the Green Belt and that the character and appearance of the area would not be

unacceptably harmed, this does not outweigh the harm that I have found would be caused to highway safety. I am also not satisfied that features of nature conservation interest would be suitably conserved. I find that the proposal would conflict with the development plan when it is read as a whole and there are no material considerations which indicate that a decision contrary to the development plan should be reached.

27. For the reasons given above, I therefore conclude that the appeal should be dismissed.

J Bowyer

INSPECTOR