



Appeal Decision

Site visit made on 17 May 2022

by C Shearing BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd June 2022

Appeal Ref: APP/H1515/W/21/3285390

Land at Chitral, Wyatt's Green Road, Swallows Cross, Brentwood CM15 0SS

- 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 Coventry of Edward James Property Limited against the decision of Brentwood Borough Council.
 - The application Ref 20/01502/FUL, dated 15 October 2020, was refused by notice dated 1 July 2021.
 - The development proposed is redevelopment of the site comprising demolition of existing commercial buildings, removal of rubble and bunds, spoil heaps and tipped waste and erection of 17 new dwelling houses (use class C3), together with associated landscaping, vehicle and cycle parking and infrastructure works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council has recently adopted the Brentwood Local Plan 2016-2033 (the BLP), superseding the saved policies of the 2005 Replacement Local Plan. The main parties have both commented on the implications for this appeal and I have taken those comments into account, determining the appeal scheme in regard to the most up to date development plan situation.
3. A Unilateral Undertaking under section 106 of the Town and Country Planning Act 1990, dated 10 May 2022, was submitted during the appeal process (the UU). This related to the provision of affordable housing. I have had regard to the UU in reaching my decision.
4. The appellant has submitted additional drawings which provide information on the volume of existing buildings, and which overlay the existing and proposed buildings. As these provide additional clarification and do not amend the development proposed, I have taken those drawings into account.

Main Issues

5. The main issues are:
 - i) Whether the proposal would be inappropriate development in the Green Belt, and;
 - ii) If the proposal would be inappropriate, whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by

other considerations so as to amount to the very special circumstances required to justify the proposal.

Whether Inappropriate Development

6. Paragraph 149 of the Framework states that the construction of new buildings in the Green Belt should be regarded as inappropriate and provides a list of exceptions. These include proposals relating to limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings) which would, under the second limb of this exception, not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.
7. Policy MG02 of the BLP provides a number of criteria relating to development in the Green Belt. Among other things it states that the Green Belt within the Borough will be preserved from inappropriate development so that it continues to maintain its openness and serve its key functions, and that such proposals will be considered in accordance with national planning policy.
8. The UU has the ability to deliver six units for affordable rent tenure within the development. As the Council agree that this provision would address an identified need for affordable housing within the Borough, I am satisfied that the second limb of paragraph 149 g) is applicable to this appeal.
9. The main parties agree that the central part of the site, comprising commercial uses and including the associated areas of hard surfacing, constitutes previously developed land, as defined by the Framework. The Council do not dispute that the man-made bunds, which run along the eastern side of the commercial uses, were also included within the areas it considered to be previously developed land. I do not dispute this approach.
10. However, the areas of land beyond the bund to the east, and the land to the west of the commercial uses behind the property of Chitral, are functionally and physically separated from the commercial uses. The area to the east comprises predominantly overgrown scrubland while the land north of Chitral is a paddock of grassland with gated access through the garden of Chitral. Based on the information before me and in the absence of substantive evidence to the contrary, I find the east and western parts of the site do not fall within the definition of previously developed land or its curtilage.
11. The appellant has demonstrated that footprint of the proposed buildings would lie entirely within the previously developed land. However, the areas associated with the use of those buildings, including residential curtilages and the proposed parking yard to the northern side of the site, would extend into land which is not. I return to the matter of these areas below.
12. The appellant has drawn my attention to an appeal decision relating to a golf course where the appeal site was considered in its entirety rather than distinguishing between the developed and undeveloped parts of the site¹. While I have little information of that appeal before me, the decision states that both parties agreed the entirety of the site was previously developed land. It is also not unusual that a golf course might include large areas of undeveloped land

¹ APP/H151/W/18/3209204

within its curtilage. As such, the circumstances would appear to be materially different to the appeal site.

13. Under the exception to inappropriate development at paragraph 149 g) of the Framework, consideration of the impact on openness forms a part of the assessment of whether the proposals are inappropriate. Openness of the Green Belt has a spatial aspect as well as a visual aspect. Openness is also open textured and a number of factors can be relevant in its consideration.
14. The site is in a rural location outside any defined settlement boundary. Within the area of previously developed land there are a number of buildings which are predominantly single storey with low level roof forms. The tallest building is situated in the north western corner of the site. Between the buildings the land is hard surfaced and used for purposes including parking and storage, and includes piles of building materials. The southern portion of the site, closest to Wyatt's Green Road, is hard surfaced and used as a car park and turning areas. A number of storage containers also exist on the southern part of the site.
15. The openness of the wider area is established by the dispersed pattern of development and the predominance of open fields, woodland and vegetation. The predominantly low level buildings and structures existing on the site, and their set back position from the road, contribute towards these qualities of openness. In this case the proposal would significantly alter the existing sense of openness by erecting 17 dwellings with associated access road, areas for parking and vehicle manoeuvres, boundary treatments and domestic paraphernalia that would arise from the residential occupation of each dwelling.
16. While a quantifiable assessment of comparative footprint and volume figures is not the only determining factor in considering impact on openness, it is, nonetheless, useful in assessing the extent of change in built form on the site. The Council have not disputed the revised figures provided by the appellant. These state that the proposal would entail a 149% uplift in the volume of buildings on the site and a 21% increase in footprint. I do not consider the removal of the bund should be specifically applied to these figures as it reads as a landscape feature rather than built form.
17. In addition to these significant uplifts, the proposed development would be notably taller than the existing buildings, which would be replaced with predominantly two storey houses with pitched roofs. The distribution of these taller buildings across the site would also be further dispersed compared to the existing, particularly through bringing development close to the front edge of the site and further east. Even with the significant extent of the existing bund, the proposed development would be greater in height, particularly along this eastern edge.
18. In terms of visibility, the site is bound by mature trees and woodland including a buffer of woodland which lines the edge of the highway. As a result, the existing development on the site has very little visibility in both nearby and far reaching views. The appellant's View Point Assessment (VPA), demonstrates that there would be some increased visibility of the proposed development from the junction to the west, particularly in winter months, when the roof forms and parts of the first floors of the development would be visible. Inevitably the positioning of two dwellings close to the edge of the highway, and the creation of an access which provides views into the development, would also increase the visual prominence of development on the site when

viewed from Wyatt's Green Road. While the visual effects on openness would be limited to these localised views, the effects would nonetheless be significant. In any event, there would be a substantial decrease in the spatial aspect of the Green Belt's openness, irrespective of how visually obvious the proposed development may be.

19. When these factors are taken together, the harm to openness would be substantial, and so the proposal would not accord with the exception under the second limb of paragraph 149 g). As a consequence, it would constitute inappropriate development in the Green Belt.
20. With regard to the proposed development outside the areas of previously developed land, this could fall to be considered under paragraph 150 e) of the Framework. This states that the change of use of land in the Green Belt is also not inappropriate, provided it preserves its openness and does not conflict with the purposes of including land within it. The proposal would still have a much greater impact on the openness of those areas than the existing uses in this case. This is particularly due to the introduction of the boundary treatments, parking areas, as well as formal landscaping and pathways on that land. As such the development on those areas would fail to preserve the openness of the Green Belt, and would also consequently be inappropriate development under the terms of the Framework.

Other Considerations

21. The Framework makes clear that inappropriate development is, by definition, harmful to the Green Belt and 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.
22. The development would provide 17 new dwellings, of which 6 would be affordable. This is a clear benefit of the proposal, to which I attach considerable weight.
23. The site is currently dilapidated in its appearance and the buildings and land are generally in an untidy condition. By comparison the proposed buildings would be sympathetically designed to reflect buildings typical of a rural farmstead which would complement the wider character of the area. They would also respect the scale and form of the other nearby buildings. The introduction of formal landscaped areas to each side of the development including ponds and orchards, would also provide a visually pleasing setting to the development. While this is the case, due to the heavy screening from landscaping around the site, the set back of the development from the road and its scale, the visual harm of the existing development on the wider landscape character is limited. I therefore attach moderate weight to the benefit of tidying the land and removing existing buildings.
24. There would also be improvements to biodiversity and surface water management through the new landscaping and ponds, and the removal of substantial areas of hard surfacing, which attracts moderate weight. There may also be some improvements to the living conditions of nearby occupiers in terms of noise, however without evidence on this matter this consideration is given limited weight.

25. The appellant notes that these positive attributes align with the aims of Policy MG02 part c) of the BLP insofar as it seeks enhancements to the Green Belt and improvements to damaged and derelict land. However, as the proposal is in conflict with other parts of that policy as concluded below, and as I afford only moderate weight to the visual improvements to the site, the compliance of the proposal with part c) of Policy MG02 does not alter the weight I give to these benefits.
26. In the absence of substantive evidence, and based on my assessment and site visit, I find that the proposal would preserve the setting and significance of the grade II listed heritage asset of Rays Place Farmhouse to the north, rather than enhance it. This is a neutral matter and as such does not attract weight in favour of the proposal. Third parties refer to the imposition of a new speed limit on the highway that would provide a notable benefit to highway and pedestrian safety. However, this does not form part of the development proposals before me and as such attracts no weight.
27. With regard to the Council's future review of the use of previously developed land for housing, I have no substantive evidence before me to demonstrate the likelihood that this would include the appeal site, nor the extent of development that the Council may wish to see on the site, should that occur. This circumstance attracts minimal weight.
28. The appellant refers to other benefits listed in its Statement of Case as matters not in dispute. However, while the development may be policy compliant in these other respects, these matters are neutral and do not attract weight in favour of the development.
29. The appellant has drawn my attention to two appeal decisions which considered similar issues, one being Ingatestone Garden Centre² and the other Colney Heath³. In terms of the former, I understand that site was proposed to be allocated for housing in the emerging local plan. Furthermore, the quantum of housing proposed was significantly more, and the Inspector found the level of harm caused to openness was at the low end of the spectrum. These circumstances are very different to those of the appeal before me. With regard to Colney Heath, this also entailed a much greater level of market and affordable homes as well as self-build plots. Similarly, the balance of considerations in that instance was different to the appeal before me.
30. While the benefit of the new housing, visual and environmental improvements to the site attract some weight in favour of the development, taken together, the weight of the other considerations in this instance would not be sufficient to clearly outweigh the harm to the Green Belt which I am required to give substantial weight. Consequently, the very special circumstances necessary to justify the development do not exist.
31. The development proposed would therefore be contrary to Policy MG02 of the BLP and the objectives of the Framework insofar as they seek to resist inappropriate development in the Green Belt other than where very special circumstances exist.

² APP/H151/W/20/3256968

³ APP/B1930/W/20/3265925

Other Matters

32. There is disagreement between the main parties regarding whether the Council have a 5 year supply of land for housing. If they did not, I would be led to paragraph 11 of the Framework. However, as the policies in the Framework, insofar as they relate to the Green Belt, provide a clear reason for refusing the development proposed (based on my findings above), the presumption in favour of sustainable development would not apply.
33. The Council report that as a result of the adoption of the BLP earlier in 2022, the proposal now fails to comply with a number of other new policies. These include Policy BE01 in respect of carbon emissions; BE02 regarding water efficiency and management, Policy BE04 regarding heat risk, and Policy BE07 relating to connections to digital infrastructure. The appellant has suggested that these matters could be addressed by planning conditions. I have not been provided with wording for such conditions, however, as the appeal is dismissed for matters relating to the Green Belt, this is not a matter I need to consider further.
34. In respect of Policy HP05 of the BLP which relates to affordable housing, the UU is capable of securing the required 35% affordable housing contribution, thereby meeting the first criteria of the policy. I have afforded weight to this in my decision. I have also noted the dispute between the main parties regarding several aspects of the UU. However, as the appeal is dismissed on Green Belt grounds, I do not intend to consider those disputes further.

Conclusion

35. For the reasons set out above, the proposal would conflict with the development plan and the Framework. There are no material considerations, including certain approaches of the Framework, worthy of sufficient weight that would indicate a decision should be made other than in accordance with it. The appeal should therefore be dismissed.

C Shearing

INSPECTOR