



Appeal Decision

Site visit made on 5 March 2024

by J Moore BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th April 2024

Appeal Ref: APP/G5180/W/23/3323877

Waldens Bungalow, Waldens Road, Orpington, Kent BR5 4EU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Ms Lara Bloomberg against the decision of the Council of the London Borough of Bromley.
 - The application Ref is DC/22/04613/FULL1.
 - The development proposed is demolition of glasshouse. Erection of dwellinghouse for an agricultural worker on former glasshouse foundation.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development in my banner heading above is taken from the planning application form, excluding further wording which does not form acts of development.
3. There is a minor inconsistency in the site address as it appears on the application form, the appeal form, and the decision notice. The decision notice and other submissions before me refer to Waldens Cottage. Having regard to the address as it appears on the Royal Mail Post Code Finder, I am satisfied that the address on the application form and the appeal form is correct, and therefore I have used this address in my banner heading above.
4. In December 2023, a revised version of the National Planning Policy Framework (the Framework) was published. The paragraphs most pertinent to this appeal are unchanged, other than their numbering. As such neither party is prejudiced by a lack of consultation on the revised Framework.

Main Issues

5. The appeal site is within the Metropolitan Green Belt. Therefore, the main issues are:
 - whether the proposed development would be inappropriate development in the Green Belt, having regard to the Framework and any relevant development plan policies;
 - the effect of the proposal on the openness of the Green Belt; and
 - whether the 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

6. It is necessary for me to set out some background and details of the proposal, as such matters affect my consideration of the appeal.
7. The appeal site is roughly an 'L' shaped parcel of land, one part of which includes the dwelling called Waldens Bungalow with an enclosed area of land to form a garden, and further buildings towards the north-west which include a barn and stables. This area is separated from the other part of the 'L' shape by a private access track, with boundaries marked by established hedging and trees. The other part of the 'L' shaped land includes an area formerly occupied by two glasshouses. The proposed dwelling house would be sited on the area of land formerly occupied by one of the glasshouses, which includes a concrete base and short perimeter walling remaining in situ.
8. From the appellant's evidence and application details, the appellant bought the property from family members who had rented out the land for many years. The former glasshouses were previously used to grow flowers and vegetables for commercial sale prior to the fall of glass during a previous storm event. The glass structures were removed for safety reasons about five years ago.
9. The supporting information to the application describes the property as a small holding, and the appellant states that the land is in need of maintenance to improve its condition. However, there is no evidence before me of any registered agricultural holding or any agricultural tenancy.

Whether the proposal would be inappropriate development

10. The Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. It goes on to state that the construction of new buildings in the Green Belt is inappropriate development, which is, by definition, harmful and should not be approved except in very special circumstances.
11. There are however a limited number of exceptions to this, as set out in paragraphs 154 and 155 of the Framework. Policy 49 of the Bromley Local Plan 2019 (BLP) and Policy G2 of the London Plan 2021 (LP) set out policy in relation to the Green Belt and these are consistent with the Framework.
12. The planning application and accompanying details demonstrate some confusion as to whether the proposal would meet any of the relevant exceptions within the Framework or the relevant policies of the development plan. The Council considered the proposal against all of the exceptions and other forms of development within paragraphs 154 and 155 of the Framework, as set out within its delegated decision report (the officer report).
13. The appellant contends that the proposal would fall to be considered as an exception under paragraph 154g), which refers to the limited infilling or the partial or complete redevelopment of previously developed land (PDL), whether redundant or in continuing use (excluding temporary buildings).
14. However, the definition of PDL within the Framework excludes land that is or was last occupied by agricultural or forestry buildings. The proposed dwelling would be sited on land previously occupied by a commercial glasshouse, dismantled some time ago. Consequently, the proposal would not meet this

- exception, as the land upon which the proposed dwelling would be sited was last occupied by an agricultural building.
15. In any event, the appellant states that the proposed development would not be a new dwelling, but a prefabricated lodge sited on existing developed land within the residential curtilage of the existing dwelling (Waldens Bungalow). Regardless of whether or not the lodge is prefabricated, it would still result in a new building of permanent construction and siting, proposed as a separate dwelling house, capable of accommodating a household.
 16. The main parties are also in dispute regarding the extent of the curtilage of the existing dwelling.
 17. The Council draws my attention to unspecified judgements regarding curtilage, which are stated to conclude that the curtilage of a building is confined to an area around the building; having an intimate association with the building; serving the purpose of the building in some necessary or useful way; and usually forming one enclosure with the building. The Council's approach to the definition of curtilage is not challenged by the appellant, and I find no reason to consider otherwise.
 18. The Council's assessment concludes that the area of land in which the proposed dwelling would be sited is outside the curtilage of the existing dwelling. The appellant's position is that the curtilage is the full extent of the appeal site, but this is not accompanied by any clear or compelling justification.
 19. Given the separation created by the access track and hedging, as set out at the start of my reasoning, together with all of the evidence before me, I am not satisfied that it has been demonstrated that the proposal would be sited within the curtilage of the existing dwelling, and I give more weight to the Council's analysis.
 20. In any event, whether or not the land is within residential curtilage can be addressed by an application for a certificate of lawfulness, as the Council suggests. It is not the role of an Inspector dealing with a section 78 appeal to determine the lawful use of land.
 21. Even if the proposal was found to be within the curtilage of the existing dwelling, the determining factor in relation to the exception for PDL is whether or not the proposal would have a greater impact on the openness of the Green Belt than the existing development, and this matter is addressed later in my reasoning.
 22. The appellant also states that the appeal scheme would be infill, based on the surrounding area. In this regard, it appears that the appellant is suggesting that the proposal would form an exception under paragraph 154e) of the Framework, which refers to limited infilling in villages. Notwithstanding my findings above, I have also considered the proposal against this exception.
 23. The appeal site is adjacent to a commercial enterprise (Syd Bishop Demolition) which includes some large commercial buildings to the south of the appeal site, with a yard and other buildings of a more domestic scale at the end of the road. There is a further yard area used to store machinery and vehicles towards the east on the opposite side of the road. There is also another property called Lydale which appeared to be in residential use. The wider landscape forms open countryside. I therefore do not consider that the appeal

site lies within a village, nor would the proposal comprise infill. Consequently, the proposal would not meet the exception under paragraph 154e) of the Framework.

24. For the avoidance of doubt, I have also considered the proposal against other exceptions within paragraph 154 of the Framework, as did the Council within the officer report which considered the application.
25. Of itself, the proposed building would not be for agriculture or forestry, and it would not therefore be an exception under paragraph 154a).
26. The exception under paragraph 154b) refers to the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments. The proposal would not form an appropriate facility for the uses specified in that exception.
27. Moreover, given my findings regarding the lawful use of the land, I cannot be certain as to the nature of any material change in use. Therefore, it has not been demonstrated that the proposal would meet this exception. Even if it were so demonstrated, the determining factor would be the effect upon openness and whether it conflicted with the Green Belt purposes.
28. The proposed dwelling could not form an extension or alteration to a building which is no longer in situ. Consequently, it has not been demonstrated that the proposal would meet the exception under paragraph 154c) of the Framework.
29. Notwithstanding my findings regarding the lawful use of the land, a dwellinghouse would not form a replacement building in the same use as a former glasshouse, and therefore it would not meet the exception within paragraph 154d) of the Framework.
30. The dwellinghouse is not proposed as affordable housing for local community needs and therefore it would not be an exception under paragraph 154f).
31. The officer report also considered the proposal against the forms of development listed in paragraph 155 of the Framework, which are not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. For the avoidance of doubt, I have considered this matter.
32. The proposed development would not comprise mineral extraction, nor would it be an engineering operation or local transport infrastructure. Therefore, it would not be a form of development listed in paragraphs 155 a), b) or c).
33. The proposal would fail to comply with paragraph 155d) as the former glasshouse would not have been of a permanent and substantial construction suitable for conversion, regardless of any foundation, footings or services that remain, and it is no longer in situ.
34. I have also considered paragraph 155e) which refers to material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds). A residential use would not accord with the examples listed.
35. For the reasons above and taking account of all of the evidence before me, I therefore conclude that the proposal would be inappropriate development

within the Green Belt, which by definition is harmful. It conflicts with Policy 49 of the BDP, Policy G2 of the LP and the provisions of the Framework.

Openness

36. The Framework identifies the essential characteristics of Green Belts as being their openness and their permanence.
37. As set out above, the former glasshouses have not been in situ for some time. Other than the existing hardstanding and low walling, the immediate area of land within which the new dwelling would be located is undeveloped. It is bounded by mature trees and hedges, although the boundary to the street is more open and thus is in view from the properties opposite. It is therefore clear that the proposed dwelling would have a greater impact upon openness than the existing situation, in both spatial and visual terms.
38. From the evidence before me, I am satisfied that the proposed dwellinghouse would occupy a smaller footprint than the former glasshouses.
39. The appellant's photographs of the former glasshouses give a limited indication of their overall scale, form, design and setting.
40. The former glasshouses were sited relatively low within the surrounding landscape, and their design was such that they were comprised of an open metal framework mounted on a short wall with substantive glazing, giving a predominantly transparent form. The immediate land surrounding the glasshouses was open in nature, comprising grass, with some trees. As such, they would not have formed an unusual feature within an agricultural and/or rural context.
41. The proposed dwelling would be of a very different built form to the former glasshouses, with timber walls to include windows and doors, and a pitched roof. Overall, it would be in sharp contrast to the predominantly transparent structures of the former glasshouses. It would appear as a more substantial domestic feature than the former glasshouses, despite its single storey/lodge nature.
42. I note that the proposed plans indicate a form of terrace or patio area adjacent to the principal elevation that would extend beyond the long flank of the former footprint of the former glasshouse. There would also likely be some degree of associated domestic paraphernalia arising from the proposal. These factors would also contribute to a more domestic appearance and setting.
43. For these reasons the proposal would be a more obtrusive form of development than the former greenhouses. The proposal would therefore result in a significant spatial and visual impact upon the openness of the Green Belt compared to the existing and previous situations, and would encroach into the countryside, conflicting with the purposes of including land within the Green Belt.
44. The fact that the proposal would be partly screened by the adjacent commercial development and surrounding vegetation along its boundaries does not set aside the effect upon openness that would arise as a result of the proposal.

45. I therefore conclude that the proposal would harm the openness of the Green Belt and it conflicts with Policy 49 of the BDP, Policy G2 of the LP and the Framework in this regard.

Other Considerations – the need for agricultural worker’s dwelling

46. Policy 64 of the BLP sets out certain criteria that must be satisfied when considering proposals for agricultural worker’s dwellings. This policy is reflective of the advice at paragraph 84 of the Framework which states that isolated homes in the countryside should be avoided unless there is an essential need for the rural worker to live permanently at or near their place of work in the countryside.
47. In light of the position regarding the former glasshouses, the Council accepts an historic agricultural use of the land, and I find no reason to consider otherwise. However, as set out earlier in my reasoning, there are no details of any agricultural tenancy or registered agricultural holding before me.
48. The planning statement details various actions pursuant to the improvement of the property including erection of fencing, stable repair, and the planting of trees, hedges and wildflower meadows. However, these matters do not of themselves demonstrate agricultural use.
49. The application indicates an intention to rent the land out for sheep grazing, to provide land for horses and to keep bees. The appeal submissions refer to receipts for the provision of sheep in the back fields, but these are not before me. During my visit I saw that there were horses at the appeal site and in the adjacent fields (indicated to be within the appellant’s wider land ownership), which could indicate some equestrian use. However, overall, there is little evidence before me to demonstrate that the land is actively in agricultural use.
50. There is no evidence to demonstrate that an agricultural business has been established for at least three years; nor to indicate any profit or financial soundness; nor to demonstrate the need for a full-time worker or one who is primarily employed in agriculture; nor whether any need could be fulfilled by other existing accommodation in the area, including that within an adjoining or nearby built-up area.
51. I therefore conclude that the proposal fails to demonstrate the need for an agricultural worker’s dwelling. It conflicts with Policy 64 of the BLP, which seeks to ensure that applications for such dwellings are based on robust evidence of need, in accordance with defined criteria.

Other considerations – personal circumstances

52. The reason for the proposal is also founded upon the personal circumstances of the appellant. The appeal site is jointly owned by the appellant and her husband, and they have separated. The appellant still shares the existing dwelling with her estranged spouse. The appellant wishes to retain a family unit and co-parent her teenage children.
53. The existing dwelling has two bedrooms and is considered too small, unsuitable and incapable of being adapted to meet this objective. However, this has not been robustly demonstrated. Furthermore, it has not been demonstrated that the proposal is the only way to achieve this objective.

54. I am sympathetic to the appellant's personal circumstances and family situation. I accept that the best interest of the children would, in principle, be served by co-parenting with parents residing in reasonable proximity. However, family circumstances can be expected to change over time, whereas the proposed dwelling would remain on the site and continue to cause harm to the Green Belt in perpetuity.
55. I must also consider the appellant's and her family's rights to peaceful enjoyment of their possessions and to a private and family life and home, under Article 1 of the First Protocol and Article 8 of the Human Rights Act 1998. I have also had due regard to the Public Sector Equality Duty set out under section 149 of the Equality Act 2010, as the children would share the protected characteristics of age. The proposal would assist in eliminating discrimination against persons with the protected characteristics of age, advancing equality of opportunity for those persons and fostering good relations between them and others.
56. Having regard to all of the above, these matters would attract moderate weight in favour of the proposal. However, if I were to dismiss the appeal, it would be proportionate and necessary to do so in the pursuit of a well-established and legitimate aim: the protection of the Green Belt in the wider public interest. Any interference with qualified rights in this instance would accord with the law. The protection of the public interest cannot be achieved by means that are less interfering with their rights.
57. Furthermore, from the evidence before me, the appellant still resides at the existing property. Therefore, the appellant will not be made homeless if I were to dismiss the appeal, and as such, there would be no violation of the appellant's or her family's human rights.
58. I therefore find that the benefits of the proposal to the appellant, her children and her family would not outweigh the harm to the Green Belt in this case. If I were to dismiss the appeal, it would be proportionate and necessary to do so.

Other Considerations – Further considerations

59. The proposal would provide a new dwelling, and therefore it would contribute to the supply of housing and support the government's objective to significantly boost the supply of homes. As a prefabricated unit on a small site, the dwelling could therefore be delivered quickly. However, these benefits would be limited by the scale of the development proposed. I therefore attribute limited weight to these matters.
60. Even if I were to accept that the proposal was PDL within a residential curtilage, the benefits arising from the effective and efficient use of land would attract limited weight.
61. An intention for the dwelling to be run 'off grid' at some time in the future is commendable and would assist in meeting the challenge of climate change. An intention to increase natural habitat and biodiversity value is also commendable and would assist in conserving and enhancing the natural environment. However, these matters are not robustly demonstrated, nor is there any proposed mechanism before me to secure any potential benefits in this regard. Therefore, these considerations attract very limited weight.

62. A satisfactory design for the proposed dwelling and the absence of harm to neighbouring occupiers are neutral factors in my assessment, offering no weight either for or against the proposal.

Green Belt Balance

63. I have found that the proposal would be inappropriate development within the Green Belt, which is, by definition, harmful. I have also found that the proposal would fail to preserve the openness of the Green Belt. By virtue of paragraph 153 of the Framework, I am required to give substantial weight to any harm to the Green Belt. The Framework makes clear that the harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the development, must be clearly outweighed by other considerations for planning permission to be granted.
64. I have found that the benefits of the proposal to the appellant, her family and her children would attract moderate weight. I have also found that if I were to dismiss the appeal, it would be a proportionate and necessary act in the wider interest of the Green Belt. The other benefits of the scheme are limited. Although there are benefits that weigh in favour of the scheme, they do not individually or cumulatively clearly outweigh the substantial harm arising to the Green Belt.
65. Consequently, the very special circumstances that are necessary to justify inappropriate development in the Green Belt do not exist in this case.

Other Matters

66. The main parties have found that there would be no harmful effect to the setting of the Grade 2 listed building (Waldens Manor) which is located farther to the north of the appeal site, and I find no reason to consider otherwise.
67. Although the Council is unable to demonstrate a five-year supply of deliverable housing sites, the application of the Framework's Green Belt policies provides a clear reason to refuse the proposal.

Conclusion

68. For the reasons given above the appeal should be dismissed.

J Moore

INSPECTOR