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## Appeal Decision

Site visit made on 31 March 2025

**by S Harley BSc(Hons) M.Phil MRTPI ARICS**

an Inspector appointed by the Secretary of State

**Decision date: 14 April 2025**

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**Appeal Ref: APP/G5180/W/24/3347801**

**Land to the rear of 50-56 Cudham Lane North, Cudham, TN14 7RA**

- 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 Roger Gluck (Gluck Precision Engineering) against the decision of the Council of the London Borough of Bromley.
  - The application Ref is DC/23/04768/OUT.
  - The development proposed is erection of 4 detached houses with integral garages, additional parking and planting of a wildflower meadow.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The application has been submitted in outline and the application form states no matters are included for consideration now. However, the Design and Access Statement states that details of means of access and the layout of the dwellings are to be determined at this stage. It appears that the Council decided the application on this basis and I will determine the appeal in the same way. Computer Generated Images of the proposed houses have also been provided but as appearance and scale are for future consideration I have treated these as illustrative of only one way in which the site could be developed.
3. I have used the address from the planning application form in the banner heading above although I note that the Decision Notice and the appeal form describe the address as 50-54 Cudham Lane North.
4. There is an extensive planning history to the site including activities that appear to have taken place without planning permission and dismissed appeals for the change of use of part of the current appeal site for the storage of mobile freezer trailers and for a dwelling. There is a separate appeal pending relating to an enforcement notice in respect of timber processing/storage appeal ref APP/G5180/C/24/3343405. For the avoidance of doubt this appeal Decision relates solely to the proposal described in the banner heading above.
5. A revised National Planning Policy Framework (the Framework) came into effect in December 2024. The main Parties have had the opportunity to comment on its implications and comments received have been taken into account. References in this Decision to paragraph numbers and footnotes are those of the revised Framework. Amongst other changes the concept of grey belt land is introduced.

6. The Bromley Local Plan is under review and the site has been put forward for consideration for housing development. However, the review is at too early a stage for this to carry much weight in this appeal.

### **Main Issues**

7. The main issues are:
  - a. whether or not the proposal would be inappropriate development in the Green Belt having regard to the Framework and development plan policies;
  - b. the effect of the proposal on the openness of the Green Belt;
  - c. the effect on the character and appearance of the area;
  - d. the effect on the living conditions of occupiers of No 50 Cudham Lane in terms of noise and disturbance;
  - e. whether adequate provision would be made in respect of biodiversity, nature conservation and protected species; and
  - f. if the proposal is found to be inappropriate development, 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.

### **Reasons**

#### *Whether or not inappropriate development in the Green Belt*

8. Cudham Lane North is between Green Street Green on the edge of Orpington and Cudham. The Design and Access Statement states the appeal site is about 1.5 hectares although just over half would become a wildlife meadow. It is on the edge of, and behind, a sizeable area of housing on the western side of Cudham Lane North. The site includes a long gated access drive to the north of No 50 Cudham Lane North which would become the access to the proposed development. There is a hedge along the northern boundary the other side of which is a footpath through the field. The whole area is within the Metropolitan Green Belt.
9. The Government attaches great importance to Green Belts, the fundamental aim of which is to prevent urban sprawl by keeping land permanently open. Paragraph 143 of the Framework identifies five purposes of Green Belts. Policy 49 of the Bromley Local Plan 2019 (the LP) is similar to Paragraph 154 of the Framework in stating that the construction of new buildings on land within the Green Belt will be inappropriate unless the development comprises certain specified exceptions. Policy G2 of the London Plan 2021 (the London Plan) protects the Green Belt from inappropriate development. A newly introduced Paragraph 155 of the Framework provides for development on green belt land in certain circumstances.
10. The development of four houses in the Green Belt would be inappropriate unless one of a number of exceptions apply. The proposal does not amount to limited infilling in a village as it is not in a village and does not fill a relatively small space between other buildings. Accordingly the exception at Paragraph 154(e) does not apply. Paragraph 154(g) of the Framework states that the development of homes in the Green Belt on previously developed land would not be inappropriate if there were no substantial harm to the openness of the Green Belt.

11. A large part of the site contains the remains of walls of the former Spinney Way Nurseries and the stumps of felled trees. The Glossary to the Framework excludes, amongst other things, land that is or was last occupied by agricultural buildings from the definition of previously developed land. Section 336 of the Town and Country Planning Act 1990 includes horticulture, market gardens and nursery grounds in the definition of agriculture. Other parts of the site are grass land. No part of this appeal site appears to be in residential use notwithstanding the extent of previous land ownership.
12. Unlawful development is also precluded from the definition of previously developed land. Whilst this Decision does not amount to a formal definition of the planning status of the site, for the purposes of this appeal only, it seems likely that areas of spoil, structure, waste material and recently laid gravel hard-standing without an obvious planning permission would exclude the site from that definition. Accordingly I conclude that the exception at Paragraph 154(g) of the Framework and in Policies 49 of the LP or G2 of the London Plan does not apply.
13. Paragraph 155 of the Framework states the development of homes in the Green Belt should not be regarded as inappropriate where it utilises grey belt land subject to a number of criteria. Annex 2 to the Framework defines grey belt as land in the Green Belt comprising previously developed land and/or any other land that, in either case, does not strongly contribute to any of purposes (a), (b), or (d) in Paragraph 143 of the Framework.
14. Purpose (a) is to check the unrestricted sprawl of large built-up areas and purpose (b) is to prevent neighbouring towns merging into one another. The site is on the edge of a sizeable area of housing. The steep bank and trees to the north-west, and the hedge and footpath to the north beyond would further restrict and contain development. Accordingly in terms of the Planning Practice Guidance the site contributes moderately to purpose (a). The site is only a very small part of the gap between the towns of Orpington and Biggin Hill. Despite some views of the site through trees and hedges, particularly at times when not in leaf, due to its location behind other properties its contribution to the visual separation of the towns is relatively limited. Accordingly it contributes weakly to purpose (b). The site does not form part of the setting and special character of an historic town so does not contribute to purpose (d).
15. I conclude that the appeal site does not strongly contribute to the above purposes of the Green Belt so comprises grey belt land for the purposes of this appeal. In order to benefit from the exception at Paragraph 155 four further conditions would have to be met.
16. Due to its location on the edge of a sizeable area of housing and the distance from the nearest edges of the towns the proposed development would not significantly encroach into the countryside and the proposal would assist in the recycling of derelict land. The proposed development would not affect the ability of the remaining Green Belt across the area of the plan from serving all five of the Green Belt purposes in a meaningful way. As the Council cannot demonstrate the requisite supply of deliverable housing land there is a demonstrable unmet need for houses so the proposal would meet the conditions at Paragraph 155(a) and (b).
17. Cudham Lane North is a classified road and a local distributor. It is narrow, winds and lacks footpaths on much of its length. However, there are two bus routes

along it so there are some opportunities for travel by means other than the private vehicle. Transport solutions vary between rural and urban areas and the Council has raised no objections to the site location in terms of accessibility to services and facilities or to the safety of the access onto Cudham Lane North. I conclude that the development would be in a sustainable location for the purposes of Paragraph 155(c) of the Framework.

18. However, although four houses are proposed the site area is greater than 0.5 hectares. It is therefore major development as described in the Glossary to the Framework. Accordingly the contributions required by the 'Golden Rules' are engaged. There is no indication that any affordable housing would be provided or that there are improvements to local or national infrastructure that are necessary or to be provided. Although a wild meadow is proposed no mechanism for securing public access has been provided. Consequently, the Golden Rules do not retract the principle that development in the Green Belt is inappropriate unless it meets one of the exceptions set out in Paragraph 154 of the Framework.
19. This leads to the conclusion that the proposal would be inappropriate development in the Green Belt having regard to the Framework. There would be conflict with Policies 49 of the LP; G2 of the London Plan; and the Framework in terms of seeking to protect the Green Belt.

### *Openness*

20. The Framework indicates that openness is an essential characteristic of the Green Belt and a fundamental aim of Green Belt policy is to keep land permanently open. Although set back behind other houses and despite the unauthorised materials on the site, the visual dimension of openness is clearly apparent, most notably from the public footpath immediately adjoining the appeal site. The nursery related structures were extensive but these were demolished many years ago and only minor parts of the bases of these remain; they are barely distinguishable in views from the public footpath; and the proposed houses would be built on a different part of the site.
21. The proposed new two storey houses with rooms in the roof space would be a substantial size. New buildings of the size proposed together with domestic curtilages, vehicle parking and associated paraphernalia would lead to a meaningful loss of openness. I conclude the proposal would result in substantial harm to the openness of this part of the Green Belt. There would therefore be conflict with the development plan and the Framework and this weighs heavily against the proposal.

### *Character and appearance*

22. Access would be to the side of No 50 Cudham Lane North along an improved existing track. The four dwellings would have front elevations facing towards the north east and gardens to the rear with onsite parking for occupiers and additional visitor parking at the end of the access. Nearby development comprises a variety of dwelling sizes, styles and materials set in undulating mainly open countryside with a scattering of buildings. I have no reason to suppose that the individual houses could not be satisfactorily designed. Nor would a layout where the houses would face towards the access road be out of keeping.

23. However, there would be an open area behind and to one side which would become a wild flower meadow/conservation buffer zone which would separate the houses from those on Spinney Lane. The proposed houses and gardens would be at right angles to the nearest existing properties and would be poorly related to, and separated from, houses on Spinney Way and Cudham Road North. The regular spacing would appear uniform and urbanising on this edge of the countryside.
24. Such a relationship with neighbouring properties would be harmful by being disconnected from, and out of keeping, with the surrounding pattern of development. There would be conflict with Policies 4 and 37 of the LP and D3 and D4 of the London Plan and the Bromley Urban Design Guide in terms of seeking a high quality layout that enhances the quality of local places. However, as the proposal would generally not be seen in the context of other houses because of the intervening hedges and the generous gardens, the harm arising from the disconnected layout would be small.

#### *Living conditions*

25. The proposed access track runs along the side boundary of the house at No 50. The house is separated from the access by a fence and some vegetation and an attached garage. There would be additional vehicles and pedestrians using this access which has the potential to cause noise and disturbance for occupiers of that property. However, comings and goings to residential properties adjacent to a side boundary is not an unusual arrangement and the amount of activity generated by occupiers of four houses would be relatively limited.
26. I conclude that although there would be likely to be some harm by way of noise and disturbance as a result of the proposal this would be relatively limited. The conflict with Policies 37 of the LP and D3 of the London Plan, which require developments to respect for the amenity of occupiers of neighbouring properties.

#### *Biodiversity, nature conservation and protected species*

27. Some ecological information was provided with the application and more evidence has been provided with the appeal, notably the Ecology Partnership Technical Response which clearly shows the boundary of the SINC in relation to the proposed development area and a Reptile Presence/Likely Absence Survey.
28. There are a number of sites of nature conservation interest within about 2km of the site. The most important of these are Downe Bank and High Elms Site of Special Scientific Interest and High Elm Country Park Local Nature Reserve which are some 230m away. Due to the distance involved and the intervening fields and scattered properties, it is unlikely that a development of four houses would have a harmful effect on these.
29. Part of the site falls within the High Elms Site of Nature Conservation Interest (SINC) mixed mainly deciduous woodland at the north of the site and which forms part of a wider network of nature conservation sites. The SINC appears to be predominantly ash and beech, with occasional field maple and yew and an understorey of bramble, hazel and holly. Ground flora includes dogs' mercury, false wood brome, garlic mustard, herb Robert, and wood millet. The value of the SINC as a whole derives mainly from its diverse ancient woodlands and chalk grasslands. Deciduous woodland a priority habitat.

30. The SINC designation includes the area of the former nursery buildings and the stumps of ash trees which grew between the former green houses and which were removed due to ash die-back disease. At least one of the proposed houses and the visitor parking and access to it would appear to fall within the SINC boundary<sup>1</sup>. There is a notable lack of woodland ground flora in that part of the site.
31. The woodland edge, boundary trees and hedges, grassland, scrub and brash/rubble piles all provide suitable habitats for wildlife. Most notably a badger sett has been identified in the woodland to the north-west and a good population of slow worms was found, mainly within part of the proposed development area. Tree lines, hedgerows and woodland may provide valuable commuting corridors for bats in the local area.
32. The woodland and trees/hedges along the site boundaries are to be retained, albeit some works might be necessary to address any health and safety risk for those using the public footpath. New hedges could be planted. A wildflower meadow would be created in a little over half of the site. The older woodland on the steep banks in the main body of the SINC would not be directly affected by the proposal and root protection/ buffer zones could be secured by condition.
33. Only a very small part of the proposed car parking would be in a 30m buffer zone from the badger sett and a condition could secure appropriate protection from disturbance during construction. Most of the slow worm population would require re-location but there would be ample space to provide alternative habitat within the wild flower area. Sensitive positioning of lighting would mitigate the impact on foraging bats and bird and bat boxes and refugia could encourage additional populations. I conclude that adequate provision could be made in respect of protected species so there is no conflict with Policy 72 of the LP.
34. However, little by way of additional tree planting is proposed and it is not clear that the extent of wild flower meadow would be the most appropriate contribution to biodiversity and nature conservation in this locality or that it could be successfully established as a cover for the concrete foundations. Moreover, no mechanism for the retention and management of the area for biodiversity and nature conservation has been put forward. In view of the history of the site I consider a robust mechanism would be required.
35. For the above reasons I conclude that adequate provision would not be made in respect of biodiversity and nature conservation. Accordingly there would be conflict with Policies 69 of the LP and G6 of the London Plan in these respects.

### *Other considerations*

36. The Council cannot demonstrate the requisite five year supply of deliverable housing land. The published housing land supply for the period 2021/22 to 2025/26 is 3.99 years but the Council acknowledges a supply of 2.96 years for this appeal which is a significant undersupply. However, in this case the application of Green Belt policies in the Framework provide a strong reason for refusing the development proposed so the so-called “tilted balance” in favour of development under Paragraph 11 of the Framework does not apply.

<sup>1</sup>Figure 4: Approximate positioning of SINC boundary in relation to proposed site: Ecology Partnership Technical Response  
6 September 2024

37. The proposal would make a small but positive contribution to the local supply of housing. There would be economic benefits during the construction period and spend in the local economy from additional residents. However, these benefits are moderated because of the small scale of the development.
38. The proposal would make efficient use of land and provide some biodiversity and nature conservation improvements. The site does not qualify as previously developed land and is not within a settlement but the proposal would nevertheless restore a damaged and derelict site. However, there may be other less harmful ways in which these aims could be achieved and land management should be able to control fly tipping and other anti-social behaviour.
39. The totality of these other considerations amount to moderate weight in favour of the proposal.

### **Other Matters**

40. The appellant has expressed dissatisfaction with the way the Council has dealt with the site over some years. However, this is not a matter for me in this appeal and I have reached my own conclusions based on my own site visit and the evidence provided.

### **Conclusion**

41. The Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. In addition there are harmful impacts on openness and a small harm by way of a disconnected layout. There would also be limited harm in relation to living conditions of occupiers of No 50 and adequate provision would not be made in respect of biodiversity and nature conservation.
42. Substantial weight should be given to the harm to the Green Belt. Very special circumstances will not exist unless the harm to the Green Belt and any other harm are clearly outweighed by other considerations. I conclude that the other considerations in this case do not clearly outweigh the harm identified. Consequently, the very special circumstances necessary to justify the development do not exist.
43. In failing to comply with the development plan Policies as set out above the proposal cannot be said to comply with the development taken as a whole. I have found insufficient material considerations to indicate a decision other than in accordance with the development plan. I conclude the appeal should be dismissed.

*S Harley*

INSPECTOR