



Appeal Decisions

Site visit made on 11 July 2023

by D R McCreery MA BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 August 2023

Appeal A Ref: APP/Z3635/W/22/3307473

Stanwell Farm, Bedfont Road, Stanwell, TW19 7LY

- 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 Peter Sharma against the decision of Spelthorne Borough Council.
 - The application Ref 22/00418/FUL, dated 14 March 2022, was refused by notice dated 11 August 2022.
 - The development proposed is for the existing use of the application site as a builder's yard with the erection of an ancillary small-scale shop.
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Appeal B Ref: APP/Z3635/W/22/3307480

Stanwell Farm , Bedfont Road, Stanwell, TW19 7LY

- 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 Peter Sharma against the decision of Spelthorne Borough Council.
 - The application Ref 22/00899/FUL, dated 24 June 2022, was refused by notice dated 11 August 2022.
 - The development proposed is erection of a storage unit in connection with Builders Yard (retrospective).
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Decision

1. Appeal A – the appeal is dismissed.
2. Appeal B – the appeal is dismissed.

Preliminary Matters

3. There are two appeals on this site. Each is considered on its individual merits. However, for the purposes of setting out my reasoning in this decision, I deal with the proposals together except where otherwise indicated. Notwithstanding the retrospective nature of the development that has been indicated, I have dealt with the proposals on their respective merits.
 4. The emerging Spelthorne Local Plan 2022-2037 is at examination. The outcome of hearing sessions and potential modifications (including consultation on them) are yet to take place. The degree of uncertainty means that the emerging plan carries limited weight.
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Main Issues

5. The main issues are:

- Whether the development is inappropriate development in the Green Belt, including any effect on openness;
- The effect on the character and appearance of the area;
- The effect on the living conditions of nearby residents, paying particular regard to noise and general disturbance (Appeal A);
- Whether other considerations exist and, if they do, if they clearly outweigh any harm to the Green Belt, and any other harm, so as to amount to very special circumstances.

Reasons

Relevance of planning history and historic development

6. The site has a relatively complex planning history. As indicated, I have considered these appeals on their own merits. However, as the Appellant has asked me to pay regard to aspects of the planning history in support of various arguments, it is necessary to address this matter upfront to save repetition at later points.
7. The area roughly comprising the site was subject to the grant of a number of Lawful Development Certificates in 2005 that related to a range of commercial development (including uses). Although there is certainty that these certificates were granted, and that the extent of them covered the site, the detail is unclear. As the Appellant states, the detailed plans attached to these certificate applications are not available and, as such, the precise location of each of the identified uses is unclear.
8. An appeal against an enforcement notice relating to use for airport parking and associated development was dismissed in 2017¹. The evidence indicates that use has since discontinued. A Lawful Development Certificate was refused in 2021 relating to use of the site as a builder's merchants for the sale of construction materials.
9. In support of arguments relating to the Main Issues of both inappropriate development and other considerations that may amount to very special circumstances, the Appellant has invited me to pay regard to previous uses of the site, including the question of whether abandonment of use has, or has not, taken place.
10. It is not the purpose of this appeal (which relates to refusal of planning permission) to establish or resolve a dispute relating to the lawful use of the site. There are other mechanisms within the planning system

¹ APP/Z3635/C/17/3167818

(notably Lawful Development Certificates) that exist for those wishing to provide evidence to demonstrate lawful use.

11. In this case, I have neither a recent Lawful Development Certificate nor, in the absence of one, clear and consistent evidence that allows me to draw the necessary conclusions about how the proposal compares to activities that may, or may not, have occurred on the site. Similarly, the aerial images provided by the Appellant showing the presence of buildings on the site over time do not allow a meaningful comparison to be made with the proposals.
12. In light of the considerable uncertainty, basing my conclusions on these matters would be unsafe. For similar reasons, attempting to use planning conditions to secure an assumed pre-existing state would not be legitimate within the context of an appeal against refusal of planning permission.
13. I have considered the Appeal on this basis.

Inappropriate development and effect on openness

14. It is common ground that the site is located within the Green Belt. The National Planning Policy Framework (the Framework) says that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
15. The Framework provides for instances where forms of development are not inappropriate in the Green Belt (paragraph 150) or as exception to the construction of new buildings being regarded as inappropriate (paragraph 149). Both are relevant in this case and are considered individually.

Material changes in use of land (Appeal A)

16. In order for Framework paragraph 150(e) to apply there needs to be consideration of whether the development would preserve the openness of the Green Belt and not conflict with the purposes of including land within it. Both limbs must be met in order to satisfy 150(e).
17. In relation to openness, for the reasons set out elsewhere in this decision, I am unable to take account of the last lawful use of the site when forming a view on whether openness would be preserved.
18. Taking the proposal as it currently exists, the presence of outdoor shelving and storage, vehicles, and building materials, associated with the use are substantial items that impact on the openness of the site. This is the case even allowing for the degree of screening from some public views provided by boundary fencing. Although openness is not only about the visual dimension, public views are available.

19. This is notably from the main road and adjacent footbridge, with greater public visibility during business hours when the entrance gate is open. There are also private views from the flatted development to the rear. As such, the site cannot be regarded as completely enclosed.
20. I acknowledge the nature of the surroundings and the strong presence of business uses (including Heathrow airport). However, as well as being Green Belt land in its own right, the site is not completely surrounded by land used for commercial and industrial purposes. There is undeveloped land, predominantly to the east and south of the site. The proposal encroaches towards this undeveloped area. I do not agree with the Appellant's assertion that there would be no impact on the Green Belt.
21. Taken as a whole the proposal would not preserve the openness of the Green Belt, when both spatial and visual aspects are considered.
22. For the avoidance of doubt, in forming a view on the issue of openness it has not been necessary to consider the Council's evidence relating to development on land outside the site boundary. For the purposes of this appeal I have adopted the Appellants position that the development is only that within the site boundary.
23. In light of my conclusions on openness, and the need to satisfy both limbs of Paragraph 150 in order for it to be relevant, providing detailed reasoning on conflict with Green Belt purposes serves limited purpose. However, for completeness it flows from my conclusions on openness that the proposal would conflict with the purposes relating to checking unrestricted sprawl and safeguarding the countryside from encroachment.
24. For these reasons, Framework Paragraph 150 does not apply to the proposal in Appeal A. As such, this proposal is inappropriate development in the Green Belt.

Extension or alteration of a building (Appeal B)

25. Although the description in Appeal B refers to a storage unit, it can legitimately be considered as an extension by virtue of its attachment to an existing building.
26. However, in comparison to the existing building, when its footprint and other aspects of scale are taken into account, the extension is a disproportionate addition over and above the size of the original building. This judgment is a matter of fact and degree.
27. In order to reach a view on this issue it has not been necessary to factor in the differences in materials, which I do not regard to be significant one way or the other.
28. For these reasons Framework Paragraph 149 does not apply to the proposal in Appeal B. As such, this proposal is inappropriate development in the Green Belt.

29. Paragraph 149 does not in itself call for a consideration of effects on openness. Nevertheless, for completeness, the site coverage and scale of the proposed building is such that it would have an effect on the openness of the site. Although the effects would be visually contained, this is the case when regard is paid to the spatial dimension of openness.
30. In overall conclusion, both Appeal A and Appeal B propose inappropriate development in the Green Belt. Consequently, there is conflict with national planning policy in Section 13 of the Framework, along with Policy GB1 of the Local Plan 2001, which also addresses development in the Green Belt.
31. Although GB1 is predicated on development being considered in line with Government policy contained in superseded PPG2, the evidence does not lead me to conclude that the parts of it of relevance to this appeal are inconsistent with the Framework. For the avoidance of doubt, I have regarded the judgement relating to 'limited extensions' in GB1 as being consistent with that required under Paragraph 149 of the Framework.

Character and appearance

32. The character of the area is mixed, with open land and residential uses along with a strong presence of business uses (including Heathrow airport).
33. As discussed above, the site cannot be regarded as completely enclosed. There is a degree of screening, yet also public and private views as described. The presence of outdoor shelving and storage associated with the use are substantial items that are clearly visible beyond the site and detract from the character and appearance of the area. They do not make a positive contribution to the street scene.
34. This is mitigated by the visual association provided by the strong presence of business use within the locality. Seen within context, the proposed use in Appeal A results in no more than moderate harm to the character and appearance of the area.
35. The single storey, and therefore visually contained, nature of the development in Appeal B is such that it does not harm the character and appearance of the area.
36. In conclusion on harm, the proposal in Appeal A would have a harmful effect on the character and appearance of the area. Consequently, there is conflict with development plan policy EN1 of the Core Strategy and Policies DPD. Appeal B would not have a harmful effect on the character and appearance of the area. As such, no policy conflict arises from Appeal B.

Living conditions (Appeal A)

37. The Council raises concerns about whether the relationship between the proposed use and neighbouring residential properties will give rise to an unreasonable reduction in living conditions, when regard is paid to noise and general disturbance.
38. The site is located within an area influenced by business use and transport infrastructure. This includes Heathrow airport and, more directly, the main road passing the site entrance. There is a level of associated general noise and activity in the surroundings that is to be expected and is part of the character of the area. In this context, a use of the scale and nature proposed, operated in a reasonable and responsible fashion, is generally unlikely to add materially to the noise and activity already present.
39. Residential properties to the immediate south and west have been drawn to my attention. The residences in the flatted development to the south are away from the shared boundary with the site, separated by a car park. As such, the potential for unreasonable noise impacts is relatively low for properties at lower levels in the buildings, rising marginally in risk for properties at higher levels due to the absence of fencing acting as a sound buffer and greater potential to experience travelling noise.
40. The property to the west is closer in proximity and is therefore at greater risk due to the lack of physical separation. The single storey nature of this property, coupled with boundary fencing, and existing noise and activity associated with the road are all physical/locational factors that serve to reduce the risk of noise disturbance.
41. Notwithstanding the risks described above, none of which are significant given the wider context described, the Council refers to buffer zones and acoustic fencing which, I agree, could mitigate against unreasonable impacts resulting from noise and activity. Such measures, along with other mitigation such as restrictions on hours of operation, could be the subject of conditions.
42. Given the overall conclusion of this appeal, it has not been necessary to examine the justification for such measures in detail, paying regard to the requirements of the Framework in relation to use of conditions. However, in principle and taken as a whole, such measures would be capable of reducing the risk of harmful impacts further if justified. Reaching this judgement in the absence of a specific noise assessment is reasonable, paying regard to the proposal, the surroundings, and the relationship with neighbours.
43. In conclusion, the proposal in Appeal A would not have a harmful effect on the living conditions of nearby residents, paying particular regard to noise and general disturbance. Consequently, there is no conflict with development plan policies EN1 and EN11 of the Core Strategy and Policies DPD.

Other considerations

44. I have paid regard to the comments made by the Appellant in relation to other considerations that, they say, may amount to very special circumstances. In some instances, the Appellant remakes points that also relate to the consideration of inappropriate development and effect on openness. The comments have been taken into account, although I have not repeated my reasoning on these issues.
45. As discussed above, I am unable to draw conclusions about the lawful use of the site or place significant weight on its history. It is, however, safe to acknowledge that the site is previously developed land and has been subject to commercial use over a period of time, whether uninterrupted or not. This is a matter that attracts moderate positive weight as a consideration.
46. The appeal at Park View² turned on its own facts and evidence, limiting its usefulness in the present case. It is a neutral consideration.
47. Economic benefits associated with the builders merchant, including local employment and supply chains are acknowledged. Linked to this is the general point that the local authority area is physically constrained when it comes to land availability for commercial use. On the evidence provided this attracts moderate positive weight. The Appellant's appeal decision examples³ are context and evidence specific, so do not increase the weight further.
48. The mixed character of the area is discussed elsewhere in this decision. The words the Council have used to describe the land are not of central importance. I have paid regard to the characteristics of the area in reaching my conclusions, although this does not as a matter of principle alter the fact that the land is designated as Green Belt and is therefore subject to the policy approach that is set out in the Framework. Consideration of the site as part of plan making also does not alter its present designation. Nor is it reliable to draw conclusions about the acceptability of individual developments from parts of the evidence base of an emerging plan that, in any event, is not at an advanced stage in its examination. The certainty and effect of future Heathrow expansion on the local area is not a matter that carries a level of reasonable certainty on which to base credible planning judgements. These are neutral considerations.

² APP/X0360/C/21/3266830

³ APP/A1910/W/17/3192066, APP/R0660/W/17/3190537

Conclusion

49. Both Appeal A and Appeal B are inappropriate development in the Green Belt which is, by definition, harmful. As such, there is conflict with local and national planning policy as described above. Paragraph 148 of the Framework is clear that any harm to the Green Belt should attract substantial weight. Appeal A also results in harm to the character and appearance of the area, albeit moderate, with associated conflict with the development plan for the area.
50. I have carefully considered the evidence in relation to other considerations. My conclusions on these matters are set out above. Taken as a whole the other considerations attract only moderate weight.
51. Weighing the issues up, given the great importance attached to the Green Belt both nationally and locally, I conclude that the harm by reason of inappropriateness is not clearly outweighed by the other considerations. Consequently, very special circumstances do not exist and the Framework and other policies direct that planning permission should be refused.
52. For the above reasons and having regard to all other matters, I conclude that the appeal should be dismissed.

D R McCreery

INSPECTOR