



Appeal Decision

Site visit made on 14 October 2025

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 November 2025

Appeal Ref: APP/G5180/W/23/3323406

Land between 57-67 Fox Lane, Keston BR2 6AL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the 1990 Act) as amended against a refusal to grant planning permission.
- The appeal is made by Mr Tim Clapham on behalf of Keston Homes Ltd against the decision of the Council of the London Borough of Bromley.
- The application Ref is 23/00509/FULL1.
- The development proposed is described as the installation of timber fence, gates and a tumbled flint stone wall.

Formal Decision

1. The appeal is dismissed.

Preliminary Matters

2. There is another appeal¹ at the property made by the same appellant against an enforcement notice served by the Council on a shipping container and set of hoardings at the appeal site. Whilst at the same site these are independent appeals and are subject to separate decisions.
3. The application is partially retrospective, as during my site observations I noted that timber post and rail fencing had been installed along the flank elevation along with the erection of a retaining flint stone wall adjoining the property at 67 Fox Lane, which is currently being redeveloped. From the evidence before me, the site has been cleared of vegetation and appears to have been reprofiled, with a hard surfaced access route laid in its place and a set of large metal gates installed adjacent to the roadside.
4. It is acknowledged that the description of development contained in the application form is silent with regard to the provision of the hard surfaced accessway, however this forms part and parcel of the development subject to the application and subsequent appeal. Both parties have made comments and representations on this aspect of the scheme, and I propose to deal with the appeal in the same manner. I have advised both parties of my approach, and neither has offered any further comments and as such there would be no prejudice to either party.

Main Issues

5. The main issues are:
 - whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies and, if so, the effect on openness;

¹ PINS Ref: APP/G5180/C/23/3322525

- the effects of the proposed development on highway safety; and
- 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 inappropriate development

6. Policy G2 of the London Plan (LP) adopted March 2021 seeks to protect the Green Belt from inappropriate development. Policy 49 of the London Borough of Bromley Local Plan (BLP), adopted January 2019 highlights that inappropriate development will not be permitted in the Green Belt, unless very special circumstances are demonstrated which are concluded to outweigh the potential harm, including harm to the openness of the Green Belt. It also sets out a number of exceptions. These policies are generally consistent with the National Planning Policy Framework (the Framework).
7. 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 154 of the Framework establishes that buildings and other forms of development would be inappropriate unless they meet a listed number of exceptions. The exceptions most relevant to this appeal are: 154.b) the provision of appropriate facilities (in connection with the existing use of land or a change of use), including buildings, for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it; and 154.h) ii. engineering operations.
8. A 'building' is defined in section 336 of the 1990 Act to include '*any structure or erection and any part of a building, as so defined, but does not include plant or machinery comprised in a building.*' It is, therefore, reasonable to conclude that the timber fence, gates and the flint stone wall, would be encompassed by this interpretation. Thus, this part of the proposal could be considered under paragraph 154.b). Both parties agree that the creation of the hard surfaced access route would be classed as an engineering operation under section 336 of the 1990 Act, which would be considered under paragraph 154.h) ii and I have no reason to disagree with that assessment.
9. The appellant has indicated that the appeal site is currently used for agricultural purposes. The appellant further contends that the site requires fencing and gates to allow the landowner access to their land, whilst providing a degree of security from trespass, fly tipping and other unsociable land use taking place. The hard surfaced access route allows the appellant to gain access to the land via vehicle and turn on site.
10. However, interested parties contend that the provision of the gates and the accessway are not associated with agricultural purposes but rather to facilitate entrance and egress to an alleged unauthorised builder's compound within the site. I noted the presence of the compound during my site investigation, however

at this stage I am unaware of any formal enforcement action in respect to this matter, given my findings on the enforcement appeal².

11. Be that as it may, I must deal with this appeal based on the application as submitted. The provision of the timber fence, gates, tumbled flint stone wall and hard surfaced access route, could be designed and used for agricultural purposes, including the provision of security and to prevent any crime. Consequently, the timber fence, gates and tumbled flint stone wall are considered 'appropriate facilities' in connection with the existing agricultural use of land in compliance with paragraph 154.b) of the Framework. Also, the works to form the hard surfaced access route, would amount to an engineering operation in accordance with paragraph 154.h) ii. of the Framework.
12. Nevertheless, in order to be considered as an exemption from inappropriate development within the Green Belt, the developments as a whole, would need to meet with the second limbs of paragraph 154 with regard to the preservation of openness, and the purposes of the Green Belt.

Openness and purposes of the Green Belt

13. Openness can have both spatial and visual aspects³, and the proposal would introduce new development consisting of a timber fence, gates, tumbled flint stone wall and hard surfaced access route. The proposal would provide a larger quantum of built development than previously existed on site, thus would result in an adverse impact on the Green Belt and would not preserve its openness in spatial terms.
14. With regard to the visual aspect, the site is highly visible from public vantage points including a public footpath adjoining the site and from Fox Lane itself. It is acknowledged that the design of the timber fence, gates and tumbled flint stone wall have been carefully considered and would provide features that are associated within a semi-rural setting such as this. The proposal also seeks to incorporate hedging and to create a natural "Hügelkultur" mound to increase the opportunities for local ecology. The appellant indicates that this will also facilitate the creation of a wild-flower meadow.
15. I acknowledge that the current visual impact of the appeal site differs significantly from the pleasant verdant setting with well-established trees and shrubs prior to their removal. However, I have been provided with no evidence that the removal or felling of the trees has been undertaken unlawfully. Nevertheless, whilst relatively low level and not visually prominent, the proposal would facilitate the use of the site for access and the parking of vehicles, and these storage effects which whilst limited, would impact on the visual openness of the Green Belt.
16. Overall, I find there would be harm to both the spatial and visual dimensions of the openness of the Green Belt, which whilst modest, is harmful, nevertheless. Therefore, the proposal fails to preserve the openness of the Green Belt.
17. Given the proposal is partly retrospective, the undertaking of the development to date, on the previously relatively undeveloped parcel of land, would be considered encroachment into the countryside, and thus contrary to the purposes of the Green

² PINS Ref: APP/G5180/C/23/3322525

³ Turner v SSCLG & East Dorset Council [2016] EWCA Civ 466

Belt. However, even if the developments complied with all five purposes, as stated above the proposal would result in harm to the openness of the Green Belt.

18. In not complying with the listed exceptions, the scheme would be inappropriate development in the Green Belt, which paragraph 153 of the Framework states is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

Effects of the development on highway safety

19. The appeal site is located on the east side of Fox Lane close to the junction with Jackass Lane and Gates Green Road. Fox Lane is a narrow road sloping down and away from the junction with Heathfield Road in Keston, with a 30mph speed limit. The area surrounding the appeal site has a semi-rural feel with a large green open space located opposite the site. The appeal site is located amongst residential properties which provide a ribbon of built development bounding the open space.
20. The appeal proposal would provide access to the fields behind the site for vehicles and is currently being utilised as access for an alleged unauthorised builder's compound from Fox Lane. The access to the appeal site is separated from the roadside by the neighbouring closed boarded fences and well-established vegetated boundaries. Concern has been raised regarding the adequacy of the visibility splays of the proposed access at the junction with the public highway by the Council's Highway Officer in terms of highway safety.
21. The Manual for Streets (MfS) and Manual for Streets 2 (MfS2) set out nationally accepted standards for visibility, to ensure there is adequate inter-visibility between vehicles on the major and minor arms at junctions. The distance back along the minor arm from which visibility is measured is known as the X distance. Whilst the Y distance represents the distance that a driver who is about to exit from the minor arm can see to their left and right along the main alignment.
22. The MfS recommends that on a 30mph road a visibility splay of 2.4m (X distance) x 40m (Y distance) are applied. The MfS recommends that the Y distance should be based on the recommended Stopping Sight Distances (SSD) values, unless there is local evidence that shows a reduction in visibility below recommended levels will not necessarily lead to a significant problem. In using the MfS visibility figures, it is preferable to use actual recorded 85th percentile figures of traffic speeds on existing roads when generating an accurate design of a visibility splay.
23. The appellant⁴ and third parties⁵ have submitted information in regard to local traffic counts and speeds of vehicular traffic using Fox Lane. Both parties highlight that the average 85th percentile speeds range between 23.9mph and 25.9mph, which is below the stated speed limit. At the lower end of this range, the MfS indicates an SSD of 31m should be achieved on the Y distance. The Technical Note produced by TPA highlights that the maximum visibility splays achievable at the site are 12m to the west and 7m to the east⁶. Consequently, the required SSD cannot be achieved due to the boundary treatments of the adjoining neighbours, which are outside the control of the appellant.

⁴ Summary from automatic traffic counter – Wednesday 1st March 2023 to Tuesday 7th March 2023

⁵ Technical Note produced by TPA - Ref: 2112-036/TN/02 dated March 2023

⁶ Technical Note produced by TPA - Appendix B drawing number 2112-036 VS03

24. I appreciate that the use of the access would be limited and infrequent given the scale of the development proposed. I further acknowledge that I have not been presented with any information regarding local evidence and personal injury accident data to highlight any conflict between road users and/or whether a reduction in the SDD value would be justified. Nevertheless, from the information before me, the proposal would intensify the use of the junction with Fox Lane and the volume of traffic entering and exiting, which whilst limited, would increase the risk of conflict. Therefore, the submitted information has not demonstrated that the visibility splays would not be detrimental to highway safety.
25. For the reasons set out above, I cannot be satisfied that the scheme would not increase the risk of conflict between road users which would be harmful to highway safety. I therefore find that it would conflict with BLP policy 32, LP policy T4 and the Framework which collectively requires development to be designed so they do not provide an unacceptable impact on highway safety, or the residual cumulative impacts on the road network.

Other Considerations

26. It is acknowledged that the appellant refers to a potential fallback position for the hard surfaced access route with respect to permitted development rights for agricultural development on units of less than 5 hectares as contained in Schedule 2, Part 6 Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). However, I have not been provided with any details such as a formal certificate of lawfulness for these works. Whilst this part of the appeal is in situ given the retrospective nature of the scheme, it would not be appropriate to speculate on its lawful status. Furthermore, there is limited information in respect to the lawful status of the remaining parts of the scheme (the timber fence, gates and tumbled flint stone wall) and whether they would be considered permitted development under any relevant section of the GPDO. I therefore give limited weight to either of these as a fallback option.
27. The appellant also draws my attention to other gates referenced in the locality⁷. I am not aware of the full circumstances and/or planning history associated with these developments, but it is evident from the limited details presented that they turned on their own particular merits. I therefore give these examples moderate weight, as I cannot be certain that these are directly comparable. In any case, each scheme must be considered on its own merits. While consistency in decision making is important, ultimately, what constitutes an exception under Green Belt policy needs to be determined in the light of the specific circumstances and context of each case.
28. I note comments made by third parties in respect to the felling of trees; impact on ecology; use as builders compound; and disturbance to living conditions. It would be incumbent on the Council as Local Planning Authority to consider whether the land has or is being used unlawfully. Consequently, it would not be appropriate for me to comment on this matter, as it would need to be separately considered by the Council. Should they decide that it is expedient to take enforcement action in respect of an alleged material change of use of the land, it would be open to them to consider what the requirements of any such enforcement notice would be.

⁷ Photos of Jackass Lane, Nash Lane, Gate Green Road, Fox Lane contained in the Appellants Appeal Statement

Very Special Circumstances and Green Belt Balance

29. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. I have concluded that the appeal scheme would be inappropriate development that would, by definition, harm the Green Belt. I have also concluded that the appeal scheme would result in limited harm to the openness of the Green Belt, for which the Framework requires substantial weight to be apportioned. I have also found the scheme would be detrimental to highway safety.
30. The appellant sets out very special circumstances, which include the provision of access for the landowner to the fields, whilst preventing unauthorised access, fly tipping and other unsociable activities which could be considered to be a public benefit. Furthermore, there would be maintenance of the site to provide a wild-flower meadow which would also provide a limited benefit to the area. Nevertheless, the substantial weight given to the harm to the Green Belt and its openness is not clearly outweighed by these benefits and the potential impact of the development on highway safety. Therefore, the other considerations in this case do not clearly outweigh the harm that I have identified.
31. Consequently, the very special circumstances necessary to justify the developments have not been demonstrated and the proposal would conflict with the Framework and the relevant policies of the development plan as outlined above.

Conclusion

32. For the reasons given above the appeal should be dismissed.

Robert Naylor

INSPECTOR