



Appeal Decision

Site visit made on 15 September 2023

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th November 2023

Appeal Ref: APP/G5180/W/23/3319266

Land South of The Manor, New Barn Lane, Cudham, Bromley TN16 2HT

- 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 Divami Ltd against the decision of London Borough of Bromley.
- The application Ref DC/22/03092/FULL1, dated 3 August 2022, was refused by notice dated 6 October 2022.
- The development proposed is described as an alteration of an existing building to be used as a family home reducing its original footprint and volume whilst maintaining the architectural and conservational language of the surrounding building and natural habitat. This is a small-scale self-build project. We are proposing to significantly reduce footprint and volume to provide front garden (which will also provide parking space) and rear garden (external amenity space), both of which will be enclosed by repairing existing metal wire fencing and repositioning part of it to enclose front garden. This will be a sustainable development where we will incorporate low carbon measures here including installation of solar panels, air heat pumps, ground heat extraction pumps etc and provide electric charging points for electric assisted cycles, electric scooters, electric cars etc. We will exclusively use electric vehicles or pedal cycles on this site.

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Divami Ltd against the London Borough of Bromley. This application is the subject of a separate Decision.

Preliminary Matters

3. I have used a shortened description of development taken from the application form as the lengthier version includes reference to the planning merits of the development.

Main Issues

4. The appeal site is in the Green Belt and so the main issues are:
 - Whether or not the proposed development is inappropriate development in the Green Belt, having regard to the effect on openness and the purposes of including land in the Green Belt, in regard to the National Planning Policy Framework (2023) (the Framework) and any relevant development plan policies;
 - the effect of the proposed development on the character and appearance of the area; and

- 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

5. The appeal site is located on New Barn Lane to the south of the village of Cudham. It extends from the roadside edge into an open field and includes an existing agricultural building which is close to the site boundary. There is a slight downward slope on the site as it moves towards New Barn Lane, with the building being positioned on the lower part of the site. There was no evident boundary separating the appeal site from the open fields beyond it.
6. The existing building would be retained and include additional metal cladding and openings to facilitate its change to a residential property. Vehicular parking would be provided in an open section at one end of the building and there is an area of amenity space identified close to the building. The site boundary extends beyond the building and the identified amenity space, into the open field.
7. The proposed development would utilise an existing gated access from New Barn Lane.

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

8. The National Planning Policy Framework (the Framework) (2023) identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The Framework also outlines, at paragraph 149 that apart from a list of given exceptions, the construction of new buildings should be regarded as inappropriate development in the Green Belt. Paragraph 150 outlines 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, as outlined in 150d), the re-use of buildings. Policy 49 of the Bromley Local Plan (2019) is consistent with the Green Belt aims of the Framework.
9. The appellant's case gives emphasis to the relevant section in the Framework to which it is considered that the proposed development should fall to be considered under. It is the appellant's view that, having regard to case law, the proposed development would constitute the type of development outlined in paragraph 149c), that is, the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building. The appellant's argument follows that having satisfied this exception it is not necessary for the development to be considered against any other exceptions in the Framework.
10. The Council's position is that the proposed development would be of the type outlined in paragraph 150d) that being the re-use of a building, providing that it (the building) is of permanent and substantial construction. For this exception to apply, the development must also preserve the openness of the Green Belt and not conflict with the purposes of including land within it. The Council are of the view that the proposed development would not preserve the

openness of the Green Belt and would conflict with the purposes of including land within it.

11. Paragraph 149 of the Framework clearly states that it relates to the construction of new buildings. In the proposed development, whilst alterations to the existing building are proposed, they do not amount to the construction of a new building and therefore I do not find it to be applicable to the proposed development.
12. In the proposed development, whilst alterations to the existing building are proposed, the substantive or primary development relates to the re-use of the existing building as a dwelling and therefore it is my judgement that paragraph 150d) is the relevant exception category to assess the proposed development against. The alterations that are proposed are only as a consequence of, and to facilitate, the proposed re-use of the existing building as a dwelling. They do not result in a new building.
13. Using the appellant's argument, proposals for the re-use of buildings could sidestep paragraph 150d) where that development does not result in disproportionate additions, and thus render 150d) superfluous. Whereas the purpose of 150d) is that a new building, that would otherwise be inappropriate development in the Green Belt, is not needed.
14. I have had regard to the various case law put forward by the appellant in their advocacy that the development, in being considered not inappropriate under paragraph 149c), should not then be considered under paragraph 150.
15. It was established in *Bromley v SSCLG* [2016] EWHC 595 (Admin) that the mere fact that permission for a new building may also involve a material change of use does not mean that it ceases to be not inappropriate development. Therefore, if a proposal meets one of the exceptions under paragraph 149 of the Framework it should not then also be considered against paragraph 150e). This was also established in *Lee Valley Regional Park Authority v Epping Forest DC* [2016] EWCA Civ 404 where it was held that once a particular development is found to be, in principle, appropriate, the question of the impact of the building on openness is no longer an issue. In this case, however, I have found that the relevant paragraph for consideration is 150d) as the proposed development does not create a new building.
16. The correct approach as set out in *Bromley* was found not to have been followed in the *Valentines Farm* case, whereby the Court quashed the decision, and the appeal was redetermined. The judgement did not however, turn on whether or not a new building was created, only that having found the development to not be inappropriate under 149c), the Inspector should not have also considered it against paragraph 150.
17. The appellant also suggests that the proposed development falls to be considered as an exception under 149e) that being limited infilling in villages. This exception also relates to the construction of new buildings, which I have found not to be the case here. In any event, the development would not be within a village, nor would it represent infilling of a gap.
18. It is not in dispute between the parties that the building is of permanent and substantial construction. Based on the submitted evidence, I have no reason to form a different view.

19. 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.
20. In the proposed development, the existing building would be re-used. In determining that the re-use of buildings need not be inappropriate in the Green Belt, the Framework does not exclude the use of buildings as dwellinghouses, subject to the tests as set out above.
21. The identified external amenity space¹ would, however, extend slightly beyond the footprint of the existing building and represent a small incursion into the Green Belt. It would, however, for a large part, be confined to the footprint of the existing building. The remainder would be tight to the building. Due to its size and siting, the re-use of the building and the amenity space as set out, would not cause harm, and thereby preserve the openness of the Green Belt in both spatial terms and visual terms.
22. However, notwithstanding the identified area of external amenity space, it is pertinent that the area covered by the proposed development (the redline boundary) forms a significantly greater area than the external amenity space as identified. Were planning permission to be granted for the proposed development as set out, based on the identified land subject to the application, there would be nothing to prevent use of the wider area of land for associated residential purposes.
23. Although it would be possible to remove permitted development rights for ancillary buildings, there would be nothing to prevent the siting of domestic paraphernalia such as outdoor furniture, trampolines, BBQs, sports equipment, and the parking of vehicles on this land. This would represent a significantly greater incursion into the Green Belt than the proposed fenced amenity space. This would cause harm to, and thereby not preserve, the openness of the Green Belt in both spatial and visual terms. The Courts have previously held that there was no legal error made by an Inspector in concluding that proposed fencing, bin storage, car parking space and domestic paraphernalia would fail to preserve openness.
24. It would be unreasonable and unenforceable to impose conditions requiring the internal storage of such items and equipment when not in use. I do not agree with the appellant that such domestic use of land would be for outdoor sport and recreation as put forward.
25. There would also be a necessity to provide a vehicular access track to the proposed parking area for the dwelling. No details of the access have been provided in terms of its route and width and I therefore cannot be certain that it would not cause harm to the openness of the Green Belt or the purposes of including land within it. That said, I acknowledge that there will be instances where certain forms of access tracks which do not cause harm to the openness of the Green Belt or the purposes of including land within it, and it may be the case that such a form of access is achievable in this instance.
26. The appellant has referred to an existing track leading to the building. This was not however in evidence on my site visit, although it is possible that this may have become overgrown and is no longer visible. I note from a previous appeal

¹ Drawing Number B/470/P1

decision² that a hard-surfaced access track had become overgrown but was still evident.

27. Concerns have been expressed in relation to the impact that the movement of vehicles would have on the Green Belt. Although the specific access details are not before me, any movement of vehicles would be for a very short period and would not harm the openness of the Green Belt. I acknowledge that the outdoor parking of vehicles has the potential to harm openness, however in this case parking would be provided within the building and the access track could be designed as such to prevent parking on it.
28. For both the re-use of a building and a material change of use of land, it is a requirement that in order for it not to be inappropriate, it is also necessary that it does not conflict with the purposes of including land within the Green Belt. One such purpose is to assist in safeguarding the countryside from encroachment. Although I have acknowledged that the re-use of a building in the Green Belt as a dwelling is not excluded in the Framework, this is on the basis that it must preserve openness and not conflict with the purposes of including land within it.
29. One such purpose of the Green Belt is to safeguard the countryside from encroachment. The re-use of the existing building, combined with the limited area of amenity space as set out, would not result in a harmful encroachment into the countryside. It is also likely that an appropriately sized and sited access would not result in a harmful encroachment, although I do not have such details to be certain on this matter.
30. In this case, however, the application site, by extending significantly beyond the area of the existing building and its proposed external amenity space, would bring a distinctly more urbanising use to a greater part of the site which for the reasons outlined above, would be highly more conspicuous than the current arrangement. This aspect of the development would therefore fail to safeguard the countryside from encroachment and conflict with one of the purposes of including land within the Green Belt.
31. Therefore, although the proposed development would constitute the re-use of a building, when considered as a whole it would not preserve the openness of the Green Belt and it would conflict with one of the purposes of including land within the Green Belt. Were the application site boundary to have been tightly drawn to only include the retained building, its identified private amenity space and an appropriate means of access, my finding on whether or not the development was inappropriate in the Green Belt may have been different.
32. Nevertheless, for the reasons given above, the proposed development before me, would constitute inappropriate development in the Green Belt. It would be contrary to Policy 49 of the Bromley Local Plan (2019) and the Framework, this is a matter to which I afford substantial weight against the proposed development in the planning balance.

Character and appearance

33. The appeal property is located not far from the roadside in an area of distinct rural character, with open fields and a pleasant sense of naturalness and spaciousness.

² APP/G5180/W/15/3139414

34. The utilitarian appearance of the appeal building would be retained as a result of the development. It would retain the appearance of an agricultural building in a rural setting and considering this element of the development in isolation, it would not harm the overall character and appearance of the area.
35. As identified however, the development extends significantly beyond the mere footprint of the building. As in my consideration on the impact of the small area of amenity space as identified on the Green Belt, due to its overall size and siting, I do not consider that the use of this area of land for associated amenity use would harm the character and appearance of the wider area. It would be sited close to the building with limited views from public vantage points.
36. The storage of vehicles within a covered parking area would result in them being contained within the building envelope and I do not consider that this would cause harm to the character and appearance of the area, even if it would involve vehicles to momentarily use the required track to access the building.
37. The expansion of the residential use of the site, as per the application site boundary would, however, fundamentally alter its existing open rural character. The residential use of the land combined with the siting of domestic paraphernalia such as outdoor furniture, trampolines, BBQs, sports equipment, and the parking of vehicles on this land would cause significant harm to the existing rural character and appearance of the site. Furthermore, the formalised and structured planting and landscaping of this part of the site would appear at odds with the more undeveloped, natural, open aspect of the site that presently exists. These features would give the site a significantly more urbanised appearance.
38. The proposed development would therefore cause harm to the character and appearance of this rural area. It would be contrary to Policy 37 of the Bromley Local Plan (2019) which requires, amongst other things, that developments should positively contribute to the landscape and respect landscape features.

Other considerations

39. The proposed development would result in the creation of an additional dwelling. This would represent a minor contribution to the housing stock, and I give this matter moderate weight in favour of the appeal.
40. The appellant has referred to further examples of case law. I have had regard to, and followed, the findings in *Euro Garages*³ where the Court affirmed the importance of decision-makers analysing what is the harm to the openness of the Green Belt when applying Green Belt exception policies in the Framework. I have also had regard, and followed, the findings in *Samuel Smith*⁴ where the court held that “whether the development would ‘preserve’ the openness of the Green Belt cannot mean that a proposal can only be regarded as ‘not inappropriate in the Green Belt’ if the openness of the Green Belt would be left entirely unchanged. It can only sensibly mean that the effects on openness must not be harmful, understanding the verb ‘preserve’ in the sense of ‘keep safe from harm – rather than ‘maintain (a state of things)’”. In the appeal proposal, I have found harm would be caused to the openness of the Green Belt and would thereby not be preserved.

³ *Euro Garages Ltd v SSCLG* [2018] EWHC 1753 (Admin)

⁴ *Samuel Smith Old Brewery (Tadcaster) v North Yorkshire CC* [2018] EWCA (Civ) 489

41. I have had regard to the Bluebell Cemetery appeal decision⁵ insofar as it is a material consideration. The nature of that development is, however, quite different to the current appeal. That appeal was for the extension of a building, found not to be inappropriate. The Inspector did however observe that since there were already cremation services held on the site, albeit with the cremation itself being carried out off-site, other than the extension, there were no external or physical changes being made to the site. The same access roads and car parking as currently exist on site would be used. It was found that the proposed development would not result in a more intensive use of the site.
42. I have also had regard to the Knockholt Farm appeal decision⁶ insofar as it is a material consideration. In that appeal, however, the Inspector did not consider that the proposed development met any of the exceptions listed in the Framework. The proposed development failed to constitute the type of development under paragraph 150d) as it was found not to be of a substantial construction. It was also held that the development amounted to a 'fresh build' given the level of works that were proposed, and paragraph 149c) was therefore not met. There are therefore clear differences with this appeal, and I give it limited weight.

Planning Balance

43. 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.
44. 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 moderate harm to the openness of the Green Belt and conflict with the purposes of including land within it. There would also be harm caused to the character and appearance of the area.
45. Having considered the matters raised in support of the proposal, including in relation to the creation of an additional dwelling, I conclude that they do not clearly outweigh the harm that I have identified, by reason of inappropriateness, harm to openness, and harm to the character and appearance of the area. Consequently, the very special circumstances necessary to justify the development do not exist.
46. Therefore, the proposed 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 proposal would also be contrary to the Framework.

Other Matters

47. 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 benefit from the presumption in favour of sustainable development.

⁵ APP/G2245/W/19/3243177

⁶ APP/G2245/W/19/3243177

Conclusion

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

A M Nilsson

INSPECTOR