



Appeal Decision

Site visit made on 23 October 2024

by David Prentis BA BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th October 2024

Appeal Ref: APP/H1515/W/23/3333505

Ongar Garden Centre, Ongar Road, Kelvedon Hatch, Essex CM15 0LB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Mrs Tracey Lunnion against Brentwood Borough Council.
 - The application Reference is 23/00296/OUT.
 - The development proposed is an outline application for the demolition of the existing commercial units and construction of new replacement commercial buildings (Class E and Class B2) - appearance, landscaping, layout and scale are reserved matters.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The application was submitted in outline, with access to be determined at this stage. Appearance, landscaping, layout and scale would be reserved matters. The application form states that the new gross internal floorspace for Class E use would be 170 sqm and the new gross internal floorspace for Class B2 use would be 5,440 sqm, resulting in a total proposed gross internal floorspace of 5,610 sqm. The application form also states that the gross internal floorspace to be lost through demolition would be 6,906 sqm. This figure is disputed by the Council. This is a matter I comment on below.
3. The application was supported by a block plan, showing three buildings and areas for parking, service vehicles and landscaping, together with elevations for Plot 1 and floorplans/elevations for Plots 2 and 3. These drawings are marked as indicative. Indicative plans are commonly submitted with outline applications to assist the decision maker by showing one way in which the proposed development could be accommodated. I have taken these indicative drawings into account on that basis.
4. The appeal is against the failure of the Council to determine the application within the required period. The Council's statement of case indicates that the Council's officers would have recommended that the application be approved, subject to conditions. Nevertheless, there are other parties who maintain objections to the appeal scheme. These include Kelvedon Hatch Parish Council and several local residents. In any event, as the matter is now at appeal, I am bound to consider it on its merits in the light of all material considerations.
5. The sequence of events leading up to this position is that the officers prepared a report which was due to be considered by the Council's Planning Committee on 17 October 2023. However, on 13 October 2023, solicitors acting for BGC

South Ltd (the operator of Ongar Garden Centre) submitted a letter which stated that the officers' report was legally flawed in various ways (the Memery Crystal opinion). These alleged flaws included a concern that the report failed to deal properly with the approach to Green Belt policy. The Council then sought its own legal advice and the application was withdrawn from the Planning Committee agenda¹.

6. In January 2024 there was an appeal decision relating to a similar proposal on the same site². The Inspector noted that there were discrepancies within the appeal documents regarding the red line boundary for the appeal site. The site location plan was based on an Ordnance Survey extract supplied by Getmapping dated 15 March 2021. This showed the red line tightly drawn around the access road from Ongar Road (A128) and the existing garden centre buildings and hard standing. Other plans, including those in the flood risk assessment and the indicative block plan, showed a larger area. The Inspector made clear that his decision took the appeal site to be as shown on the Getmapping site location plan. The same site location plan was used for the application which led to this appeal and I have taken this plan as defining the appeal site boundary.
7. The previous appeal was dismissed on grounds of highway safety and flood risk. The Inspector did not consider that Green Belt was a main issue, noting that there was agreement between the Council and the appellant that the proposal would not represent inappropriate development in the Green Belt, subject to the scale and layout of new buildings being controlled at reserved matters stage. In effect, the Inspector accepted that approach. However, whilst he referred to a "*second application*" (now the subject of this appeal) and "*a legal note*" (the Memery Crystal opinion), the Inspector stated that he had assessed the appeal having regard to documents submitted in March and May 2023, rather than any documents submitted in connection with the second application. It is therefore clear that the previous appeal decision did not take account of the Memery Crystal opinion.
8. It is not for me to comment on the merits of the previous application, the Council's reasons for refusal or the resulting appeal decision. However, for the purposes of this appeal, I consider that whether the proposal would represent inappropriate development in the Green Belt should be a main issue. For reasons I shall expand on below, I agree with the broad thrust of the Memery Crystal opinion, which is that the officers' report did not deal properly with Green Belt policy.
9. I appreciate that my approach to Green Belt differs from that of the previous Inspector. However, I have had regard to the Memery Crystal opinion which was not taken into account by the previous Inspector. I do not think that the Council or the appellant have been prejudiced because they were aware that the Parish Council and interested parties had objected on the basis that the proposal would represent inappropriate development in the Green Belt. Green Belt policy was therefore plainly a live issue to be addressed in the evidence. Moreover, the Council and the appellant have read the Memery Crystal opinion and have had the opportunity to respond to it.

¹ Inspector's note - The legal advice obtained by the Council has not been included in the evidence submitted for the appeal. I make no criticism of the Council on this point, it was for the Council to submit whatever evidence it saw fit.

² APP/H1515/W/23/3318748

Main issues

10. The main issues are:

- whether the proposal would represent inappropriate development in the Green Belt;
- the effect of the proposal on highway safety;
- the effect of the proposal on flood risk;
- the effect of the proposal on the historic environment; and
- whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, such as to amount to the very special circumstances required to justify development in the Green Belt.

Reasons

Green Belt

11. The appeal site is located within the Green Belt, where the National Planning Policy Framework (the Framework) states that inappropriate development is, by definition, harmful and should not be approved except in very special circumstances. Substantial weight is to be given to any harm to the Green Belt. The construction of new buildings in the Green Belt should be regarded as inappropriate unless one of the exceptions specified in paragraph 154 applies. In this case, the relevant exception is found at paragraph 154(g) which allows for redevelopment of previously developed land which would not have a greater effect on the openness of the Green Belt than the existing development.
12. As noted above, the red line site boundary is drawn tightly around the existing garden centre buildings, together with external paved areas used for car parking and outdoor sales. I agree with the Council and the appellant that most of the area within the red line would constitute previously developed land, as that term is defined in the Framework.
13. The appellant considers that the existing gross internal floorspace is 6,906 sqm. The Council, on the other hand, calculates that the existing floorspace is approximately 820 sqm. The reason for this wide divergence is that the appellant considers that external sales areas should be taken into account. In taking this approach, the appellant points to an appeal decision relating to Ingatestone Garden Centre³. However, that appeal decision does not assist the appellant. In that case, there was no dispute that the development proposed would amount to inappropriate development. The Inspector's comments on hard standing within the garden centre operation related to her assessment of the extent of previously developed land. That is the same approach that I have taken here.
14. This is not to say that the use of external areas is irrelevant to a broader assessment of openness. The use of external sales areas and parking areas can have an effect on openness. However, in my view the starting point for applying paragraph 154(g) in this case is to consider how the buildings that

³ APP/H1515/W/20/3256968

exist now would compare with the buildings that would exist if the appeal were allowed. In that context, external sales areas should not be conflated with floorspace enclosed within buildings.

15. The Council's figure is an estimate based on plans submitted with previous planning applications. From what I saw on my site visit, I consider that to be a reasonable approach. I consider that the Council's figure for the existing floorspace should be preferred to the appellant's figure.
16. The proposal is for 5,610 sqm of floorspace, which would be more than six times the existing. That in itself is a strong indication that the proposal would have a greater impact on openness than the existing development. However, it is also necessary to consider the nature of the existing and proposed buildings. The garden centre buildings are single storey. Drawings provided by the Council indicate that they are typically around 4m to 4.5m in height. By comparison, the indicative elevations show that the buildings on Plots 1, 2 and 3 would have heights of around 10m, 7.5m and 5m, respectively. Plot 1 would have an extensive two storey element. The proposed buildings would be significantly taller than the existing buildings. That is unsurprising, given the intended use of the proposed buildings.
17. In visual terms, the existing buildings are low key, comprising a collection of timber clad structures with low pitched roofs and predominantly glazed structures resembling greenhouses. They have only a limited visual impact in medium range views, such as views from Ongar Road. The indicative drawings show that the proposed building on Plot 1 would present an elevation of around 85m in length to Ongar Road. The massing of the building would feature long horizontal lines with a central glazed element rising to two storeys. In a visual sense, this would make a strong visual statement and would have a significantly greater impact on the openness of the Green Belt than the existing buildings. I appreciate that the elevations are indicative and that appearance and scale are reserved matters. Nevertheless, having regard to the amount of floorspace proposed, and the intended uses, it seems likely that the proposed buildings would be of a broadly similar nature to those shown on the illustrative plans.
18. The garden centre includes areas of external hard standing used for parking and outdoor sales. There are also some marquees and fabric canopies mounted on poles. Taken together, these features add to the overall impact on openness. The proposed use would have a similar requirement for car parking but would also require a service yard or yards which can be expected to accommodate HGVs serving the proposed development. The proposed use would attract more HGVs than the existing garden centre operation. My assessment is that both the current and proposed uses have, or would have, external features that would add to the overall impact on openness. I do not think that the proposed use would have materially less impact in this regard.
19. Drawing all this together, I conclude that the proposal would have a significantly greater impact on the openness of the Green Belt than the existing garden centre. The proposal does not therefore fall within paragraph 154(g) and would represent inappropriate development in the Green Belt.
20. The Council's approach to this issue is that the assessment required by paragraph 154(g) could be deferred to the reserved matters stage. Moreover, the Council's suggested conditions include the following:

31) Notwithstanding the submitted documents and application form, the development hereby permitted shall not exceed 4 metres in terms of building(s) maximum height or 820sqm in total floor area (and footprint) unless otherwise agreed in writing by the local planning authority.

Reason: no parameter plans have been submitted for consideration and therefore this condition is necessary to ensure that the built form of the proposed development would have no greater impact upon the openness of the Green Belt in comparison to the existing lawful development and in order to ensure that the development would not give rise to a detrimental impact upon highway safety and efficiency as it would be comparable to the scale of the existing development.

21. Planning Practice Guidance (PPG) states that, where details have been submitted as part of an outline application, they must be treated as part of the development for which the application is being made. Unless the applicant has made it clear that the details are illustrative, conditions cannot be used to reserve those details for subsequent approval⁴. In this case, the amount of floorspace proposed for Class E and Class B2 use was specified in the application form. Limiting the amount of floorspace to a lower figure would be contrary to the PPG. Moreover, and in any event, the effect of the Council's suggested condition would be to bring about a fundamental alteration to the proposed development. In my view such a condition would be unreasonable.
22. Consequently, I do not agree with the Council's approach. I consider that it is necessary to assess the appeal against the relevant national and local policies now, rather than deferring that assessment to a later stage. Policy MG02 of the Brentwood Local Plan (BLP) states that all development proposals within the Green Belt will be considered and assessed in accordance with the provisions of national planning policy and that planning permission will not be granted for inappropriate development in the Green Belt other than in very special circumstances. I have concluded that the proposal would be inappropriate development which would, by definition, be harmful to the Green Belt. I have also concluded that there would be a significantly greater impact on the openness of the Green Belt. The Framework states that substantial weight should be given to any harm to the Green Belt. I return to the question of very special circumstances below.

Highway safety

23. The previous appeal was dismissed on grounds which included highway safety. Since the previous application, the appellant has provided additional information on matters such as the traffic generation of the existing and proposed uses, the proposed increase in staff employed at the site and the effect on the local highway network. Having considered this additional information, the Highway Authority advised that its previous concerns had been resolved and that the proposal would not have a material impact on highway safety and efficiency. The Council no longer objects on highway safety grounds.
24. The site has an established access to Ongar Road (A128) which would be used for the proposed development. The Highway Authority advises that this access has operated without any road traffic incidents in the last five years. The

⁴ Planning Practice Guidance 21a-005-20190723

access currently accommodates cars and HGVs associated with the garden centre operation. I saw that it has substantial radii to facilitate large vehicles turning in and out.

25. The garden centre operation has a large car park and is itself a significant traffic generator. I note that the proposal would generate some additional HGV movements and that the pattern of arrivals and departures would be altered. Nevertheless, the effects on the wider transport network have been assessed and there is no evidence that there would be significant harm. The concerns expressed by the previous Inspector have been addressed through the further information that has been submitted. Details of internal access roads and pedestrian facilities could be controlled by a condition.
26. I conclude that the proposal would not be harmful to highway safety. There would be no requirement for off-site highway mitigation works and no conflict with BLP Policies BE08 and BE12, which together seek to protect the functioning of the highway network from both direct and cumulative impacts of development.

Flood risk

27. The previous appeal was dismissed on grounds which included flood risk. The Inspector had concerns about the adequacy of the information on flood risk that had been submitted. Those concerns have been addressed through a revised flood risk assessment, which incorporates consideration of all potential sources of flooding and the potential for a sustainable surface water drainage system. The Environment Agency and the Lead Local Flood Authority have no objection to the appeal scheme on flood risk grounds, subject to appropriate conditions.
28. The Environment Agency Flood Map shows that none of appeal site is within flood zone 3 and only a small part is within flood zone 2. The majority of the site is within flood zone 1, which is at low risk of fluvial flooding. It would be possible to ensure, at reserved matters stage, that all buildings would be located in flood zone 1. The potential for shallow flooding of part of the access road is identified but this is not assessed as being unduly hazardous.
29. I conclude that the proposal would not be subject to an unacceptable level of flood risk. It would accord with BLP Policies BE05, BE14 and NE09 which together seek to manage flood risk through a requirement for site specific flood risk assessments and the use of sustainable drainage systems.

Historic environment

30. There are no designated heritage assets within or adjoining the appeal site. Littlebury is a Grade II* listed building which, the list description notes, is a house dating from 1540. Littlebury is located the west of the appeal site, to the north of the River Roding. The Council's Historic Buildings Consultant advises that the proposed buildings shown on the indicative plans have the potential to detract from the setting of Littlebury and the associated barn, because the agrarian setting contributes to the significance of the listed buildings.
31. Although the heritage statement identifies a Grade II listed building described as "*Barn to the North East of Littlebury*", Littlebury itself is not mentioned. The Framework requires applicants to describe the significance of any heritage

assets affected, including any contribution made by their setting. The appellant has provided no information in respect of Littlebury. In relation to the barn, the heritage statement merely reproduces the list description. There is no assessment of the significance of the listed building, the contribution that setting makes to significance or the effect of the appeal proposals.

Consequently, I do not have sufficient information to discharge the duty set out in section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. Nor do I have sufficient information to conclude on BLP Policies BE14 and BE16 which together seek to protect designated heritage assets.

32. The Council's approach to this issue is similar to its approach to Green Belt. It is suggested that a form of development that would not harm the setting of the listed buildings could come forward at reserved matters stage. For the same reasons as those given above, I do not think that is the right approach. The decision maker should have sufficient information to discharge the statutory duty and apply the relevant BLP policies when determining the application.
33. Had I been minded to allow the appeal, it would have been open to me to seek further information on heritage impacts. However, as I shall dismiss the appeal for reasons that would not be affected by such information, it is not necessary for me to comment further on this issue.

Other matters

34. There have been written representations objecting to the appeal from Kelvedon Hatch Parish Council and interested parties, including local residents and customers of the garden centre. Many of the matters raised have been covered above. I consider that concerns regarding ecology, biodiversity net gain and air quality could be addressed by conditions.
35. Interested parties argue that the site is not a sustainable location for the proposal because it would be dependent on transport by the private car. I note that the bus service along Ongar Road is not very frequent. Nevertheless, the same point applies to the existing use, which relies on a large car park to accommodate customers. Facilities for pedestrians and cyclists within the site, improved pedestrian access to the bus stop at the site entrance and improvements to the bus stop itself could be secured through reserved matters and conditions. This would be consistent with BLP Policy BE09, which seeks to prioritise cycle and pedestrian movements and access to public transport. This is not a matter that weighs against the appeal.
36. Interested parties have stated that the garden centre has become an important place for social interaction, because of the café and sitting out area, attractive surroundings and free parking. Whilst I acknowledge those concerns, the garden centre is a commercial business. BLP Policy PC10 relates to community facilities, which the plan states can include village halls, community centres, libraries and the like. I agree with the Council that a garden centre is not a community facility in the terms of the BLP.
37. I understand that there are legal proceedings relating to the continued occupation of the appeal site by the operator of the garden centre. That is a separate matter which has no bearing on the determination of the appeal.

38. The appellant states that the proposal would employ up to 150 people. No occupier has been identified and that figure is no doubt based on standard employment densities. In my view it should therefore be treated with a degree of caution. On the other hand, interested parties have expressed concern about the loss of existing jobs at the garden centre. That would represent a negative economic impact. Nevertheless, I consider that the proposal would result in a net uplift in the number of jobs at the site. That would be an economic benefit to which I attach moderate weight.

Whether very special circumstances exist

39. I have found that the proposal would amount to inappropriate development in the Green Belt. Moreover, the proposal would result in a significantly greater impact on the openness of the Green Belt than the existing development. Mindful of the Framework, I attach substantial weight to the Green Belt harm. On the other hand, I attach only moderate weight to the economic benefit of additional employment. I conclude that there are no other considerations that clearly outweigh the harm to the Green Belt. It follows that the very special circumstances required to justify development in the Green Belt do not exist.
40. It also follows that the proposal would be contrary to BLP Policy MG02.

Conclusion

41. I have found that the proposal would accord with policies of the BLP relating to flood risk and highway safety. Other potential impacts of the proposal could be addressed by conditions, consistent with the relevant BLP policies. Nevertheless, I consider that the conflict with Policy MG02 is a fundamental objection, such that the proposal should be regarded as being in conflict with the development plan as a whole. I have not identified any considerations that indicate a decision other than in accordance with the development plan. The appeal should therefore be dismissed.

David Prentis

Inspector