



Appeal Decision

Site visit made on 27 January 2023

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 February 2023

Appeal Ref: APP/G5180/W/22/3299014

The Retreat, Berrys Green Road, Berrys Green, Westerham TN16 3AJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr & Mrs R & J McKenna against the decision of London Borough of Bromley.
 - The application Ref DC/20/05015/OUT, dated 26 November 2020, was refused by notice dated 3 March 2022.
 - The development proposed is a replacement dwelling.
-

Decision

1. The appeal is dismissed.

Preliminary Matter

2. I have taken the site address from the Council's decision notice as this is a more accurate description of the location of the appeal site.

Main Issues

3. The appeal site is located within the Green Belt. Therefore, the main issues are:
 - Whether or not the appeal development is inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (2021) (the Framework), including the effect on openness;
 - If the appeal development is 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 it.

Reasons

Site and proposal

4. The appeal site is located on Berrys Green Road between two residential properties, namely Claremont and The Lodge. The wider area comprises residential properties of various sizes, styles and settings. The area has a distinct rural feel.
5. At the time of my site visit I observed that the appeal site comprises a timber clad mobile home, chalet style structure that was set back behind a long driveway and grassed area. This was mounted on skids. To the rear of this structure is the remains of a dwelling that was previously located on the site.

This has very much blended into the landscape. The remainder of the site was strewn with a wide array of paraphernalia including building materials and outdoor equipment.

6. The site also contained two mobile homes. There is also a timber workshop type building that runs perpendicular with the timber clad mobile home and further towards the rear of the site is a brick-built garage.
7. The application has been made in outline with all matters reserved for future approval. A plan has been submitted which indicates how a dwelling could be accommodated on the site. I have taken this plan into account for indicative purposes only.

Whether or not inappropriate development in the Green Belt including the effect upon openness

8. The Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The Framework outlines that the construction of new buildings should be regarded as inappropriate in the Green Belt subject to a number of exceptions as set out in paragraph 149. Policy 49 of the Bromley Local Plan (2019) reflects the exceptions as set out in the Framework. The appellant puts forward arguments that the proposed development would constitute exceptions under 149 d), e) and g).
9. One of the exceptions cited is g) the limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings). For this exception, the development must not have a greater impact on the openness of the Green Belt than the existing development; or 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.
10. The Framework defines previously developed land as land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes, amongst other things, land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape.
11. The appeal site contains the remains of a previous dwelling which have blended into the landscape. There are also a number of temporary buildings on the site. The appeal site when taken completely however, includes permanent buildings and has been used for residential purposes with a significant degree of open storage of building equipment and materials. This would suggest that it is capable of constituting previously developed land.
12. The development is not proposed to meet an identified affordable housing need and is therefore required not to have a greater impact on the openness of the Green Belt than the existing development, which excludes temporary buildings and the remains of the previous building.
13. All matters including those of layout and scale are not before me in the appeal and these have been reserved for future approval. Therefore, although

indicative plans have been submitted, I am unable to reach a firm conclusion in relation to addressing the necessity that the proposed development would not have a greater impact on the openness of the Green Belt. As any outline permission is the planning permission it would not be appropriate to assess the impact on openness, as a matter of principle, at the reserved matters stage. Nevertheless, the indicative plans form part of the outline application before me and I have considered them as such.

14. The Framework outlines that one of the essential characteristics of Green Belts is their openness. Openness has a spatial aspect as well as a visual aspect. The existing development is relatively low rise. It is strewn across the majority of the appeal site. The indicative plans, including the removal of the existing structures and other paraphernalia would not have a greater impact on the openness of the Green Belt in spatial terms.
15. The proposed dwelling as indicatively shown would be significantly greater in size, scale and height than the existing low-rise buildings on site. For these reasons, it would have a greater impact on the openness of the Green Belt in visual terms than the existing development.
16. The appellant has submitted an analysis for the footprint of the existing buildings/structures that would be removed. This includes the 'original' dwelling which has blended into the landscape and the existing timber clad mobile home. Even if I accepted the appellants figures, they are based solely on footprint and do not account for increases in scale and height that would result as per the indicative plan.
17. I therefore consider that in visual terms the proposal would cause significant harm to the openness of the Green Belt and thus have a greater impact on openness than the existing situation.
18. The appellant considers that the proposed development would comply with the exception outlined in paragraph 149 d) of the Framework, that being the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces. Policy 52 of the local plan permits a replacement residential dwelling in the Green Belt where a building is in residential use, provided that the resultant dwelling does not result in a material net increase in floor area compared with the existing dwelling; and that, amongst other things, the size of the replacement dwelling does not harm visual amenities or the open or rural character of the locality. Although the application is made in outline with all matters reserved, I cannot be certain, and the indicative plans fail to convince me, that the new building would not be materially larger than the one(s) it replaces.
19. The remains of the 'original building' are not in residential use as required by Policy 52. Furthermore, the evidence suggests that excluding these remains, of which have blended into the landscape, the indicative proposed dwelling would be materially larger than the buildings it would replace.
20. The appellant also suggests that the proposed development would constitute 'limited infilling in villages' and therefore not be inappropriate development in the Green Belt as outlined in paragraph 149 e) of the Framework. I accept that the proposed development of one dwelling on land with dwellings either site would constitute limited infilling.

21. The Framework does not provide a definition of what constitutes a village. The Oxford English Dictionary defines a village as a group of houses and associated buildings, larger than a hamlet and smaller than a town, situated in a rural area. Taking this definition, I consider that Berrys Green does not contain any basic services or amenities that would be expected in a village. As a result, it bears the hallmarks of a hamlet and would be too small to constitute a village for the purposes of 149 e) and thus the proposed development would not constitute this exception. The quoted case law¹ and appeal decision², for which I do not have full details, do not alter my view.
22. For these reasons, the proposal would not constitute one of the exceptions outlined in the Framework and would therefore be inappropriate development in the Green Belt.

Other considerations

23. The proposed development would represent a significant improvement in the overall appearance of the site and this is borne out in representations that have been received. Although this is a benefit in favour of the proposed development, I am not convinced that the proposal is the sole means of achieving this benefit. I give the matter moderate weight in favour of the proposed development.
24. The development would represent a form of financial investment. There is however limited evidence on this matter and for one dwelling it would be minor in terms of the overall local authority area. I therefore give this limited weight in favour of the appeal.
25. The proposed development would allow for the opportunity to provide ecological enhancement and biodiversity net gain. This is typically a requirement of new development regardless and I give it limited weight.
26. The proposed development would create a new dwelling. Although the appeal site appears to have an existing residential unit that would suggest there would be no overall gain. Nevertheless, the indicative plans point towards the proposed dwelling providing improved living conditions for future occupants. I give this matter moderate weight in favour of the proposed development.
27. Similarly, the development would bring permanent residents who would contribute to the local economy. It is not however demonstrated how this would be greater than the current situation and I therefore give it limited weight.
28. The appellant refers to the opportunity for the Council to regain meaningful control over the appearance of the site. I have acknowledged the visual improvement that would occur above. I give limited weight to the suggestion the Council would 'regain meaningful control' in terms of land use planning matters. The Council's legislative powers exist before and after the development even if it were to exercise its statutory duty as local planning authority.

Planning Balance

¹ Wood v SSCLG [2014] EWHC 683 (Admin)

² APP/R0660/W/17/317029

29. Paragraph 147 of the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 148 continues by stating that 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.
30. The development in this case amounts to inappropriate development in the Green Belt and the Framework requires that substantial weight is attached to the harm in that regard. It would also cause significant harm to the openness of the Green Belt in visual terms.
31. Having considered the matters raised in support of the proposal and the other considerations as outlined above, I conclude that they do not clearly outweigh the harm that I have identified, by reason of inappropriateness and harm to openness. Consequently, the very special circumstances necessary to justify the development do not exist.
32. Therefore, the proposal would be contrary to Policy 49 of the Bromley Local Plan (2019) that seeks to restrict inappropriate development in the Green Belt except in very special circumstances. The proposal would also be contrary to the Framework.

Other Matters

33. As the application of policies in the Framework that protect the Green Belt provides a clear reason for refusing the proposed development, it does not therefore benefit from the presumption in favour of sustainable development.
34. I acknowledge the timescale for determination of the application and the appellant has referred to a lack of communication and feedback prior to receiving the decision. I accept that this would cause understandable frustration, however neither are reasons to allow the appeal and the Council has set out their reasons for the handling of the application.

Conclusion

35. The proposed development would therefore conflict with the development plan and there are no other considerations, including the Framework, that outweigh this conflict.
36. For the reasons given above, and having had regard to all other matters raised, I therefore conclude that the appeal be dismissed.

A M Nilsson

INSPECTOR