



Appeal Decision

Site visit made on 8 May 2024

by J Moore BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 July 2024

Appeal Ref: APP/R3650/W/23/3335743

Rye Farm Manor, Elmbridge Road, Cranleigh, Surrey GU6 8JX

- 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 Mr Daniel Tain against the decision of Waverley Borough Council.
 - The application Ref is WA/2022/02340.
 - The development proposed was originally described as: erection of 3 ancillary buildings; erection of entrance gates/piers to the courtyard and Old Barn following demolition of 3 existing buildings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. There was some confusion regarding the purpose and status of plans submitted to the appeal. In addition, the appellant's evidence referred to plans which did not appear to have been submitted to the appeal. I sought clarification on these matters, and I am satisfied that no party has been prejudiced in this regard.
3. The appellant's submissions indicate a willingness to modify the scheme in the form of amendments, supported by further plans and drawings. The first amended scheme would remove the proposed link and car port, and the second amended scheme would also remove the proposed gates, walling and piers.
4. There are no representations from interested parties before me and the LPA raises no explicit objection to the proposed amendments. From the evidence before me, representations/consultations during the determination phase yielded no objections, subject to the imposition of conditions.
5. In this instance, and having regard to the 'Wheatcroft Principles' and the Holborn judgement¹, I do not consider that the proposed amendments result in a substantial or fundamental change to result in a different application, and no party would be unfairly prejudiced by my acceptance of the amendments.
6. A revised National Planning Policy Framework (the Framework) was published in December 2023. The paragraphs most pertinent to this appeal are unchanged, other than their numbering. The main parties have had the opportunity to comment on any implications of the revised Framework within the appeal timetable.

¹ Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]; Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin).

7. Two applications referenced within appeal submissions were determined during the course of the appeal. Application Ref WA/2022/00717 for restoration of canal and proposed re-alignment of bridleway 352 was granted in April 2024. This permission concerns land adjacent to the appeal site. Application Ref PRA/2023/02738 for prior approval for permitted development under Schedule 2, Part 3, Class Q of the GPDO² for an agricultural building at Rye Farm Manor was refused in February 2024. The subject building is within the appeal site.
8. These applications are material to the appeal before me, and I have therefore taken these decisions into account in my consideration of the appeal. For the purposes of this appeal, I shall refer to the latter application as 'the Class Q refusal'.
9. As the proposal is in proximity to two listed buildings, I have had special regard to section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Main Issues

10. The appeal site is located outside a settlement boundary and within the Metropolitan Green Belt. Therefore, the main issues are:
 - whether the proposed development would be inappropriate development in the Green Belt, including the effect upon openness, and having regard to the Framework and any relevant development plan policies; 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

Background

11. The appeal site includes three buildings to the south of the main dwelling around a secondary courtyard with separate access from that farther to the north. The proposal as originally submitted seeks to demolish the three existing buildings and to erect three ancillary buildings in a courtyard arrangement, with a link between two buildings, a car port, entrance gates, walling and piers.
12. The appeal site is the subject of a previous similar scheme, whereby in July 2022 a planning application Ref WA/2022/00387 was refused for the erection of 3 ancillary buildings; erection of entrance gates/piers to the courtyard and old barn following demolition of 3 existing buildings and Listed Building Consent Ref WA/2022/00388 was granted. The Council considers the appeal scheme to be a revision of this previous scheme, but it is a stand-alone application.

Whether inappropriate development

13. 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 inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances; and that the construction of new buildings within the Green Belt is inappropriate development. There are, however, a limited number of exceptions to this, as set out in paragraph 154 of the Framework.

² The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

14. The exception at paragraph 154 d) is the replacement of a building, provided that the new building is in the same use and that it does not result in disproportionate additions over and above the size of the original building³.
15. Policy RE2 of the Waverley Borough Local Plan Part 1: Strategic Policies and Sites 2018 (LPP1) states that the Metropolitan Green Belt will be protected against inappropriate development in accordance with national policy.
16. Although the Framework does not define what may constitute a disproportionate addition, Policy DM14 of the Waverley Borough Local Plan Part 2: Site Allocations and Development Management Policies 2023 (LPP2) sets out that replacement buildings should be in the same use; and that the replacement of a building which results in the new building having a floorspace that is 10% or more larger than the building it replaced will normally be considered materially larger.
17. Furthermore, Policy DM14 identifies other factors to be taken into account including changes in scale, mass, height, and floorspace; and sets out further factors to consider when assessing the effect of a proposal upon openness.
18. Building 1 is a large barn, and benefits from a certificate of lawfulness Ref WA/2023/00857 for existing use of large barn for purposes incidental to the enjoyment of the dwellinghouse. Building 2 is described as a former dairy building/cottage and benefits from a certificate of lawfulness Ref WA/2021/01979 for a change of use to form a dwellinghouse. Consequently, these two buildings are in residential use.
19. However, building 3 is described as a cowshed, and the appellant advises that it is used for the keeping of cattle as a hobby use. Its footprint would be covered by the proposed building for staff accommodation, which would not be the same use. During my visit I saw that the cowshed included straw bedding and there were cattle in the adjacent fields.
20. The appellant draws my attention to the Class Q refusal for building 3 and suggests that this contradicts the Council's position at the time of determination that the appeal site is partly in agricultural use.
21. However, the decision notice and officer report for that application indicate that it had not been adequately demonstrated that the cowshed was used solely for an agricultural use as part of an established agricultural unit on the relevant dates within the GPDO at that time.
22. Consequently, the Class Q refusal simply indicates that the development failed to satisfy the definition of permitted development. It does not of itself provide substantive evidence of any lawful use of building 3, whether agricultural or otherwise.
23. The appellant's legal opinion dated 25 July 2022, concerns advice following the refusal of the previous scheme prior to the Class Q refusal. Among other things, the advice accepts that in respect of the "hobby farm" use, the keeping of cattle for example may still comprise agricultural use. Moreover, it is not the role of an Inspector dealing with a section 78 appeal to determine the lawful

³ The Framework defines 'original building' as the building as it existed on 1 July 1948, or if it was constructed after that date, as it was built originally.

- use of a building. Such matters can only be determined by an application for a certificate of lawfulness.
24. Paragraph 155 of the Framework sets out that certain forms of development are not inappropriate in the Green Belt, provided they preserve its openness and do not conflict with the purposes of including land within it. This includes that at paragraph 155 d), which refers to the re-use of buildings provided that the buildings are of permanent and substantial construction.
 25. In this regard, the appellant suggests that the cowshed could be converted to residential use. However, it is not clear whether the cowshed is of a permanent and substantial construction, and whether it would meet any other policy requirements pursuant to residential use.
 26. The appellant suggests that the appeal site should be regarded as one planning unit, as per the principles established in *Burdle*⁴, in that it is argued that the site is occupied by buildings that are clearly incidental and/or ancillary to the unit of occupation as a whole.
 27. In the case of *Burdle*, it was suggested, as a useful working rule, that it should be assumed that the unit of occupation is the appropriate planning unit - unless and until some smaller unit can be recognised as the site of activities which amount in substance to a separate use both physically and functionally. Further, that the determination of the appropriate planning unit is a matter of fact and degree.
 28. Physically, all three buildings share a courtyard access, which also leads towards the southern aspect of the main dwelling, and the certificate of lawfulness for the use of building 1 is for purposes incidental to the main dwelling.
 29. While the appellant states that building 2 is staff accommodation, there is no substantive evidence before me concerning any tied tenancy and the certificate of lawfulness is for a dwellinghouse. As such, it could function as a separate unit of occupation. The shared courtyard arrangement would not prevent its independent use.
 30. Furthermore, the evidence before me indicates that the keeping of cattle as a hobby use is associated with the occupation of building 2 with the permission of the previous/current owner of the main dwelling, and this appears to include the use of building 3, the cowshed.
 31. During my visit, I saw a metal fence and gate arrangement pursuant to the management and movement of cattle, which runs from the front elevation of building 2 towards building 3. The line of this is indicated on the location plan.
 32. The hardstanding behind the metal fencing/gates extends between buildings 2 and 3. The arrangement is such that it would permit the movement of cattle between these two buildings and beyond the rear elevation of building 3, with a further area bounded by post and rail fencing with gates, such that cattle could pass to and from the adjacent fields. A gate is also in place within the post and rail fencing between the rear areas of buildings 2 and 3. Consequently, some degree of physical separation is in place.

⁴ *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207

33. Given the above factors, it is not clear that the appeal site forms a single planning unit in mixed use serving the main dwelling as the appellant suggests.
34. I therefore find that it has not been demonstrated that the proposal would meet the exceptions under paragraph 154 d) and 155 d) of the Framework, and the terms of Policy DM14 insofar as it requires replacement buildings to be in the same use.
35. As such, it is not necessary for me to consider whether the proposal would meet the 10% footprint threshold for replacement buildings in accordance with Policy DM14. Nonetheless, I acknowledge the appellant's calculations that overall, the appeal scheme as submitted would result in an increase of 1.18% in floorspace terms, substantially less than the 10% threshold of Policy DM14.
36. Notwithstanding my findings above, I have considered the appellant's further grounds of appeal that the proposal should be considered as an exception under paragraph 154 g) of the Framework. This exception refers to limited infilling or the partial or complete redevelopment of previously developed land (PDL), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt than the existing development.
37. The definition of PDL within the Framework is: *Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure.* It further states that *this excludes land that is or was last occupied by agricultural buildings.*
38. Building 3 appears as a cowshed and is presently used for the keeping of cattle, which is an agricultural use, even if as a hobby. There is no substantive evidence before me as to whether the building is of permanent construction. These factors, together with my findings regarding the planning unit lead me to conclude that it has not been demonstrated that the proposal would meet the definition of PDL and in turn, the exception under paragraph 154 g) of the Framework.
39. In any event, if I were found to be in error in the above matters, the determining factor for replacement buildings under Policy DM14 and for the exception under paragraph 154 g) is the effect upon openness.
40. The existing westerly boundary of the appeal site comprises hedging and a length of post and rail fencing. The proposed gates and piers would meet the definition of a 'building' in section 336 of the Town and Country Planning Act 1990. Such structures are not explicitly cited within the closed list of exceptions within paragraph 154 of the Framework. Consequently, these elements of the appeal scheme as submitted and within the first amended scheme would be inappropriate development within the Green Belt.
41. The Framework identifies the essential characteristics of Green Belts as being their openness and their permanence. Openness is an essential characteristic of the Green Belt, and it has a spatial as well as a visual aspect.
42. The southerly boundary of the appeal site appears open, due to the absence of built form along almost all of its length and a short length of fence running towards the west from the cowshed. The adjacent land includes mounded earth, building rubble, and some post and rail fencing in a state of disrepair.

The present arrangement of buildings is such that open views are available alongside the canal towards the south and east of the appeal site. Due to their scale and siting, buildings 1 and 2 do not significantly detract from this openness. Limited views are available along Elmbridge Road where it crosses the canal and through gaps in existing vegetation along that road.

43. Although the siting of the proposed built form would be broadly similar to that existing and maintain a courtyard arrangement, the proposal would result in an overall increase of 10.7% in volume terms. Therefore, the proposal would result in a spatial impact upon the Green Belt through an increase in bulk and mass across the site. Without the car port and link, the volume increase would be 6.47%.
44. The proposed garage building would be of a smaller footprint and mass compared to building 1, and all three proposed buildings would be shorter in height than building 1. Therefore, the effect of the proposal is to redistribute bulk and mass across the three proposed buildings, resulting in an overall reduction in building height across the appeal site.
45. However, the proposed estate office/gym and staff accommodation buildings would be sited at right angles to each other, along the southerly and easterly boundaries of the appeal site. Due to their siting, overall scale, height, width and depth, they would form a larger bulk and mass than presently existing, such that it would result in a strong sense of enclosure, impacting upon openness in both spatial and visual terms.
46. The proposed link between the two buildings, and the proposed car port to the north of the estate office/gym building would add to this sense of enclosure, giving the appearance of continuous built form along the southern and eastern boundaries. Due to their height, the proposed entrance gates, walls and piers would further add to the sense of enclosure, even if softened by hedging.
47. Consequently, the appeal scheme, whether it excludes the carport, link, entrance gates and piers or not, would fail to preserve the openness of the Green Belt.
48. I therefore conclude that the proposed development is inappropriate development in the Green Belt, which is, by definition, harmful; and that it fails to preserve the openness of the Green Belt. It conflicts with LPP1 Policy RE2, LPP2 Policy DM14 and the requirements of the Framework.
49. In reaching my findings I have taken account of the caselaw cited by the appellant regarding the Green Belt⁵.

Other considerations

50. There are two listed buildings (both Grade II) located to the north of the appeal site, namely Rye Farm House and the Barn 40m to the West of Rye Farm House. Their significance stems from their age and character as an historic farmstead, with a loose courtyard arrangement. All of the buildings proposed for demolition are later 20th century additions to the original farmstead.

⁵ Turner v SSCLG & East Dorset Council [2016] EWCA Civ 466; Tandridge DC v SSCLG & Syrett [2015] EWHC 2503; R (on the application of Samuel Smith Old Brewery (Tadcaster) and others) (Respondents) v North Yorkshire County Council (Appellant) [2020] UKSC 3; Timmins v. Gedling Borough Council 2014 EWHC 654 (Admin)

51. The main parties agree that the demolition of the three existing buildings would be a positive benefit to the settings of the listed buildings due to their 20th century utilitarian nature. They further agree that the appeal scheme would result in a sympathetic secondary courtyard development which would not harm their settings, subject to conditions to control the appearance of the development. I find no reason to disagree. I am therefore satisfied that the proposed development would not harm the significance and settings of the listed buildings.
52. The main parties agree that the proposed development would not harm the Area of Great Landscape Value within which it is located, and I find no reason to consider otherwise.
53. Overall, the appeal scheme and amended schemes would be a positive benefit to the setting of the listed buildings and the character and appearance of the area. These matters attract moderate weight in favour of the proposal.
54. The appellant is working with the Wey and Arun Canal Trust to restore the adjacent canal and relocate a bridlepath. In the appeal scheme and amended schemes before me, there is no proposed mechanism to secure such a benefit. As set out in my preliminary matters, permission for such works was granted during the course of the appeal. This matter therefore attracts no weight either for or against the proposal.
55. While the proposed gates, walls and piers are considered necessary by the appellant to achieve security measures, it has not been demonstrated that this is the only way to achieve that objective. This matter therefore attracts no weight either for or against the proposal.
56. The appellant's submissions refer to two fallback positions regarding the cowshed and I have referred to these matters in my first main issue. The Class Q refusal does not demonstrate that the enactment of permitted development rights is a realistic prospect, and therefore it attracts no weight as a fallback position.
57. The potential conversion of the cowshed to a dwelling is a theoretical prospect. However, this has not been robustly demonstrated. I have no substantive evidence to indicate that there is a significant probability that such a fallback position could or would be constructed should this appeal be dismissed. In such circumstances, I cannot be certain that any such scheme would result in the same or greater harm than I have identified in the schemes before me. This limits the weight that I can attach to it as a fallback position.
58. I consider that the proposal would result in temporary economic benefits during the construction process. However, these benefits would be limited in duration and would therefore attract limited weight.

Other Matters

59. My attention is drawn to positive discussions with the Council during pre-application stage, and the content of officer reports which considered previous schemes. Whilst pre-application advice is not binding, it is clearly unfortunate if the final outcome is an adverse one. Such matters do not nevertheless warrant allowing the appeal, and I have determined the appeal on its individual planning merits.

Green Belt Balance and Conclusion

60. The proposed development would be inappropriate development in the Green Belt, which is, by definition, harmful. I have also found that that the proposed development would fail to preserve the openness of the Green Belt, even if the impact would be limited. The Framework establishes that substantial weight should be given to any harm to the Green Belt.
61. 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.
62. I have found that the benefits of the proposal to the setting of the listed buildings and the character and appearance of the area would attract moderate weight. I have also found that the temporary economic benefits arising during the construction process would attract limited weight.
63. 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. Therefore, the very special circumstances necessary to justify the proposal do not exist in this case.
64. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. Therefore, the appeal is dismissed.

J Moore

INSPECTOR