



Appeal Decision

Site visit made on 6 December 2023

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 December 2023

Appeal Ref: APP/G5180/W/23/3323680

Orpington Sports Club, Goddington Lane, Orpington BR6 9SX

- 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 Adrian Foster of Westcombe Park Rugby Football Club against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/23/00394/FULL1, dated 2 March 2023, was refused by notice dated 9 May 2023.
 - The development proposed is described as a retrospective application for the erection of a temporary sports unit used to facilitate crossfit games. The application is for the unit to remain in place for 5 years. Use class F2 for the unit remains the same as existing sports club. The opening hours for the unit is from 5:15am to 7pm.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The development has been undertaken. I am therefore considering the appeal retrospectively.
3. On 20 December 2023 the Government published a revised National Planning Policy Framework (the Framework). The revised Framework was accompanied by a written ministerial statement (WMS). Having regard to the main issues in this appeal, it has not been necessary to invite submissions from the parties on the revisions that have been made to the Framework.
4. The Council refused planning permission, amongst other reasons, as it considered that it had not been demonstrated whether or not the development causes harm to nearby trees.
5. Since the original decision, the appellant has submitted a Tree Impact Assessment which concludes that the development has not resulted in any harmful impacts on the nearby trees. The Council's Tree Officer has reviewed the assessment and the Council is now satisfied that its concerns have been satisfactorily addressed. The Council do not wish to contest this reason for refusal.
6. I have no reason to form a different view and accordingly will determine the appeal on the basis of the remaining reasons for refusal.

Main Issues

7. The appeal site is located within the Green Belt. Therefore, the main issues are:
- Whether or not the development is inappropriate development in the Green Belt for the purposes of the Framework including the effect on openness;
 - whether the development represents a sustainable form of development with regard to its location and development plan policy;
 - whether the development has resulted in the unacceptable loss of a sports pitch or sports court;
 - the effect of the development on the living conditions of occupants of nearby residential properties in terms of noise and disturbance; and
 - if the development is inappropriate development in the Green Belt, 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

Appeal site and development

8. The appeal site is located at Orpington Sports Club which is a multi-sports facility. It is situated to the east of Goddington Lane, from where the vehicular access is located, and is close to the junction with the A224 Court Road and The Hwy. The sports ground primarily consists of outdoor pitches and includes a club building with associated facilities which is adjacent to the car park. The site is surrounded by mature trees and is located within the Green Belt.
9. The appeal development comprises two buildings. Namely the larger sports hall building used for crossfit and the small storage building. It is outlined that both buildings measure 258sqm and are of a scaffold construction with timber cladding infill.
10. Both buildings are located close to the southern boundary of the site. It is outlined that the structures were erected to allow the tenants to safely continue providing sports and recreational activities during the covid-19 pandemic, when social distancing rules were enforced by the Government. A temporary consent of 5 years is sought. The opening hours for the unit are from 5:15am to 7pm.

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

11. The Framework 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 154 that apart from a list of given exceptions, the construction of new buildings should be regarded as inappropriate development in the Green Belt. One of the exceptions, 154b), includes the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport and outdoor recreation; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of

including land within it. Policy 49 of the Bromley Local Plan (2019) reflects the exceptions as set out in the Framework.

12. The appeal development is located at Orpington Sports Club which is a large complex that primarily caters for outdoor sports such as rugby and cricket. The appellant considers that the development supports appropriate facilities in connection with the existing use of land for outdoor sport and recreation, and thus forms the exception cited above.
13. From the submitted evidence and my own observations on my site visit, the development appears as a largely standalone operation and separate to the rugby club operation. I do not doubt there are some ties. Both entities use the same access and car park, and there may be use of the facility by members of the rugby club and the other outdoor sports clubs. The financial contribution also supports the rugby club as has been set out.
14. However, despite some connection, and that it provides some support, it does not amount to an appropriate facility for (my emphasis) outdoor sport. It is, in effect, a facility in its own right for mainly indoor sport and recreation. I am not convinced that the development is needed for facilitating outdoor sport to be undertaken at the site. On this basis, it therefore fails to meet the exception as set out above.
15. Had I considered that the development did constitute an appropriate facility for outdoor sport, in order to be considered as an exception to allowing new buildings in the Green Belt, it is also required to preserve the openness of the Green Belt and not conflict with the purposes of including land within it.
16. In terms of openness, the Framework outlines that this is one of the essential characteristics of Green Belts. Openness has a spatial aspect as well as a visual aspect.
17. The appeal buildings are located on part of the site where the evidence outlines was previously sports courts. Although the evidence does not make a direct spatial comparison, due to its overall size and scale, the appeal buildings have a greater impact in spatial terms. They are, however, sited relatively close to the existing buildings and contribute to form a cluster of buildings at this part of the site. I therefore find that the harm to the Green Belt in spatial terms is moderate.
18. In visual terms, due to its overall size and scale, the building is highly discernible from within the sports complex, particularly from the car park area. There is an established tree belt along the site boundary that provides a significant degree of screening from the A224 (Court Road). I therefore find that the harm to the Green Belt in visual terms is moderate.
19. For these collective reasons, the development causes moderate harm, and therefore does not preserve the openness of the Green Belt in spatial and visual terms.
20. The appellant has referred to an unimplemented planning consent to increase the built development on the site. The Council have commented that this consent has expired. Therefore, it is of limited weight in the appeal. Either way, it had different planning issues to consider, and was for a different form and use to the development before me, which I have considered on its own individual planning merits.

21. For the reasons given above, the development does not constitute an exception as outlined in paragraph 154 of the Framework. The development is therefore inappropriate development in the Green Belt and is contrary to Policy 49 of the Bromley Local Plan (2019) and Policy G2 of the London Plan (2021) which protect the Green Belt from inappropriate development.

Sustainable form of development

22. In order to support communities, including through the provision of recreation and leisure facilities, Policy 20 of the Bromley Local Plan (2019) outlines that such facilities will be encouraged to locate to maximise accessibility and will normally be permitted provided that it is accessible to the members of the community it is intended to serve by a full range of transport modes.
23. Policy S5 of the London Plan (2021), on the matter of sports and recreation facilities, outlines that development proposals for sports and recreation facilities should increase or enhance the provision of facilities in accessible locations, well-connected to public transport and link to networks for walking and cycling.
24. The development is located at an existing sports ground that is within a predominantly residential area and is not within a recognisable town or neighbourhood centre. From the Council's case and my own observations on site, it appears to have relatively poor public transport accessibility. There are bus stops close to the site, however these are served by a very limited number of services at poor frequency. Furthermore, as I observed, the southbound bus stop has a relatively inharmonious access, requiring users to cross the busy Court Road twice to access it. The Council also outline how the site has a poor PTAL (Public Transport Accessibility Level) rating of 1b, where 0 has the poorest access to public transport and 6b has the best.
25. The appellant has highlighted that the appeal site is 1km from Chelsfield Station. Although the walking route is relatively direct and harmonious, the distance is such that it is likely to discourage its use and I give greater weight to the PTAL rating in this regard.
26. I acknowledge that some users may live locally and arrive on cycle or by foot. There is, however, limited evidence to support this suggestion that would lead me to override my views expressed above. I also recognise, as the appellant highlights, the development is at an existing sports and recreation facility. The existing facility is however locationally governed by the presence of outdoor pitches, unlike the appeal development.
27. For the reasons set out above, users of the facility will, for the most part, be reliant on travel by car. The facility, by reason of its location and poor accessibility, will therefore fail to contribute to reduce the need to travel by private car.
28. The use therefore represents the creation of an unsustainable form of development, and it conflicts with the accessibility and sustainability aims of Policy 20 of the Bromley Local Plan (2019) and Policy S5 of the London Plan (2021) as set out above.

Sports pitch provision

29. The development has taken place on land that was formerly a fives court. It is suggested that the use of the land for fives ceased a considerable time ago and that the side walls which are required, have been removed. The historic aerial photos submitted with the appeal support this stance.
30. Policy 20 of the Bromley Local Plan outlines that planning permission will not be granted for proposals that would lead to the loss of community facilities, unless alternative enhanced provision is to be made in an equally accessible location for the community it serves, or it can be demonstrated that there is no longer a need for them or other forms of social infrastructure.
31. In the appeal, the development provides for cross-fit training. The representations demonstrate how this constitutes a community facility. Therefore, whilst it is for an alternative activity, it remains as a community facility. Although the interim Playing Pitch Supply & Demand Report (March 2022) identifies insufficient capacity of tennis courts, although it does not specifically mention fives, the evidence and historic photographs suggest that the cessation of the fives court was due to it being unused over a long period.
32. Policy 58 of the local plan sets out that the Council seeks to retain sports, recreation and playing fields and will resist their loss unless it can be demonstrated that the open space, buildings and other land used for sport, recreation and play are surplus to requirements. In the appeal development, the land will be retained for recreation, albeit within a building.
33. I am not persuaded that, on the matter of loss of the fives court for replacement with a building for cross-fit, results in material harm in terms of the provision of sports and recreational facilities. The representations clearly show the valued use of the facility and are of such a volume to weigh significantly in favour of the appeal in terms of demonstrating a demand, particularly when compared to the limited evidence to demonstrate demand for the retention or reinstatement of the fives court at this site.
34. Having regard to the above policies and the language contained in paragraph 103 of the Framework, I consider that the development is for an alternative sports and recreation provision, the benefits of which, as demonstrated in the representations, clearly outweighs the loss of the former use.
35. Therefore, in terms of protecting and securing sports and recreation provision in the borough, the development complies with Policies 20 and 58 of the Bromley Local Plan (2019) and the Framework.

Living conditions

36. The closest residential properties to the appeal development are located on Goddington Lane and Court Road.
37. In terms of the background noise level, this is largely in the form of road traffic noise from the nearby Court Road which is a busy A road which connects Orpington with the M25 motorway.
38. On my afternoon site visit, when I arrived at the site the door to the building was open and I could hear noise emanating from the activities being undertaken at the building. This included background music. The noise was not

however highly audible above the noise from the road, which is the dominant noise source in the immediate area, and I do not consider it was of such a magnitude to cause a disturbance to the nearby residential properties, which were further from the appeal building than where I observed the noise level.

39. The description of the development states that the premises opens at 05:15. At this time, it is highly likely that road traffic levels would be significantly lower and noise levels would be lower. This is also a time when surrounding residents may reasonably expect there to be a quieter noise environment. To this end, the operation of the premises at this time has the potential to cause noise and disturbance from comings and goings of users, and given the lightweight construction, from noise emanating from the activities being undertaken.
40. The appellant suggests that hours of use and the use of audio equipment could be controlled by planning condition. I agree that there would be more appropriate times when the operation could be carried out that would not cause unacceptable levels of noise and disturbance, although no hours have been proposed. There are also further conditions that could be imposed in relation to the use of audio equipment and a requirement for self-closing doors.
41. Therefore, whilst I find that the operation of the facility at the times set out in the description of development has an unacceptable impact on living conditions in terms of noise and disturbance, subject to the imposition of appropriate planning conditions relating to the hours of use and other mitigation measures, I find that subject to conditions, the development would not have an unacceptable impact on living conditions. It would comply with Policies 37 and 119 of the Bromley Local Plan (2019) and Policy D14 of the London Plan (2021), 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.

Other considerations

42. The appellant's commitment and dedication to the operation is clear from the representations. I have no reason to doubt the sincerity and genuineness of the comments. I acknowledge such admirable and commendable qualities, and it is evident that the facility is well-used, much valued, and that the appellant is held in high regard by the users. These matters weigh strongly in favour of the appeal, particularly in terms of providing a community sports facility.
43. The facility also makes a financial contribution to Westcombe Park RFC. I acknowledge that this is likely to be an important contribution, however there is limited financial evidence submitted to give this significant weight in the appeal. I therefore give this limited weight in favour of the appeal.
44. I acknowledge that consent is sought for a temporary period of 5 years. I give this factor limited weight in favour of the appeal. I am also mindful that it is outlined the structures were initially erected using permitted development rights introduced to allow socially distanced activities to be carried out due to government restrictions during the pandemic. These restrictions are, however, no longer in place.

Planning Balance

45. Paragraph 152 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 153 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.

46. 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 moderate harm to the openness of the Green Belt in spatial and visual terms. I have also found that the development is not in a sustainable location.
47. Having considered the matters raised in support of the development 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, harm to openness, and the requirement that developments are sustainably located. Consequently, the very special circumstances necessary to justify the development do not exist.
48. Therefore, the development is 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 is also contrary to the Framework.

Conclusion

49. The development therefore conflicts with the development plan and there are no other considerations, including the Framework, that outweigh this conflict.
50. 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