



Appeal Decision

Site visit made on 7 February 2024

by Stewart Glassar BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 February 2024

Appeal Ref: APP/G5180/W/23/3325830

**Land at rear of 50 to 54 Cudham Lane North, Hazelwood, Bromley
TN14 7RA**

- 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 Roger Gluck (GPE Ltd) against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/23/00269/FULL1, dated 23 January 2023, was refused by notice dated 4 July 2023.
 - The development proposed is described as 'Proposed Temporary Change of Use of existing open ground for the purposes of storage of mobile freezer trailers'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Although the application form refers to the land being to the rear of No. 56 Cudham Lane North, the site is to the rear of Nos. 50 – 54. In the interests of clarity, I have amended the address in the banner heading accordingly.
3. Both the Planning Statement which accompanied the planning application and the subsequent Appeal Statement refer to the use being for up to 12 freezers. I have considered the proposal on this basis. At the time of my visit the site was being used to store freezers. The retrospective nature of the proposal has no bearing on my decision.
4. A revised National Planning Policy Framework (the Framework) was published by the Government after the determination of the planning application. It does not raise any new considerations in relation to this appeal.

Main Issues

5. The main issues are:
 - a) whether the proposed development would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies;
 - b) the effect of the proposed development on the character and appearance of the area;
 - c) the effect of the proposed development on highway safety; and

- d) whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.

Reasons

Whether Inappropriate Development

6. The Framework advises that in the Green Belt, development should be regarded as inappropriate. The Bromley Local Plan 2019 (BLP) and the London Plan 2021 are both broadly consistent with the Framework insofar as seeking to protect the Green Belt from inappropriate development.
7. Paragraphs 154 and 155 of the Framework do however set out exceptions where development in the Green Belt might not be considered as inappropriate. The Council does not consider the proposal to benefit from any of these exemptions. The appellant contends that the proposal should be considered as a change in the use of land under Paragraph 155(e).
8. Paragraph 155(e) allows for 'material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds)'. This is subject to the proviso that such uses also preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.
9. The recent judgement in *Royal Borough of Kingston Upon Thames v Secretary of State for Levelling Up, Housing and Communities & Anor* [2023] EWHC 2055 (Admin) makes clear that the inclusion of the 'such as' examples in this paragraph mean that it is not an open-ended, broad category of change of use where the only limitation is that there is no impact on openness and no conflict with the purposes of the Green Belt.
10. The judgement noted that any sensible reading of the context can only lead to the conclusion that the uses permitted were to be read as being very closely aligned to the examples given. Whilst the storage of freezers would be an open use of the land without built form it would not be similar to the types of uses illustrated in Paragraph 155(e).
11. However, even if I were to conclude that the proposal fell within the change of use of the land as prescribed by Paragraph 155(e), I would still need to consider whether the openness of the Green Belt would be preserved and that the use would not conflict with the purposes of including the land within the Green Belt.
12. I appreciate that the nature of the business relies on the freezers being out at other locations and that a freezer will not necessarily be in the same place for long periods of time. Nevertheless, despite the somewhat transient nature of the on-site operations, there will no doubt be peaks and troughs in demand and at times there will be more freezers on site than others. For example, at the time of my site visit there were three freezers on site. The photographs attached to the Council's appeal statement show seven freezers on site. Such fluctuations would be dependent upon demand rather than being something which could be controlled by any planning conditions.
13. I acknowledge that preservation of openness isn't absolute and that it can be maintained whilst allowing change to occur. With that in mind, and

notwithstanding that in this case any loss of openness would be localised, given the extent of the permission sought, I nevertheless find that harm to the Green Belt would arise from the proposal and that the openness of the Green Belt would not be preserved.

14. Whilst the proposal might not conflict with the purposes of including the land within the Green Belt, it would not fully comply with Paragraph 155(e). Therefore, in view of the foregoing and having regard to the Framework, Policy 49 of the BLP and Policy G2 of the London Plan, the proposal would be inappropriate development in the Green Belt. As per Paragraph 153 of the Framework, any harm to the Green Belt attracts substantial weight.

Character and Appearance

15. The appeal site is located on the edge of a sizable cluster of houses within the open countryside. It forms part of a larger area of open land (edged blue on the site location plan) and which is served by an existing vehicular access. There is some planting and vegetation along the boundaries which helps to screen the site. It is set behind some houses on Cudham Lane North, with some further houses to the south west which are visible from the site. Whilst the appeal site and adjoining land is far from pristine in appearance, it does nevertheless contribute to the overall open and rural character of the area.
16. The freezers would be stored towards the rear of the site and so would not be visible from Cudham Lane North or be seen from the access road until quite a long way along it. They would also be set away from nearby dwellings and so would not have any direct effect on the living conditions of neighbouring residents in terms of overshadowing or being overbearing.
17. Notwithstanding the fluctuations in the number of freezers on site, the storage of freezers gives the site a more urbanised appearance which in turn diminishes the existing rural character. The overall visual effect of the operations would be limited and localised, but nonetheless there would be a small amount of harm to the overall character and appearance of the area.
18. This harm would be contrary to Policy 37 of the BLP which requires, amongst other things, that developments should be attractive and contribute to their context such as the surrounding landscape.
19. The decision notice refers to Policy 6 of the BLP but as this appears to relate to residential extensions it is not of relevance to this appeal and so I have not taken it into account.

Highway Safety

20. Cudham Lane North has a speed limit of 30mph in the vicinity of the appeal site and as a country lane the road is narrow in places with various bends. Based on what I saw and the substantive evidence before me, vehicle speeds do not appear to be particularly high in the vicinity of the site.
21. The access to the site is wide. Whilst visibility is slightly constrained by the alignment of the road itself as well as the roadside hedges and boundary enclosures, there is nothing before me to suggest that vehicles entering or exiting the site would be unable to see oncoming traffic or visa versa. Given the likely road speeds, it seems probable that vehicles entering or exiting the site would be able to achieve that manoeuvre in a safe fashion.

22. A vehicle towing a freezer might be slower and less agile than an unencumbered vehicle entering or exiting the site. This may mean that on occasions traffic on Cudham Lane North would need to slow down or possibly come to a brief halt in order to allow the manoeuvre to be completed. However, in view of my observations on the general level of visibility, likely vehicles speeds, and the stated level of vehicular movement from the site, this seems unlikely to be something that would occur often or be likely to cause other road users much difficulty.
23. There is no data before me to indicate that Cudham Lane North or this part of it in particular is prone to accidents or is a particular risk to other road users. Similarly, that the lane is used as a bus route is not in itself a reason to reject this scheme. There is no information as to how frequent such services are, but it does nevertheless indicate that the lane can be used by larger vehicles.
24. I acknowledge the concerns of local residents that at times the lane can be heavily used and can become congested and this no doubt has an effect on their immediate environment. Similarly, it is legitimate for the Council to be concerned about possible congestion and disruption on the road and the potential safety implications. However, there is no substantive evidence before me to indicate that the proposal would necessarily be materially harmful in such regards.
25. Based on the substantive evidence before me I do not find harm arising with regard to highway safety. Accordingly, the proposal would comply with Policies 31 and 32 of the BLP which seek to ensure that developments do not adversely affect road safety and that traffic generation is appropriately addressed.

Other Considerations

26. There would be no harm to trees or ecology and no repairs or maintenance of the freezers takes place on site. However, these are indications of a lack of harm and so do not weigh positively in favour of the scheme.
27. The use of the site would allow the business to continue to operate and there would be some economic benefits in this regard. However, there is no indication that the operations need to be located on this particular site or that the business cannot be located elsewhere and continue to operate.
28. I understand that the site has been tidied and restored following previous, possibly unauthorised activities. However, tidying up the site is not necessarily dependent upon using the land to store freezers.

Green Belt Balance

29. I have found the scheme to represent inappropriate development in the Green Belt. The Framework requires me to give this harm substantial weight.
30. On the other hand, the benefits outlined above carry limited weight. These other considerations do not clearly outweigh the substantial harm I have identified due to loss of openness and inappropriateness. Consequently, the very special circumstances necessary to justify the proposal do not exist.

Planning Balance

31. The development is contrary to the Framework and to the development plan which seek to protect the Green Belt. The proposal would also cause harm to

the character and appearance of the area, in contravention of development plan policy. The fact that I have found in the appellant's favour with regard to highway safety does not outweigh the totality of the harm I have identified.

32. The proposal would not accord with the development plan taken as a whole and there are no other material considerations to outweigh this finding.

Other Matter

33. The application form refers to the permission being a temporary change of use although no specific time period is requested. Regardless of this, the Appeal Statement does subsequently raise the possibility of me imposing a condition limiting the use to six months, particularly if I were to find against the appellant. However, there would clearly be an on-going risk to Green Belt openness during that period without any very special circumstances to justify it. With that in mind and given that it would be open to the Council to consider what might be a reasonable timeframe for the relocation of the operations were it to pursue enforcement action, a six month permission would not be justified in this instance.

Conclusion

34. For the reasons set out above, I dismiss the appeal.

Stewart Glassar

INSPECTOR