



Appeal Decision

Site visit made on 9 February 2023

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 March 2023

Appeal Ref: APP/G5180/W/22/3308504

Land at the Chalk Pit and land opposite Econ House, Old Maidstone Road, Ruxley, Sidcup, Kent DA14 5BA

- 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 Econ Group Ltd against the decision of London Borough of Bromley.
 - The application Ref DC/21/02546/FULL1, dated 20 May 2021, was refused by notice dated 8 April 2022.
 - The development proposed is described as to relocate use of the site for General Waste materials from Chalk Pit, Old Maidstone Road, Ruxley to land opposite Econ house, Old Maidstone Road as defined on the submitted drawings. The land at the Chalk Pit will be returned to open space use as part of the Green Belt. Retention of some associated buildings and activities on land opposite Econ House.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. At the time of my visit, I observed that the part of the appeal site as it relates to land opposite Econ House was in use for the purposes as outlined above. I am therefore considering this aspect of the appeal retrospectively.

Main Issues

3. The appeal site is within the Green Belt and so the main issues are:
 - Whether the development is inappropriate development in the Green Belt having regard to the National Planning Policy Framework (2021) (the Framework) and any relevant development plan policies, including the effect of the proposal on the openness of the Green Belt;
 - The effect of the development on the living conditions of occupants of nearby residential properties with specific regard to noise and disturbance; and
 - If the 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 required to justify it.

Reasons

Site and proposal

4. The appeal site comprises two parcels of land on the southern side of Old Maidstone Road. The first westernmost parcel is located opposite Econ House where the appellant's administrative building is located. It is accessed via a site that has a lawful use for industrial purposes¹. I observed on my site visit that the site was currently in use for the appellant's business. There were various forms of plant and machinery located on this part of the site including a number of storage containers. The second parcel of land is located further eastwards and has its own access from Old Maidstone Road. It is referred to as the 'Chalk Pit' and sits adjacent to the Chalk Pit Caravan Site which at the time of my visit contained two caravans. This part of the site also has a lawful use for industrial purposes². Both parcels of land are within the Green Belt.
5. There are residential properties on the intervening land and also a row of residential properties to the north.
6. The development, in effect, seeks to relocate the use of the Chalk Pit site to the site opposite Econ House. The appellant proposes to revert the Chalk Pit site to open space and plant new trees, landscape features and implement a number of ecological enhancements. This would consolidate the operations to one site.

Whether or not inappropriate development in the Green Belt and the effect on openness

7. 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. The Framework also outlines, at paragraph 150 that certain other forms of development are also not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. Such forms of development include engineering operations and the material change of use of land. Policy 49 of the Bromley Local Plan (2019) reflects the exceptions as set out in the Framework.
8. The development includes the siting and relocation of a number of steel shipping style storage containers and outbuildings such as portacabins. It is not suggested by either party that these do not constitute inappropriate development in the Green Belt. Having regard to the exceptions listed in paragraph 149, I have no reason to form a different view, and thus this element of the development constitutes an inappropriate form of development in the Green Belt.
9. Engineering operations and the material change of use of land does not constitute inappropriate development in the Green Belt provided that it preserves its openness and does not conflict with the purposes of including land within it.
10. Along with the storage containers and outbuildings, the use of the land for the purposes outlined includes, as I observed, a significant amount of plant and machinery. The plans also show that the area will be a hardstanding and surrounded partly by a 2m high, open Heras fence and partly by a 2m high acoustic fence.

¹ Lawful Development Certificate DC/12/01293/ELUD

² Lawful Development Certificate DC/99/03005/ELUD

11. 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 development results in siting of storage containers and outbuildings where the evidence does not suggest were there any previous forms of development. The siting of such structures where there have previously been none, cannot fail but to have a greater impact on the openness of the Green Belt in spatial terms, and thus cause harm. I find that considering the overall size and scale of the development and the absence of any previous buildings on the site, such harm is significant.
12. In terms of the use of the land, this involves a significant amount of visually noticeable activity with large plant, machinery and vehicles involved in the processes being undertaken. Such a use causes moderate harm to the openness in this regard and therefore the development does not preserve the openness of the Green Belt from a visual or spatial perspective.
13. I acknowledge that a significant amount of planting is proposed for screening. This would also bring a certain amount of visual and biological enhancement, particularly to the Chalk Pit site. It would also however, to some degree, appear as a deliberate attempt to conceal the visual impact of the development and it would also take a length of time to become established.
14. By introducing an essentially urban activity into the above context, the development therefore also amounts to encroachment into the countryside. This is in conflict with one of the purposes of including land within the Green Belt set out at paragraph 138 of the Framework and causes moderate harm.
15. Therefore, the development does not preserve the openness of the Green Belt and conflicts with one of the purposes of including land within it. Accordingly, it amounts to inappropriate development in the Green Belt when considered against the Framework and is therefore by definition, harmful to the Green Belt.

Living conditions

16. There is an existing row of residential properties to the north of the appeal site. These have relatively long rear gardens extending slightly downwards from Old Maidstone Road. This results in the properties being set slightly lower than the appeal site.
17. At my site visit, on a relatively calm and clear afternoon, I was able to hear much of the activity being carried out at both parcels of the appeal site. It is not clear whether, from a noise perspective, this was a typical day or a day of lower or greater than usual activity. I was also able to observe the road traffic noise from the A20 to the south of the site and from a vehicle scrapyard adjacent to Econ House.
18. The appellant has submitted two noise surveys. One relating to the site opposite Econ House³ and one for the Chalk Pit site⁴. The noise monitoring for the site opposite Econ House was undertaken between 1130 on Friday 25 March 2022 and 1130 on Monday 28 March 2022, with monitoring at the Chalk Pit site being undertaken between 1200 on Friday 25 March 2022 and 1200 on Monday 28 March 2022.

³ Environmental Noise Survey Report 29720/ENS1 – 29 March 2022 – Hann Tucker Associates

⁴ Environmental Noise Survey Report 29720/ENS2 – 29 March 2022 – Hann Tucker Associates

19. Both reports conclude that the survey has been undertaken in order to establish the currently prevailing noise levels, and that plant noise emission criteria have been recommended based on the results of the noise survey and with reference to the Council's policy.
20. Neither report outlines the operational status of either site at the time, where it might be a reasonable assumption that at weekends and evenings noise levels would generally be lower. Neither survey directly assesses the impact on the residential properties to the north. The Council also consider that the noise impact from the proposed scheme has not been adequately assessed, and in order to confirm acceptability a detailed BS4142:2014 noise assessment should have been carried out.
21. A condition has been suggested by the Council that in the event that the appeal is allowed. Although the appellant outlines that they would accept the condition and considers the surveys demonstrate that it could be complied with, the Council consider that this is not sufficient as; 1) the criteria should be applied to the calculated noise at the nearest residential receptor for all activities on-site, in accordance with the BS4142:2014; and 2) the calculated noise as described in 1 above should be demonstrated to be achieved as part of the submission to support the acceptability of the scheme on noise grounds. The Council outline that without this information it is not possible to establish whether the use will be able to meet the criteria and not cause detriment to the amenities of the area.
22. From my observations on my site visit, the noise generated by the use was sudden and intermittent, as opposed to the more continuous and monotonous noise from the surrounding highways. Such noise occurrences are typically those that cause the greatest level of disturbance, being highly noticeable and distinct. The noise sources from the appeal site are mainly generated from a large number of mobile sources of noise, including excavators and skip lorries. There is also the potential for noise from movement and dropping of waste and scrap metal. These are random, spontaneous and in effect not easily controllable. Such sudden noises, unlike continuous noise, can be significantly more intrusive and perceptible, with the potential to cause significant harm. This has been further demonstrated in the representations that have been received which refer to disturbance due to noise.
23. Given the limitations of the timings and locations of the surveys I cannot be certain that the noise assessments are a true reflection of the use as a whole, with it being entirely possible that there was in fact less activity and noise generated on the days of measurements being taken than at other times. I have therefore also taken into account my own observations during my site visit.
24. The appellant has proposed an acoustic fence to mitigate the noise levels. There is however no substantive evidence before me to suggest that the proposed acoustic fence would mitigate the noise levels to an acceptable level.
25. The development therefore causes significant harm to the living conditions of occupants of nearby residential properties with regard to noise and disturbance. It is therefore contrary to Policies 37 and 119 of the Bromley Local Plan, which require, amongst other things, that development should respect the amenity of occupiers of neighbouring buildings by ensuring they are not harmed by noise and disturbance.

26. The development is also contrary to paragraph 185 of the Framework which seeks to ensure that development is appropriate for its location taking into account the likely effect (including cumulative effects) on, amongst other things, living conditions, and avoid noise giving rise to significant adverse impacts on quality of life.

Other considerations

27. The proposed development would, in effect, seek to relocate the existing lawful use from the Chalk Pit site to the land opposite Econ House. The Chalk Pit site is also located in the Green Belt. It is situated further back from Old Maidstone Road at a lower ground level. On my site visit I observed there were some operations being undertaken on the Chalk Pit site. Being at a lower level with dense planting on the southern boundary and some planting on the northern edge, this site is visually less prominent than the more prominent and open site opposite Econ House. Given these features, together with a greater degree of separation, I observed it is evidently less audible from the row of residential properties on the opposite side of Old Maidstone Road. This has also been highlighted in the representations that were received.
28. In terms of the impact on the openness of the Green Belt, for the reasons given above, the site opposite Econ House causes greater harm, particularly in visual terms, than the Chalk Pit site. It is also closer to residential properties. I acknowledge that the Chalk Pit site benefits from a lawful development certificate, however the two sites are quite different in nature, as is their effect on the Green Belt and living conditions. It is also pertinent that the use of the Chalk Pit site, albeit lawful, is not subject to the policies of the development plan or the Framework, unlike the site opposite Econ House. For these collective reasons, as an 'other consideration' in the case, I give limited weight to the fact that the proposed development would, in effect, seek to relocate an existing operation.
29. The appellant's evidence robustly sets out the economic significance of the business and how the development relates to this. I acknowledge and recognise that the development would consolidate and expand the business and its economic significance in the local area. I give this factor moderate to significant weight in favour of the proposed development.
30. The submission includes several documents that formed part of an application for a lawful development certificate⁵ for an existing use of land. The land subject to that application is a relatively similar area to the part of the appeal site opposite Econ House. Since my site visit, the Council have informed me that the application was refused on the basis that the site is the subject of an extant Enforcement Notice dated 20 May 1996 which prohibits the use of the site as part of a demolition business.
31. It is not within the confines of this appeal to rule on the lawfulness or otherwise of the existing use of the site. Additionally, as two separate applications under separate procedures, evidence seeking to confirm the lawfulness of the site has limited weight in this planning appeal. I have considered this application as a planning appeal under S78⁶ and in accordance with S38(6)⁷.

⁵ DC/22/03884/ELUD

⁶ Town and Country Planning Act 1990

⁷ Planning and Compulsory Purchase Act 2004

32. The appellant considers that the control the Council would have through planning conditions and noise control through mitigation would be a benefit of the development. I give limited weight to this perceived benefit 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. These include powers in relation to environmental health and statutory noise nuisance.
33. There are some landscape and ecological enhancements to be gained and there is likely to be some improvement in the living conditions for occupants of the caravan site and the dwellings sited between each parcel of the appeal site. The visual enhancement that would result from the landscaping and ecological enhancement of the Chalk Pit site weighs moderately in favour of the development. The improvement in terms of living conditions for some residents is however cancelled out by the adverse impact on living conditions I have found above.

Planning Balance

34. 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.
35. 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 also causes significant harm to the openness of the Green Belt in visual and spatial terms.
36. Having considered the matters raised in support of the development and the other considerations as outlined above, I conclude that collectively, they do not clearly outweigh the harm that I have identified, by reason of inappropriateness, the harm to openness, and the harm to living conditions. Consequently, the very special circumstances necessary to justify the development do not exist.
37. Therefore, the development 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 development would also be contrary to the Framework.

Conclusion

38. The development would therefore conflict with the development plan and there are no other considerations, including the Framework, that outweigh this conflict.
39. 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