



Appeal Decision

Site visit made on 21 September 2022

by Peter White BA(Hons) MA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20/10/2022

Appeal Ref: APP/G5180/W/21/3286471

Land between 57 and 67 Fox Lane, Keston BR2 6AL

- 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 Keston Homes Ltd against the decision of London Borough of Bromley Council.
 - The application Ref DC/21/00828/FULL1, dated 19 February 2021, was refused by notice dated 12 May 2021.
 - The development proposed is the erection of a five bedroom dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The planning application was made in the names of David Clapham & Dorothy McQueen of Keston Homes Ltd, but the appeal is made in the name of Mr Tim Clapham of Keston Homes Ltd. I have therefore considered the appellant to be Keston Homes Ltd.
3. The appellant's statement appears to make a claim for costs. However, beyond a brief and general request for an award to be made, there is no supporting evidence as to why unreasonable behaviour may have occurred, or how this may have resulted in wasted expense in the appeal process. Therefore, I have not deemed this a substantive application for an award of costs and have considered the matter no further.

Main Issues

4. The main issues are:
 - whether the proposed development would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;
 - the effects of the proposed development on the openness of the Green Belt;
 - the effects of the proposed development on the character and appearance of the area;
 - the effects of the proposed development on highway safety;
 - the effects of the proposed development on biodiversity; and

- If the development is 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.

Reasons

Whether inappropriate development in the Green Belt

5. Policy 49 of the London Borough of Bromley Local Plan 2019 (BLP) and policy G2 of the London Plan 2021 (LP) broadly conform to the general thrust of national Green Belt policy set out in the Framework.
6. The Framework establishes that the construction of new buildings in the Green Belt should be regarded as inappropriate, subject to exceptions as set out in paragraph 149; one such exception relates to limited infilling in villages.
7. The Framework does not provide a definition of 'limited infilling in villages'. Assessment as to whether the appeal site is within a village, and constitutes limited infilling, is therefore a matter of planning judgement, including the situation 'on the ground'.
8. Fox Lane extends to the south-west beyond the built-up core of the village of Keston. It contains a ribbon of residential development on one side, opposite an undeveloped area of fields and woodland. It is a narrow lane of rural character with no footways. The appeal site is located beyond a public footpath at the end of a continuous row of residential dwellings. It stands as a narrow undeveloped gap before two further dwellings, and buildings on Jackass Lane.
9. To the north-east of the public footpath the driveways, low boundary walls, and limited gaps between large houses give this area a built-up character. In contrast, to the south-west a more spacious character is found with the open frontage and flat-roofed and largely single-storey dwelling at 67 Fox Lane, and the traditional rural character of 69 Fox Lane behind an established hedgerow. A further dwelling on Jackass Lane stands to the rear of 69 Fox Lane, and is associated with additional buildings on Jackass Lane. From the junction of Fox Lane with Jackass Lane and Gates Green Road, the sense of place is a very rural one, with occasional buildings in an open rural area. The undeveloped appeal site, and the trees and shrubs between the appeal site and the dwelling at No 67, provide a visual buffer between these areas of different character.
10. The appeal site is therefore the last surviving gap between the village of Keston and the cluster of buildings predominantly associated with Jackass Lane.
11. I note the appellant's reference to extracts from several appeal decisions which relate to limited infilling in villages in the Green Belt. However, from the information before me, none of those sites appear comparable to the appeal site, and in fact reinforce that each case must be determined as it is seen in its context.
12. I therefore consider the development is not limited infilling in a village. As a consequence, the proposal is by definition inappropriate development in the Green Belt. Inappropriate development is, by definition, harmful to the Green Belt, and substantial weight should be given to any harm to the Green Belt.

Openness

13. Paragraph 137 of the Framework states that the essential characteristics of Green Belts are their openness and their permanence.
14. The proposed development would result in a large 5 bedroom house with three floors above ground and a basement. At around 10m in width, and of a similar depth, it would be a substantial presence on the appeal site, accommodating much of the width of the site. Spatially, there would be a considerable reduction in openness. Hard-surfaced parking and turning space for four cars between the dwelling and the road and boundary walls would further reduce its openness.
15. I found above that the undeveloped appeal site, and the trees and shrubs between the appeal site and the dwelling at No 67, provide a visual buffer between the village and land beyond it. The appeal site, in its undeveloped form, is also particularly apparent from the public footpath which runs along, and beyond, the north-eastern edge of the appeal site. From all these positions, the development would visually reduce the openness of the Green Belt in this location.
16. The development would therefore not preserve the openness of the Green Belt. Unless very special circumstances are found to justify the development, it would therefore conflict with LP Policy G2 and Chapter 13 of the Framework, which together seek to protect Green Belt land.

Character and appearance

17. Residential development in this location would result in the loss of the undeveloped buffer between the built-up area of the village and the more open countryside in the Green Belt beyond it. It is also in a location which I identified above as being beyond the continuous row of development, and which associates with the open rural area beyond the built settlement.
18. The built-up parts of Fox Lane contain a variety of predominantly large two and one-and-a-half storey dwellings with relatively low roofs. The proposed development would be a dwelling of urban/suburban character, over 4 storeys. Its siting would generally align with those either side, but it would be a significant depth, which would increase its prominence in this location.
19. I identified above that the site would be seen from both within the village, and from the countryside in the Green Belt beyond it. From the more open rural areas to the west, and the public footpath, it would appear as an unduly urban feature.
20. In conclusion, I therefore find that the development would harm the character and appearance of the area and would be contrary to BLP policies 4, 8 and 37 and LP policy D3, which together seek well-designed development which is appropriate in its context. In its reason for refusal the Council also referred to other policies with which I have found no conflict.

Road safety and traffic flow

21. Fox Lane is a narrow road, without footways, which falls in height from the village towards the appeal site. At the time of my visit it was lightly trafficked, but I did not visit at peak periods. Despite being signposted as unsuitable for

HGVs and with warning signs for pedestrians and horses, traffic did not appear to slow significantly.

22. The appeal site is located at the bottom of the hill adjacent to a public footpath which runs between the appeal site and 57 Fox Lane. A brick pillar and fencing on the corner of No 57 limits visibility from the appeal site towards the village. On the other side, vegetation planted up to the highway edge in the garden of No 67 also restricts visibility.
23. The Council considers 40mph speeds should be considered for rural roads, but that visibility splays for even 30mph traffic are unachievable. Indeed, evidence from an interested party suggests that the average speed along Fox Lane is around 25mph and sufficient visibility cannot be achieved for even these lower speeds.
24. The appellant has expressed a willingness to carry out their own speed surveys. However, given the evidence before me indicates visibility would be substantially insufficient, it would be unreasonable to impose a condition on such a fundamental matter.
25. Visibility at some existing dwellings on Fox Lane is also constrained, but the presence of poor existing accesses is not sufficient justification for a new access with substandard visibility. Given the relatively straight alignment of the road north-east of the site, drivers travelling from that direction may slow down on seeing a vehicle exit slowly from an access, but that would not be the case in the opposite direction where there is a bend in the road.
26. Therefore, considering all the evidence before me, including my own observations, I cannot be certain that safe access can be provided to the development. Although numbers of additional vehicle movements from one dwelling would be relatively low, and cars could turn within the site and emerge in forward gear, the limited extent of visibility would amount to an unacceptable impact on highway safety.
27. In conclusion, the proposed development would have an unacceptable impact on highway safety. It would therefore be contrary to BLP Policy 32 and LP Policy T4, which relate to impacts of development on road safety and danger. It would also conflict with Chapter 9 of the Framework, which seeks to ensure safe and suitable access, and to prevent development on highways grounds only if there would be an unacceptable impact on highway safety.

Biodiversity

28. At the time the planning application was made the site was an area of mixed deciduous trees/mature scrub, dense scrub, and a small area of semi-improved grassland and tall ruderals mosaic. An oak tree stood in its northern corner adjacent to the entrance to the public footpath.
29. Nevertheless, by the time of my visit, the appeal site had recently been cleared of all vegetation, and much of its surface, leaving only 2 small trees at the rear of the site. Hoardings had been erected on 3 sides with metal gates at its entrance, leaving the planted boundary with No 67.
30. As a result, and notwithstanding the PEA findings and recommendations, at the present time it is very unlikely that protected species are present on the appeal site. I have not seen compelling evidence that the close proximity of the

proposed dwelling to natural habitats would significantly harm biodiversity, and an external lighting scheme could be required by planning condition to secure suitable protections for foraging bats. Consequently, the development would be unlikely to have an adverse impact on biodiversity and protected species in and adjacent to the appeal site.

31. I note the appellant's proposal for off-site planting of an orchard on the land outlined in blue in order to secure biodiversity net gain. I also note the Council states it has not had the opportunity to verify its effects, without access to the data used. Whatever the case, having not seen a mechanism for securing that benefit, by planning obligation or other means, I am unable to attach weight to that proposal.
32. In conclusion, the proposed development would not have a significant adverse impact on biodiversity. I therefore find no conflict with BLP Policies 70, 72 and 79 and LP Policy G6, which together seek to enhance and manage the impacts of development on biodiversity.

Other considerations

33. The main parties agree the Council cannot demonstrate a 5 year Housing Land Supply (HLS), with the appellant stating 3.31 years of supply, and the Council 3.99 years. Small and medium sites can make an important contribution, and can often be built out relatively quickly, but the proposed development of one dwelling would make only a small contribution to meeting the shortfall. I therefore attribute a limited degree of weight in favour of the development.

Conclusion

34. The Framework indicates 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 harm to the Green Belt and any other harm are clearly outweighed by other considerations.
35. The development is inappropriate development in the Green Belt, and harms openness, to which I must attribute substantial weight against the development. Although I have not found harm to biodiversity, I attribute additional weight against the development, the harm to its character and appearance, the unacceptable impact on highway safety, and the consequential conflict with development plan policies. The Council is unable to demonstrate a 5 year HLS, but the proposed development of one dwelling would make only a small contribution towards meeting the shortfall. The harm to the Green Belt is therefore not clearly outweighed by the other considerations. The very special circumstances required to justify a grant of planning permission have not been demonstrated.
36. In applying paragraph 11d) of the Framework, policies in the Framework that protect areas or assets of particular importance therefore provide a clear reason for refusing the development proposed, and the presumption in favour of sustainable development does not apply.
37. For the reasons above, having regard to the development plan as a whole, the approach in the Framework, and all other material considerations, I conclude the appeal should be dismissed.

Peter White

INSPECTOR