



Appeal Decisions

Site visit made on 9 October 2024

by Alison Partington BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 November 2024

Appeal Ref: APP/G5180/W/24/3341005

133 Baston Road, Hayes, Bromley BR2 7BS

- 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 Mr Nigel Styles (South East Living Group) against the decision of the Council of the London Borough of Bromley.
 - The application Ref is DC/23/03781/OUT.
 - The development proposed is the demolition of existing house, swimming pool and tennis court and the erection of 2 detached dwellinghouses with car barns and parking.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was submitted in outline with access and layout to be determined at this stage. I have determined the appeal on this basis treating any plans that show the scale and appearance of the dwellings or the landscaping of the site as indicative.
3. In the light of the Transport Technical Note and Road Safety Audit submitted at appeal stage the Council have confirmed that they are no longer contesting the third reason for refusal that related to highway safety.

Background and Main Issues

4. The majority of the site including one of the accesses, the loop road and the landscaping area adjacent to the road, and the triangular shaped parcel of land at the rear of the site where the dwellings would be located lies in the Green Belt as defined by *The London Plan (March 2021)* (LP). In addition, the front part of the site up to the existing dwelling is within the Bromley, Hayes and Keston Common Conservation Area.
5. As a result, the main issues in the appeal are:
 - whether or not the proposal would be inappropriate development in the Green Belt for the purposes of the development plan and the *National Planning Policy Framework* (the Framework) having regard to the effect of the proposal on the openness of the Green Belt and the purposes of including land within it;
 - whether or not the proposal would preserve or enhance the character or appearance of Bromley, Hayes and Keston Common Conservation Area and its setting;

- the effect of the proposal on ecology and biodiversity; and
- if the proposal is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify it.

Reasons

Whether inappropriate development

6. Policy G2 of the LP and Policy 49 of the *Bromley Local Plan (adopted January 2019)* (BLP) set out the forms of development that may be considered acceptable within the Green Belt. This indicates that whilst the construction of new buildings is generally inappropriate development in the Green Belt. One of the exceptions to this is for the limited infilling or the partial or complete redevelopment of previously developed sites, whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purposes of including land within it than the existing development. It also states that engineering operations are not inappropriate provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it. The same is indicated in paragraphs 154 g) and 155 of the Framework.
7. The appeal site includes two areas of land that are within the Green Belt. At the front of the site adjacent to the road the Green Belt land comprises a vehicular access and track and an area of vegetation, whilst the Green Belt land at the rear of the site currently has a swimming pool, a tennis court and 2 associated single storey outbuildings. These previously belonged to the adjacent school but are now unused and in a poor condition. Beyond this is a large grass field that is well maintained, a small part of which lies within the site boundary. Nonetheless, the majority of the land within the Green Belt is previously developed land.
8. The appeal scheme proposes the demolition of the pool, tennis court and the associated outbuildings as well as the existing house on the site that is not in the Green Belt. The outbuildings are modest in both their footprint and volume. Whilst the pool has a volume, this is below ground level and so this, along with the 2-dimensional tennis court, are flat, open structures which have a very limited impact on openness either spatially or visually, despite their footprints.
9. It is proposed to replace these with 2 detached dwellings and associated car barns. These would be located within the area currently occupied by the swimming pool, the tennis courts and the outbuildings. Whilst scale is not to be determined at this stage, the volume and built form of the proposed houses would be likely to be considerably greater than the footprint and volume of the existing buildings in the Green Belt, even if the amount of land the dwellings would cover would be smaller than that covered by the pool and tennis court.
10. Therefore, compared to the structures they would be replacing, the dwellings would both spatially and visually have a far greater impact on the openness of the Green Belt. This would still be likely to be the case, if the volume of the

existing house that would be demolished and which lies outside the Green Belt is included.

11. There would be limited visibility of the proposed houses from the public realm. Whilst this might reduce the level of visual harm caused by the proposal, nonetheless it would still have a visual impact on openness. However, the fact that in some views the proposed dwellings would be seen in the context of other housing does not reduce the spatial and visual impact the proposal would have on the openness of the Green Belt.
12. The rear gardens of Nos 89 -101 form a distinct boundary between the suburban residential area and the extensive area of open land beyond. The proposed dwellings would be located beyond this residential envelope and so would represent encroachment of residential development into this open land. Whilst the land immediately adjacent to the site is in use as playing fields and so may not have an overly rural character, the proposal would still represent encroachment of the built form into the countryside, contrary to one of the purposes of Green Belt.
13. At the front of the site, the existing more southerly vehicular access would be widened by approximately 1.4m and a passing place would be created along the loop road. These both constitute engineering operations. Whilst these works would slightly increase the amount of hardstanding, this would not impact either visually or spatially on the openness of the Green Belt nor would it conflict with any of the purposes of including land within it. In particular, it would not lead to any encroachment into the countryside as the extent of the works are so small.
14. The overall proposal would lead to an increase in the number of vehicles entering and exiting the site, but the additional traffic movements from the additional dwelling would be small and the time passing through the land in the Green Belt would be short. As a result, this would not have any impact on the openness of the Green Belt either. As such, the engineering operations would not be inappropriate development.
15. Notwithstanding my findings regarding the engineering operations not being inappropriate development, the proposed dwellings would both spatially and visually erode the openness of the Green Belt. Consequently, the proposal would have a greater impact on the openness of the Green Belt and so it would not accord with the exceptions listed in Policy 49 of the BLP or paragraph 154 g) of the Framework.
16. Given this, the proposal would result in new buildings that would not accord with any of the exceptions given in BLP Policy 49 or paragraph 154 of the Framework. It would therefore be inappropriate development, which according to paragraph 152 of the Framework is, by definition, harmful to the Green Belt. In addition, there would be a degree of harm arising from the loss of openness and from being contrary to the purposes of including land in the Green Belt.

Character and appearance

17. The front half of the site lies in Bromley, Hayes and Keston Common Conservation Area. S72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special attention to be had to the desirability of

preserving or enhancing the character and appearance of a conservation area. The rest of the site forms part of its setting. In addition, opposite the site, No 54 Baston Road is a locally listed building.

18. The Supplementary Planning Guidance for the conservation area (April 2005) (SPG) indicates that the common lands act as the unifying feature to what is otherwise a large and dispersed conservation area with 16 sub-areas. The site forms part of the Baston Road / Five Elms sub-area.
19. Originally a clearing within the common, the SPG indicates that this sub-area is now dominated by Baston House School located, in part, in what was formerly Baston Farm. The northern part of the sub-area contains residential properties on Redgate Drive and Baston Road which mark the start of Hayes village.
20. The appellant's heritage statement indicates that the significance of the conservation area relates to the special architectural and historic interest that results from the high quality of the built form and its rural landscape characteristics. This has not been disputed by the Council and from my own observations I would agree with this conclusion.
21. The part of the site within the conservation area currently consists of the in and out access road, areas of hardstanding used for parking by neighbouring properties and areas of vegetation. The hedging and other vegetation along the frontage of the site, which is clearly visible when travelling along Baston Road makes a positive contribution to the character and appearance of the conservation area. However, the expanse of hardstanding surrounding this vegetation detracts from the character and appearance of the conservation area.
22. The remainder of the site consists of a non-descript mid-20th century house and its garden area, together with the disused swimming pool and tennis court and their associated outbuildings. The flat, open nature of the tennis court and swimming pool at ground level mean that although in a poor condition, their impact on the setting of the conservation area is limited. So, although parts of this area superficially have a neglected appearance, overall I consider the part of the site outside of the conservation area currently has a neutral impact on its setting. The proposed demolition of the existing house would not be detrimental to the setting of the conservation area or to its significance.
23. The locally listed building is a 2 storey, rendered, double fronted property that is a prominent feature in the street scene. The SPG indicates that dating from 1776 the house was once the home of the Bath family, giving it historic as well as architectural interest. The appellant's heritage statement indicates that although in close proximity the site does not appear to have any historic links to this dwelling. It therefore does not contribute to the significance of this non-designated heritage asset or its setting.
24. Although landscaping is a reserved matter, apart from the loss of a small area to create a passing place, the frontage landscaping would be unaffected by the proposals. The indicative plans show replacement and additional planting would be possible on the site, including in the vicinity of the secondary vehicular access that would be reduced to a pedestrian access. As such, I am satisfied that the positive contribution the frontage landscaping makes to the character and appearance of the conservation area would be preserved.

25. The scale and appearance of the proposed dwellings are not being determined at this stage. The indicative plans show single storey dwellings which from my observation did not appear to be a particular feature of residential development in the area. Nevertheless, subject to careful design, and use of appropriate materials, there is no reason to consider that the dwellings could not be sympathetic to the existing houses in the area.
26. The existing house on the site is situated some distance to the rear of Nos 111-131 Baston Road. Whilst it may have a similar alignment to Nos 93-101, most of which are served by a private access road and so are set further back from the main road, it is not seen in the context of these houses but the terraced housing to the front of it. As such, it appears as a form of backland development – as does No 121 which is set to the rear of No 123. Whilst not a common feature, these examples of backland development show it can be accommodated without having an adverse impact on its character and appearance.
27. However, the proposed dwellings would be set much further back than the existing house. Moreover, whilst these two examples of backland developments are both contained within the residential envelope, the proposal would project beyond the rear boundary of the gardens of Nos 89 -101 Baston Road which forms a distinct edge to the residential area. The land on which they would be sited relates to the extensive area of open land rather than the suburban residential area of Hayes. As a result, the development would appear as an incongruous incursion beyond the existing residential area into the more open land.
28. The existing buildings on the site are modest in size and neither they nor the pool or tennis court are visually intrusive. In contrast, the proposed dwellings and car barns would have a greater scale and mass and would have an urbanising impact on this area of land and erode its open character.
29. Whilst visibility of the proposed dwellings from the public realm would be limited, nonetheless the proposed siting of the buildings beyond the established built form would have a harmful impact on the character, if not the appearance, of the area. This detrimental impact on the land within the setting of the conservation area, would harm the ability to appreciate the significance of the conservation area.
30. It is suggested that the removal of the existing house would open up views to the common beyond. However, such views are also blocked by existing boundary treatments on the land beyond the house and would also depend on the landscaping proposed.
31. Overall, I consider that the proposed development would not preserve and would unacceptably harm, the character and appearance of Bromley, Hayes and Keston Common Conservation Area and its setting. Accordingly, there would be conflict with Policy HC1 of the LP and Policies 37, 41 and 42 of the BLP which require developments to conserve the character, appearance and significance of both designated and non-designated heritage assets and their setting in general, and conservation areas in particular. Whilst I note the appellant's comments about Policy 3 of the BLP being out-of-date, the proposal would also conflict with this policy which indicates that backland development should not, amongst other things, have an unacceptable impact on the character and appearance of the area.

32. Employing the terminology of the Framework, I consider the harm caused to the setting of the conservation area and thereby to its significance would be 'less than substantial harm', at the lower end of the scale. Nonetheless, in accordance with the Framework I give great weight to this harm. I shall weigh this against the public benefits later in my decision.

Ecology / Biodiversity

33. A Preliminary Ecological Assessment, which assesses a variety of species including those mentioned in representations from local residents, was submitted with the application. This concluded that, subject to various mitigation measures that could be controlled by condition, the proposed development would not have an adverse impact on nature conservation. The findings of this were accepted by the Council's ecological advisor subject to an updated badger survey being carried out as recommended. In the absence of any substantive evidence to the contrary I see no reason to come to a different conclusion.
34. An updated badger survey was submitted as part of the appeal. This concluded that the development would not have any impact on badger setts. However, as there could be some potential impact on foraging habitat and commuting routes, it proposed some mitigation measures and sensitive working methods. These can be controlled by conditions.
35. The application is not subject to the mandatory Biodiversity Net Gain requirements that came into effect earlier this year. Landscaping is not being determined at this stage, but based on the indicative plans, it is shown that it would be possible for the development to provide some biodiversity net gain.
36. Consequently, subject to conditions, I am satisfied that the proposal would not have an adverse impact on ecology or biodiversity. Therefore, it would not be contrary to Policy G6 of the LP or Policies 69 and 72 of the BLP which seek to ensure developments provide biodiversity net gain, and do not have an adverse impact on nature conservation and protected species unless adequate mitigation measures are provided.

Other Considerations

37. The proposal would result in 1 additional dwelling and so its contribution to housing land supply in the area would be very limited. It would also result in economic benefits during the construction period and spend by future occupiers would benefit the local economy but given the scale of the scheme these benefits would be very limited.
38. Development plan policies highlight the contribution previously developed land and small sites can make to the housing supply and support the use of such land and sites for this purpose. However, this is provided that schemes complement the character and appearance of the area. I have concluded that this would not be the case here.
39. The appeal site is located in an area with a Transport for London Public Transport Accessibility Level (PTAL) rating of 1b which indicates it is an area not well served by public transport. Nonetheless, there are bus stops in both directions in close proximity to the site. In a northerly direction, these provide access to the services and facilities in Hayes including the train station, which would also be within cycling distance of the site. As a result, future occupiers

would not necessarily be dependent on a private car for all their day to day needs.

40. The illustrative plans show a wildflower meadow would be created at the rear of the houses. However, there is no indication as to how this would be managed in the long term. As landscaping is not being determined at this stage the calculations for the potential biodiversity net gain are not fixed either. As such, I give these purported benefits limited weight.

Planning Balance

41. The proposal would be inappropriate development in the Green Belt, which, by definition, is harmful to the Green Belt, and should only be approved in very special circumstances. In addition, the proposed dwellings would impact on the openness of the Green Belt and would be contrary to one of the purposes of including land within it. Paragraph 153 of the Framework indicates that any harm to the Green Belt should be given substantial weight and that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
42. In addition, the proposal would cause less than substantial harm to the setting of the conservation area and this harm also attracts great weight.
43. On the other side of the planning balance, the proposal would make a very limited contribution to housing supply in the area and would produce some small economic benefits, and future occupiers would not be solely reliant on private vehicles to meet their day to day needs.
44. The Framework requires that where a proposal causes less than substantial harm to the significance of designated heritage assets, this harm should be weighed against the public benefits of the proposal. In this case, the provision of 1 additional dwelling would be a small public benefit, but I do not consider this would outweigh the less than substantial harm cause to the conservation area.
45. The determination of whether very special circumstances exist is a matter of planning judgement based on a consideration of all relevant matters. Whilst I have given consideration to the benefits of the proposal, I consider that they do not clearly outweigh the harm the proposal would cause. As such, very special circumstances do not exist and the proposal would be contrary to LP policy G2, Policy 49 of the BLP and the Framework.
46. The Council have indicated that they cannot demonstrate a 5 year supply of housing land, indicating that the latest position shows they have a 2.96 year supply of land. This is clearly a significant shortfall. In such circumstances paragraph 11 d) i of the Framework indicates that permission should be granted unless the application of policies in the Framework that protect assets of particular importance provide a clear reason for refusing the development proposed. Footnote 7 indicates that this includes policies relating to Green Belts and designated heritage assets. Given that I have concluded that the scheme would be contrary to both the Green Belt and heritage policies of the Framework, this is the case here.
47. Even if this were not the case, I consider the adverse impact of granting permission would significantly and demonstrably outweigh the benefits, when

assessed against the Framework taken as a whole and so paragraph 11 d) ii would not indicate permission should be granted.

Conclusion

48. The proposal conflicts with the development plan when considered as a whole. Material considerations do not indicate that a decision should be made otherwise than in accordance with the development plan. I therefore conclude the appeal should be dismissed.

Alison Partington

INSPECTOR