



Appeal Decision

Site visit made on 29 August 2024

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 September 2024

Appeal Ref: APP/G5180/W/23/3336061

Lone Barn Farm, East Hall Road, Orpington BR5 4EZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Watts Farms Ltd against the decision of the Council of the London Borough of Bromley.
 - The application Ref is 22/04016/OUT.
 - The development proposed is outline application for the demolition of existing buildings and the residential redevelopment of the site with associated vehicular access (matters relating to scale, landscaping, appearance and layout reserved for future consideration).
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Watts Farms Ltd against the Council of the London Borough of Bromley. This application is the subject of a separate Decision.

Main Issues

3. The appeal site is located within the Green Belt. Therefore, the main issues are:
 - Whether or not the appeal development is inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (2023) (the Framework), including the effect on openness; and
 - If the appeal development is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, in this case to the character and appearance of the area, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify it.

Reasons

Site and proposed development

4. The appeal site is located at the corner junction between East Hall Road and Gorse Road. There are existing residential properties to the north and south of the appeal site on East Hall Lane and Skibbs Lane respectively. The western

half of the site contains single storey brick buildings arranged in an 'L' shape around a hard surfaced courtyard. The eastern half of the site contains buildings of a more utilitarian appearance which reflect the packaging associated with the farm enterprise.

5. The site is located in the Green Belt and the area has a distinct rural character and appearance with rolling agricultural fields beyond the appeal site. On my site visit I observed extremely little passing traffic which gave the site a particularly tranquil atmosphere.
6. The application for residential development has been made in outline with all matters, save for access, reserved for future approval.

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

7. The Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The Framework outlines that the construction of new buildings should be regarded as inappropriate in the Green Belt subject to a number of exceptions as set out in paragraph 154. Policy 49 of the Bromley Local Plan (2019) reflects the exceptions as set out in the Framework. The appellant puts forward arguments that the proposed development would constitute an exception under 154 g).
8. The exception in 154 g) is the limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings). For this exception, the development must not have a greater impact on the openness of the Green Belt than the existing development; or not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.
9. The Framework defines previously developed land as 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. This excludes, amongst other things, land that is or was last occupied by agricultural buildings.
10. The development is not proposed to meet an identified affordable housing need and therefore to constitute an exception under 154 g) is required not to have a greater impact on the openness of the Green Belt than the existing development, which excludes land that is or was last occupied by agricultural buildings. The Framework outlines that openness is one of the essential characteristics of Green Belts. Openness has a spatial aspect as well as a visual aspect.
11. All matters, save for access, including pertinently those of layout and scale are not before me in the appeal and the number of dwellings proposed is not specified. There are also no indicative plans or parameters plans before me. Therefore, I am unable to make a finding in relation to addressing the requirement that the proposed development would not have a greater impact on the openness of the Green Belt, and therefore that it would not be

inappropriate development in the Green Belt. As any outline permission is the planning permission it would not be appropriate to assess the impact on openness, as a matter of principle, at the reserved matters stage. The principle has to be accepted or refuted at the outline stage. I do not agree that conditions could be imposed to control the extent or scale of the development, particularly as the application sets out that scale and layout are reserved for future approval.

12. This is particularly the case given that openness is not narrowly limited to a volumetric approach. It is 'open textured' and a number of factors are capable of being relevant to the application. As openness is not solely a volumetric analysis and can include matters such as the degree of activity likely to be generated, this is also not something that could be controlled by condition in the absence of the details as set out.
13. The number of dwellings is not specified. Whilst the impact on openness has a spatial and visual impact which is somewhat inherently related to the permanent physical form of the development, the quantum as it relates to its use, is also a pertinent factor when considering the impact on openness. A single large dwelling with large garden, with associated comings and goings, parked vehicles and outdoor paraphernalia, would be likely to have a different impact on openness than 5 or 6 dwellings with their own comings and goings, parked vehicles and outdoor paraphernalia, even if the volume and area of the permanent physical form were the same.
14. There is dispute in relation to what elements of the site constitute previously developed land and what elements are excluded from the definition by reason of being, or last being, agricultural buildings. Whilst the evidence supports the suggestion that at least some of the site would constitute previously developed land, it is not conclusive that this applies to the whole of the appeal site. The appellant does however outline that the existing buildings are subject to business rates as they are not deemed to be agricultural buildings adding weight to the argument that the site is previously developed land.
15. I acknowledge that the definition in the Framework states that for previously developed land 'it should not be assumed that the whole of the curtilage should be developed'. For example, on a site there may be structures such as agricultural buildings which are excluded from the definition, and it would be necessary to consider the different parts of the site accordingly. In this case however the lack of details and the inconclusive evidence provides an element of uncertainty on the matter. However, given that I am unable to conclude on the impact on openness, reaching a finding on this matter would not alter the outcome of the appeal.
16. Nevertheless, the Framework outlines how the redevelopment of previously developed land in the Green Belt may be acceptable where there is not a greater impact on the openness of the Green Belt than the existing development. From the evidence before me, and my own observations on my site visit, given that at least some of the site would be previously developed land, it may well be the case that a development which complies with this requirement could be permissible at the appeal site.

17. The appellant has referred to the case law in Samuel Smith¹. In that case it was acknowledged that some forms of development, may be appropriate, and compatible with the concept of openness. Along with this case, the Courts have held that rather than treating any change as having a greater impact on the openness of the Green Belt, the correct approach is to consider the impact or harm, if any, wrought by the change. Whether or not any change will have an adverse impact, and so cause harm to openness, might depend on factors such as the scale of the development, its locational context, and its spatial and/or visual implications. My finding that the proposed development has not demonstrated that there would not be a greater impact, and thereby harm to the openness, has regard to the established case law.
18. It is clear in 154 g) that for a proposed development not to be inappropriate under this exception, it must not have a greater impact on openness. As I am unable to conclude on openness at this stage, it intrinsically follows that I am unable to conclude that the proposed development would not be inappropriate. For these reasons, the proposal before me would not constitute one of the exceptions outlined in the Framework. It would therefore be inappropriate development in the Green Belt to which I attach substantial weight.

Other considerations including character and appearance

19. The appeal site comprises relatively low-rise built development. Its western half comprises more traditional brick-built buildings of a rural character. The eastern half of the site comprises more utilitarian buildings that do not positively contribute to the character and appearance of the area. There are residential properties both opposite and adjacent to the appeal site and I observed there were several residential properties sporadically sited in the surrounding area, suggesting small pockets of residential properties are characteristic of this rural area. Aside from the Green Belt matters discussed above, I therefore find that some form of residential development need not be out of character, and given that, at least part of the site comprises previously developed land it would not have an urbanising effect subject to further appropriate details.
20. There are no number of dwellings specified in the application. Although it is put forward that the previous use of the site involved a certain number of comings and goings of vehicles, the absence of a specific number of dwellings proposed gives an element of uncertainty when considering the impact on the character of the area. Such impacts include the number of residents, visitors, and deliveries which can invariably impact on the character of an area.
21. Although matters of appearance, layout, scale and landscaping are reserved for future approval, I consider that an appropriately designed scheme which reflects the low-rise rural character of the site and its surroundings would be achievable at the site in character and appearance terms, particularly when considered against the current make-up of the site. Nevertheless, the absence of any indicative plans or suggestions to this effect, again provides an element of uncertainty. A greater number of dwellings would likely require a greater number of parking spaces, hard surfaces, outbuildings, and outdoor

¹ Samuel Smith Old Brewery (Tadcaster) & Oxtou Farm v North Yorkshire CC & Darrington Quarries Ltd [2018] EWCA Civ 489

paraphernalia, all of which would have implications for the rural character and appearance of the site and its surroundings.

22. The effect of the development on the character and appearance of the area is separate to the matter of whether or not it would be inappropriate development in the Green Belt. Whilst the acceptability of the development in terms of being inappropriate development in the Green Belt is a matter of principle to be established at the outline stage, on the matter of character and appearance only, given that I have found some form of residential development would be acceptable in principle (in terms of character and appearance), it would be reasonable to further consider the impact at the reserved matters stage to consider those elements of uncertainty. It would therefore comply with Policy 37 of the Bromley Local Plan (2019) and Policy D3 of the London Plan (2021) in terms of ensuring a high standard of design in keeping with the character of the area.
23. I acknowledge that this approach to the effect of the development on character and appearance may appear contradictory to whether or not the proposal is inappropriate in the Green Belt. However, the matter of inappropriateness in the Green Belt or otherwise is a matter of principle, integral to the decision whether or not to grant planning permission. The matter of character and appearance, having considered some form of residential development would be acceptable subject to satisfactory further detail, would therefore not in itself be a reason to withhold granting planning permission.
24. The appellant has referred to a packhouse building that was granted planning permission and a subsequent Certificate of Lawful Development for an Existing Development (May 2016) as a fallback. The development in that case was found to be inappropriate in the Green Belt, however other considerations existed so as to amount to the very special circumstances necessary to justify it. Although the same considerations do not apply in the current proposal, it is nevertheless capable of implementation. However, the fact that a 2007 consent, which although capable of implementation, has not been, and the use of a number of packing buildings at the site appears to have ceased, this limits the weight as a viable fall-back.
25. The development would result in the creation of new dwellings which would moderately weigh in favour of the appeal. The weight is amplified given that the Council is unable to demonstrate a 5-year supply of housing land. The absence of a specified number however makes this benefit difficult to quantify. Similarly, additional residents would contribute to the local economy, however the number of residents who would live at the appeal site is not quantified given the number of dwellings is not put forward.
26. The appellant has referred to a number of highway issues given that the proposed development would not require access by HGVs which in turn would not then use a substandard access or damage the surrounding highway network including verges and hedges. I agree that the surrounding road network is not best suited for HGV use and the removal of such vehicles weighs in favour of the appeal. The appeal development would however bring its own vehicle movements, which would include future residents, their visitors and deliveries.

27. In a similar manner I acknowledge that it would generally be held that the impact on living conditions from a residential use would cause less noise and disturbance than a B2 use. I am not, however, aware of any previous concerns associated with the use of the appeal site, and given their location and activity, such rural enterprises are generally not comparable to equivalent uses in an urban area. It is nevertheless a benefit of limited weight in favour of the appeal.
28. The appellant has set out a business case for the development and how the proposed development would contribute to the expansion of the business. The development is not in itself a form of economic development, although there would be temporary construction jobs and contributions to the local economy from future residents. Also, there is no mechanism before me to ensure that the financial return would be dedicated to the expansion of a rural enterprise. Combined with the lack of quantitative data on the subject, I give this limited weight in favour of the appeal.
29. I have been referred to two appeal decisions² concerning residential development in the Green Belt and the consideration of a Written Ministerial Statement of December 2015. Although I do not have full details of the applications, it is clear that they are for different developments at different locations and that they were allowed under different circumstances, including the provision of affordable housing and self-build housing. The Inspector in those appeals also found that the proposed development would be inappropriate in the Green Belt. Given the differences between those appeals and this appeal, I give them limited weight.

Other Matters

30. As the application of policies in the Framework that protect the Green Belt provides a clear reason for refusing the proposed development, it does not benefit from the presumption in favour of sustainable development.
31. I have also taken into account the consultation version of the Framework and Written Ministerial Statement (WMS) issued in July 2024. The draft Framework is not adopted and is subject to change, and therefore I have afforded it only limited weight. In addition, I recognise that the WMS sets out the approach to developing 'grey belt' land in the Green Belt. However, given the harm identified above, these matters have not altered my overall decision. No representations were received from the main parties on the consultation version of the Framework or the WMS, and I have based my decision on the current extant version of the Framework.

Planning Balance

32. 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 harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

² APP/B1930/W/20/3265925 and APP/C1950/W/20/3265926

33. 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.
34. Having considered the matters raised in support of the proposal 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 and harm to openness. Consequently, the very special circumstances necessary to justify the development do not exist.
35. Therefore, the proposal would be contrary to Policy 49 of the Bromley Local Plan (2019) and Policy G2 of the London Plan (2021) that seek to restrict inappropriate development in the Green Belt except in very special circumstances. The proposal would also be contrary to the Framework.

Conclusion

36. The proposed development would therefore conflict with the development plan and there are no other considerations, including the Framework, that outweigh this conflict.
37. 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