



Appeal Decision

Site visit made on 25 April 2024

by Jane Smith MA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 May 2024

Appeal Ref: APP/H1515/W/23/3332073

**The Brentwood Garden Centre, Vicarage Close, Brentwood, Essex
CM14 5GR**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a grant of planning permission subject to conditions.
 - The appeal is made by Mr A Chalkin (GCAP Storage Limited) against the decision of Brentwood Borough Council.
 - The application Ref 23/00012/FUL was approved on 20 October 2023 and planning permission was granted subject to conditions.
 - The development permitted is described as 'Change of use of the Site including the demolition of existing buildings and use of the land for storage and distribution (Use Class B8) and erection of a bin store/bike shed; vehicular entrance gate; enhanced landscaping and perimeter fence; parking, and pedestrian footpath on Vicarage Close'.
 - The conditions in dispute are Nos 10 and 13 which state that:
 - *10. The maximum height of any items stored or associated containers/structures on the application site shall not exceed 2.5 metres measured from ground level.*
 - *13. Prior to first occupation of the proposed development, a maintenance plan detailing the maintenance arrangements including who is responsible for different elements of the surface water drainage system and the maintenance activities/frequencies, has been submitted to and agreed, in writing, by the Local Planning Authority. Should any part be maintainable by a maintenance company, details of long term funding arrangements should be provided.*
 - The reasons given for the conditions are:
 - *10. In order to safeguard and enhance the character and appearance of the area and to prevent development that would conflict with the policies of restraint within the Green Belt.*
 - *13. To ensure appropriate maintenance arrangements are put in place to enable the surface water drainage system to function as intended to ensure mitigation against flood risk. Failure to provide the above required information prior to occupation may result in the installation of a system that is not properly maintained and may increase flood risk or pollution hazard from the site.*
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of the proposed development was amended prior to the Council's decision, with the appellant's consent, following submission of revised plans. I have used the amended description in the banner heading above.
3. The Government published a revised National Planning Policy Framework (the Framework) in December 2023. Those parts of the Framework most relevant to this appeal have not been significantly amended, although relevant paragraph numbers have changed. As a result, I consider that there is no requirement for

me to seek further submissions on the revised Framework, and I am satisfied that no party's interests have been prejudiced by my taking this approach.

4. Following submission of this appeal, an application was made under s73 of the Town and Country Planning Act 1990 for removal of condition 10 and variation of condition 13¹. The Council refused the application on 2 February 2024. This was a separate application, which is not before me. However, a copy of the Officer Report was included with the Council's Statement of Case for this appeal, and I have had regard to the contents where relevant. The Appellant has had the opportunity to comment on the outcome of that application and I have also taken comments received into account.

Background and Main Issues

5. The planning permission is for redevelopment of an existing garden centre, including demolition of the existing buildings, and use of the land for storage and distribution. The approved plans indicate two outdoor storage areas to either side of a central strip containing the access, parking and ancillary buildings. There would also be modifications to boundary treatment and landscaping, including new planting along the Brook Street frontage.
6. Planning permission was granted subject to conditions, including condition 10 which restricts the height of outdoor storage to 2.5m, and condition 13 which requires that maintenance arrangements for the surface water drainage system are approved by the Council prior to occupation of the development. The Appellant seeks removal of condition 10 and variation of condition 13, to allow for submission and approval of details within three months of first occupation.
7. The main issues are:
 - if condition 10 is reasonable and necessary, having regard to:
 - whether in the absence of this restriction, the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies,
 - the effect of the proposed development on the character and appearance of the area, and
 - 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.
 - whether condition 13 is reasonable and necessary in its current form, having regard to the suitability of arrangements for maintenance of the surface water drainage system.

Reasons

Condition 10

Inappropriate Development in the Green Belt

8. The Framework states in paragraph 154 that construction of new buildings should be regarded as inappropriate in the Green Belt. However, an exception is made, among other things, for redevelopment of previously developed land,

¹ Brentwood Borough Council planning application ref 23/01547/FUL

where that would not have a greater impact on the openness of the Green Belt than the existing development. Policy MG02 of the Brentwood Local Plan adopted 2022 (BLP) confirms that development proposals in the Green Belt will be assessed in accordance with national planning policy.

9. When granting planning permission, the Council concluded that the proposal was not inappropriate development, because it would benefit from the exception made in Framework paragraph 154 for redevelopment of previously developed land. However, the Officer Report confirms that this conclusion took into account the height restriction imposed in condition 10.
10. The appeal site is currently a garden centre containing a variety of single storey buildings. At the front of the site is a display area for garden buildings. The existing buildings, structures and displayed items are consistently of single storey scale and do not cover the whole site. An area at the rear is used for outdoor storage of items including a small number of shipping containers. This is also subject to a condition limiting their height to 2.5m.
11. The land slopes down from the Brook Street frontage. Neither the street trees nor the existing chain link fence obstruct views into the site. A clear view is available across the whole site and beyond it to the rising countryside on the other side of the A12. The other boundaries are more enclosed by boundary vegetation and bunds, although roofs of one or two buildings can be glimpsed from Vicarage Close.
12. Within the height limit imposed by condition 10, the scale of the approved outdoor storage would be comparable to the scale of the existing buildings and display items on the site. However, items stored at greater height could significantly reduce openness within the site boundaries. There would be harm both in spatial terms, as a result of the increased height, bulk and massing of stored items, and in visual terms since storage at a greater height would be more conspicuous from Brook Street and above the planting along Vicarage Close. The proposed thicket planting along Brook Street would be at a low level and would not adequately mitigate the increased visibility of stored items.
13. The site sits within an established ribbon of built development on one side of Brook Street, which includes buildings of varied and sometimes substantial scale. The adjacent Holiday Inn hotel includes a tower feature and there is planning permission for a substantial replacement building at the car showroom and workshop beyond that. These existing developed sites provide a relatively built-up context to either side of the site which is relevant to the consideration of openness. Within that context, the harm to openness would be localised, being largely confined to the area within and close to the site boundaries. Nevertheless, within this area, storage at height would have a greater impact on the openness of the Green Belt than the existing development.
14. Although the fields opposite the appeal site are currently undeveloped, outline planning permission has been granted for mixed use development at a significant scale. The Council acknowledges that this would significantly affect openness, with planning permission having been granted because the benefits were concluded to outweigh the harm to the Green Belt in that particular case. However, the planning permission is in outline, with scale and layout being reserved matters. Therefore, there is little certainty about the eventual form of the development, notwithstanding the dimensions indicated on the drawing which has been brought to my attention. Nor is there any certainty, based on

the evidence before me, when this scheme may be implemented. I have therefore given limited weight to the potential future effect on openness. In any case, the presence of additional buildings opposite would not mitigate the effect on openness within the site boundaries.

15. There is a site allocation for residential development further to the east, but this would be on land excluded from the Green Belt, so the proposed dwellings would not, by definition, affect the openness of the Green Belt itself.
16. Since the existing buildings and display items are all set below street level, the 2.5m height limit accurately takes account of the relative scale of existing and proposed stored items and the similar restriction which already applies to storage on the rear part of the site. Modifying condition 10 to refer to height above street level would not effectively safeguard the openness of the Green Belt. Likewise, restricting only the stacking of site cabins and containers would not address the harm to openness, since it would still allow for other very substantial items to be stored.
17. While any individual item may be stored only temporarily and/or moved with high frequency, outdoor storage would be the predominant use of the site. Therefore, there is every likelihood that stored items would be present most, if not all, of the time, notwithstanding the turnover of individual items.
18. For the reasons given above, I conclude that in the absence of condition 10, the development would have a greater impact on the openness of the Green Belt than the existing development. Although the loss of openness would be within a localised area, the development would as a result be inappropriate development in the Green Belt, as defined in paragraph 154 of the Framework and Policy MG02 of the BLP, as summarised above.

Character and Appearance

19. As well as the buildings described above, the Brook Street frontage includes street trees, wide grass verges and hedgerows, which give this approach into Brentwood a relatively leafy character. The existing buildings on the appeal site are at a low level and those within the most publicly visible areas are neither visually intrusive nor unsightly.
20. Outdoor storage within the front part of the site would be in a prominent location and the proposed thicket planting would be at a low level. In the absence of the height restriction, there would be little control over the scale or appearance of items stored in this area. Large items such as construction vehicles and plant, containers and site equipment would be both conspicuous and potentially unsightly. They would be significantly more intrusive than the existing garden sheds and summerhouses, which are spaced out within a well-maintained landscaped area. The proposed planting would only be of limited benefit, given the extent of the site and the potential scale of stored items.
21. In its current form, condition 10 would mitigate the visual impact, by limiting storage to a low level. In the absence of that restriction, outdoor storage would be significantly more visually intrusive and would detract from the relatively leafy character of the street scene.
22. For that reason, I conclude that in the absence of condition 10, the proposed development would have a harmful effect on the character and appearance of the area. This would be contrary to relevant requirements in Policy BE14 of the

BLP, which include that development should deliver high quality, attractive places and respond sympathetically to its context.

Other Considerations

23. The Appellant states that the evidence base for the BLP rates the appeal site and surroundings as being low performing in terms of the purposes of the Green Belt and I have not been presented with any evidence to the contrary. The area does not prevent the merging of settlements or protect the setting of historic towns. The appeal site does have a relationship with the countryside since the land opposite has not yet been developed and there are longer views across the site towards the rising open land beyond the A12. Nevertheless, its role in preventing urban sprawl or safeguarding the countryside from encroachment is limited, given the existing development.
24. The appeal site has easy access to the strategic road network, being very close to the M25/A12 intersection. Reference is made within the planning application to aspirations for a commercial growth corridor along Brook Street and a strategic need for logistics floorspace. However, apart from the residential site allocation referred to above, there is no indication in the evidence before me that land along this corridor was released from the Green Belt as part of the fairly recently adopted BLP.
25. The Green Belt purpose of assisting in urban regeneration by encouraging the recycling of derelict and other urban land is of little relevance, since the appeal site is not derelict and is not within the urban area as defined in the development plan. Therefore, redevelopment of previously developed land in this area remains subject to BLP Policy MG02 and Framework paragraph 154, as considered above.
26. I recognise that the Framework gives significant weight to the need to support economic growth and productivity. If unrestricted, a wider range of proposed outdoor storage uses could take place on the site. This may make a more positive contribution to the availability of employment land, in a location which is well aligned to strategic objectives for employment growth in the BLP. It may also contribute to a more diverse supply of sites for logistics related uses, not reliant on a single large site allocation.
27. However, the planning permission is for storage and distribution within Use Class B8² and is not restricted to any specific form of outdoor storage use. The examples given of potential occupiers include uses which could feasibly operate within the height restriction and are in any case not an exhaustive list. As such, while I accept that some forms of industrial outdoor storage would be precluded, the evidence before me does not clearly demonstrate that the site would be incapable of contributing positively to the local economy if operated in accordance with condition 10. Therefore, in the circumstances of this particular case, it has not been clearly established that there would be significant additional economic benefits from an unrestricted outdoor storage use, and this moderates the weight I have attached to those benefits.
28. The fact that there is no similar condition on the planning permission for the nearby replacement workshop building is of limited relevance, since that

² As defined in the Town and County Planning (Use Classes) Order 1987 (as amended)

development would be for a different use, with the main outdoor storage use being parking of vehicles and less likely to involve storage at height.

29. There would be a net gain in biodiversity as a result of the proposed planting. However, implementation of that planting is not dependent on the outcome of this appeal, so that is a neutral consideration which weighs neither for nor against the proposal.

Condition 10: Green Belt Balance

30. In the absence of condition 10, the proposal would be inappropriate development in the Green Belt as defined in the Framework and relevant development plan policies. It would be harmful to the openness of the Green Belt, albeit at a localised level and in a location which makes only a limited contribution to the purposes of the Green Belt. There would also be harm to the character and appearance of the area.
31. The Framework states that substantial weight should be given to any harm to the Green Belt. Very special circumstances will not exist unless that harm, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
32. While there would be economic benefit arising from the development, based on the evidence before me that benefit does not entirely rely on removal of condition 10. It therefore carries only moderate positive weight. Therefore, the harm to the Green Belt, and the other harm, is not clearly outweighed by this or any other considerations. In consequence, the very special circumstances necessary to justify the proposal do not exist.
33. I therefore conclude that condition 10 is both reasonable and necessary having regard to the issues identified above.

Condition 13

34. As part of the overall approach to managing the effect of development on flood risk, Planning Practice Guidance (PPG) states that maintenance arrangements for sustainable drainage systems (SuDS) should be considered as part of the planning application process and local planning authorities should be satisfied that suitable arrangements are in place for the lifetime of the development. Policy BE05 of the BLP similarly requires that SuDS should function effectively over the lifetime of the development.
35. The amended planning application was supported by a Flood Risk Assessment³ (FRA), which details the proposed SuDS. Condition 4, which is not contested, would secure its implementation, while condition 13 requires that maintenance arrangements are confirmed and approved prior to first occupation. The appellant seeks variation of condition 13 so that those details can be approved within three months of first occupation, with no specific requirement for funding arrangements to be included.
36. The FRA details the required maintenance regime and states that it would be the responsibility of an on-site management company. The list of required tasks responds to the design of the proposed system and there is no indication that they would vary according to the proposed occupier. They include tasks

³ Logika Consultants Flood Risk Assessment dated 5 September 2023

which should be carried out monthly, including within the first three months after fitting. As such, it is both reasonable and necessary to require that responsibility for these tasks is confirmed at an early stage.

37. Since condition 13 does not require that a specific tenant or management company is named, a maintenance plan could realistically be drawn up and approved in advance of a specific occupier being identified, with the relevant responsibilities being incorporated into any subsequent tenancy or transfer agreement. A requirement for early confirmation that suitable funding arrangements would be in place is not unreasonable, since this would ensure that effective maintenance can be secured for the lifetime of the development.
38. Should approval of the maintenance plan be deferred for up to three months following occupation, there could be a significant delay in maintenance being commenced. It would also be less certain that suitable arrangements would be incorporated in any tenancy or transfer agreement. Therefore, the condition would be less effective and its enforcement at a later stage, once an occupier was in place, would be more challenging. In consequence, there would be less certainty that the SuDS would function effectively over the lifetime of the development.
39. For the above reasons, I conclude that condition 13 is both reasonable and necessary in its current form, having regard to the suitability of arrangements for maintenance of the surface water drainage system. Variation of the condition as proposed would conflict with Policy BE05 of the BLP and the PPG, as summarised above.

Conclusion

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

Jane Smith

INSPECTOR