

Appeal Decisions

Site Visit made on 12 October 2021

by Martin Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 November 2021

Appeal A - Ref: APP/G5180/W/21/3271282

Yellow Barn, Holwood Farm, New Road Hill, Keston, BR2 6AB

- 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 Gary Mercer, Holwood Farm Ltd against the decision of London Borough of Bromley.
 - The application Ref DC/20/02390/FULL1, dated 27 June 2020, was refused by notice dated 16 February 2021.
 - The development proposed is described as "The application seeks retrospective planning permission for the change of use of part of the outbuilding known as the 'Green Barn' to a fishmonger (Use Class A1) and alterations to the car park layout".
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Appeal B - Ref: APP/G5180/W/21/3272139

Yellow Barn, Holwood Farm, Keston, BR2 6AB

- 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 Gary Mercer, Holwood Farm Ltd against the decision of London Borough of Bromley.
 - The application Ref DC/20/02391/FULL1, dated 27 June 2020, was refused by notice dated 16 February 2021.
 - The development proposed is described as "In response to Health and Safety changes due to COVID-19 this application seeks approval to change the use of part of the Green Barn to provide tea & coffee making facilities, the use of a grassed area for outside customer seating, the reuse of a storage container for Click and Collect facilities and the addition of 4 car parking spaces."
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Decisions

1. Appeal A is allowed and planning permission is granted for the change of use of part of the outbuilding known as the 'Green Barn' to a fishmonger (Use Class A1) and alterations to the car park layout at Yellow Barn, Holwood Farm, New Road Hill, Keston, BR2 6AB in accordance with the terms of the application, Ref DC/20/02390/FULL1, dated 27 June 2020, subject to the conditions set out in the attached Schedule.
2. Appeal B is dismissed.

Preliminary Matters

3. As set out above, there are two appeals on this site. I have considered each proposal on its individual merits. However, to avoid duplication I have dealt with the two schemes together, except where otherwise indicated.
4. Since the appeal was submitted, the Government published the revised National Planning Policy Framework (the Framework) to which I have had

regard and on which the main parties have had the further opportunity to comment.

Main Issues

5. The main issues in the case of Appeal A are:

- i) whether or not the proposal is inappropriate development in the Green Belt, and
- ii) the effect of the proposal on the living conditions of nearby occupiers, with particular regard to noise and disturbance.

6. The main issues in the case of Appeal B are:

- i) whether or not the proposal is inappropriate development in the Green Belt,
- ii) the effect of the container on the openness of the Green Belt, and
- iii) the effect on the character and appearance of the area.

7. In addition to the above, the further main issue in respect of both appeals is, if the proposals are 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

Appeal A

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

8. The appeal scheme comprises the change of use of part of an existing building to a use comprising a fishmonger. Paragraph 150 of the Framework states that certain 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. These include the re-use of buildings, provided that the buildings are of permanent and substantial construction. This requirement is reflected in the provisions of policy 49 of the London Borough of Bromley - Local Plan (2019) (the Local Plan).
9. The proposal would re-use part of the existing building at the site, which the Council highlight has been in place for a number of years and was previously used for agricultural purposes. The principal concern is in respect of the potential for the proposal to result in an intensification of the use of the site with consequential effects on the openness of the Green Belt, resulting from increased numbers of vehicles accessing and parking at the site.
10. I observed that a farm shop and café also operate at this location, adjacent to the building within which the fishmonger is located. It is likely that there is a substantial amount of traffic and vehicle movements associated with these existing uses. There is a parking area to the front of the existing buildings that accommodates vehicles that are attracted to the site. While I note that the scheme includes alterations to the parking layout, it does not propose any expansion of the parking area itself.

11. As a consequence, there would not be any introduction of parked vehicles into areas that were not previously able to accommodate them. I am also particularly conscious that the size of the floorspace dedicated to the fishmonger use is only a small part of the building within which it is located and not significant when considering the size of the existing business operation at the site. Thus, the additional vehicles that would be attracted to the site would be accommodated within the existing car park, would not extend beyond the confines of the parking area and would not result in the number of vehicles being parked within the site exceeding that which could currently take place.
12. Accordingly, the proposal would comprise the re-use of a building that is of a permanent and substantial construction, and it would not result in a diminution of, and consequently would preserve, the openness of the Green Belt at this location. The scheme would also not conflict with the purposes of including land within the Green Belt. I find the development to not be inappropriate development and the scheme therefore accords with the requirements of the Framework, as well as policy 49 of the Local Plan.

Living conditions

13. The site currently accommodates a farm shop business, with associated café. The fishmonger occupies only a small section of an existing building, with limited floorspace. As a consequence, I find that it is unlikely that any increase in traffic accessing the site in association with the fishmonger would be significantly greater than that which could access the site in association with the existing operation. Indeed, it is inevitable that some trips will be shared with customers using the farm shop also using the fishmonger. In any event, in my view, given the scale of the proposal and that of the existing operation, any increase in traffic movements would not be such that it would result in unacceptable living conditions for nearby occupiers, particularly in light of the amount of traffic that is likely to pass the site currently along the highway. Similarly, any increase in deliveries is not likely to have a substantial effect.
14. I note that the car park is proposed to be amended to improve its layout and ability to accommodate vehicles. The Council raise no objection to the development on highway safety grounds, indicating that the level of parking provision is acceptable. I acknowledge that comments have been made in respect of customers parking in a nearby private parking court associated with the adjacent dwellings. However, there is no substantive evidence before me that the proposal would result in the same occurrences. Therefore, I have no reason to consider that the proposed parking arrangements or any increase in traffic movements would unacceptably affect living conditions.
15. I am conscious that some concern has been raised in respect of the provision of waste storage facilities at the site. While at the time of my visit I observed the presence of commercial waste bins, I find that in order to ensure that there is no adverse effect on neighbouring occupiers in this regard, a condition would be necessary in order to require further details in this respect. This would ensure that appropriate waste facilities are provided and retained. Subject to this, there would be no harm in this respect.
16. Comment is made that at times the fishmonger operates early in the morning and late into the evening, although this has been disputed. Given the proximity of the operation to residential properties there is potential for conflict between the two uses. I am aware due to the information submitted that the hours of

operation of the fishmonger have expanded over time, but I am also conscious that the appellant states that they are not seeking operating hours beyond those of the farm shop. Given my findings above in respect of the use being small compared to the farm shop, limiting the operating hours to those of the farm shop would be appropriate and would ensure that the living conditions of nearby occupiers are safeguarded.

17. Accordingly, I find that subject to the planning conditions outlined above, the proposal would not result in unacceptable living conditions for nearby occupiers, with particular regard to noise and disturbance. No specific policy has been cited by the Council in respect of living conditions, nonetheless the proposal would comply with the living condition protection aims of the Framework.

Appeal B

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

18. The Framework, at paragraph 149, indicates 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. The container is of such permanence that in my view it is correct to consider it as a new building. Having regard to paragraph 149 of the Framework, the container does not accord with any of the stated exceptions and thus is inappropriate development in the Green Belt.

The effect of the container on the openness of the Green Belt

19. The Framework, at paragraph 137, indicates that openness and permanence are the essential characteristics of the Green Belt. The siting of the container results in the introduction of a further developed element within the site, to the side of an existing building. Whilst the container is not, when considered in isolation, a vast structure, it would nevertheless result in a slightly increased quantum of built development at the site, both in spatial and visual terms. I observed that the container was partially visible from the adjacent road and thus was an observable addition to the site. Consequently, the scheme would not preserve, and there would be a small loss of, the openness of the Green Belt.
20. That the site was once occupied by a large agricultural building has little bearing on my consideration, as this was removed some time ago. I have properly made my assessment on the current situation.

Character and appearance

21. The container is located adjacent to an existing building. It is subservient to this building, with which it shares a close visual affinity. Furthermore, notwithstanding my finding in respect of openness above, it would be contained within the confines of the site and would relate well to its existing character. It would not unacceptably urbanise the location. Therefore, there would be no harm to the character and appearance of the area. The container would therefore accord with the design aims of the Framework.

Other considerations

22. The appellant outlines that the container is used in association with a "Click and Collect" service that has been established in response to the COVID-19 pandemic. I recognise the benefits associated with this, both to the business as well as to the wider community which the facility serves. This is highlighted by the letters of support that have been provided referring to the service. I am conscious that uncertainty remains over the future extent of the pandemic and therefore appreciate the value placed on the facility. Nonetheless, there is limited information before me in respect of alternative arrangements that could be made for the function served by the container.

Green Belt Balance

23. I have found that Appeal B would result in inappropriate development in the Green Belt and the Framework establishes that substantial weight should be given to any harm to the Green Belt. It would also lead to a small loss of openness to the Green Belt. There would be no harm to the character and appearance of the area, however the lack of harm in this respect is a neutral matter in the consideration of the appeal.
24. I have had regard to the other considerations outlined by the appellant and summarised above; I accord these factors moderate weight in favour of the appeal scheme. Nonetheless, substantial weight must be given to harm to the Green Belt. Accordingly, in this case the other considerations do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist.
25. I have had regard to the suggestion that a condition could be imposed requiring removal of the container should it not be used for a period of 12 months. However, there would still be harm to openness resulting from its siting and there is no certainty over the period for which it would be sited. This suggestion does not therefore dissuade me from my findings above.

Other Matters

26. In respect of Appeal A, I am aware that matters including the location of the site in a safeguarding zone and drainage have been cited. No concern is raised by the Council on these matters and there is no substantive evidence before me that would lead me to conclude that the proposal would have any adverse effect in these respects. There has also been concern over the possible use of the fishmonger as a wholesale operation. The appellant states this was a temporary occurrence which has in any event ceased. On the basis of the evidence, I am satisfied that the scale of the development proposed is acceptable at this location.
27. There is also mention of alterations to a locally listed building. However, Appeal scheme A refers only to the Green Barn and not the Yellow Barn. As such, this is not a matter I need to consider.
28. I am aware of concerns expressed in respect of the elements proposed under Appeal B other than the container. While the Council have raised no objection on the basis of these matters, given that I am dismissing the appeal for reasons following from the main issues above, I have no need to consider these matters further.

29. Reference is made to the possibility of staff accessing and using a nearby area for parking. However, this is not part of the appeal schemes before me and so has little bearing on my decisions. Any unauthorised use of land in this regard would be a matter for the Council.

Conditions

30. As the development has already commenced, I have no need to impose a condition in respect of commencement. To define the scope of the permission and in the interests of certainty, I have included a plans condition. I have found the proposal to be acceptable partly on the basis of the scale and type of development that is proposed. Therefore, in order to ensure that possible future changes do not adversely affect neighbouring occupiers, I consider it necessary to impose a condition limiting the use to that which was applied for.
31. I note comment that it is not necessary to impose a condition in respect of operating hours as it is contended that this is covered by the farm shop operation. However, the fishmonger would be authorised by a separate planning permission and thus a condition is required. The appeal contains details of the opening hours imposed on the existing farm shop and I consider it appropriate to restrict the fishmonger operation to the same hours.
32. In the interests of safeguarding the living conditions of nearby occupiers, I have also included a condition in respect of waste storage details, although I have redrafted the condition suggested by the Council. In the interests of highway safety, given that I cannot be certain that the revised parking layout has been implemented fully, I have imposed a condition in this respect.

Conclusion

33. In respect of Appeal A, I find that the proposal would not be inappropriate development in the Green Belt and would not result in an unacceptable effect on the living conditions of nearby occupiers. Therefore, for the reasons given above and having regard to all other matters raised, I conclude that Appeal A should succeed.
34. However, for the reasons given above, I conclude that Appeal B should be dismissed.

Martin Allen

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - 1:1250 scale Site Location Plan - Revision 2
 - 1:500 scale Site Block Plan – Revision 2
 - Green Barn Elevations - Revision 1
 - Green Barn Plans - Revision 1
 - Car Park: Existing Layout, marked (post October 2018)
 - Car Park: Pre-existing layout, unmarked (pre October 2018)
- 2) The premises shall be used for a fishmonger and for no other purpose (including any other purpose in Class A1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).
- 3) The use shall not operate before 09:00 and after 18:30 Monday to Saturday, and before 10:00 and after 17:30 on Sundays.
- 4) Within two months of the date of this decision, details of arrangements for the storage of refuse and recyclable materials shall be submitted to the Local Planning Authority for approval. The approved arrangements shall be fully implemented within one month of receiving approval and shall be retained available for use at all times thereafter.
- 5) The car parking spaces shown on the approved plans shall be fully marked out and made available for use within two months of the date of this decision. Thereafter, they shall be kept available at all times for the parking of motor vehicles by visitors to the site and for no other purpose.