



Appeal Decision

Hearing held on 23 February 2016

Site visit made on 23 February 2016

by **Michael Boniface MSc MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 13 April 2016

Appeal Ref: APP/G5180/W/15/3129314

Potters Yard & Bromley Sea Cadets, Bromley Common, Turpington Lane, Magpie Hall Lane, Bromley, BR2 8JN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Langford Walker Ltd & Bromley West Sea Cadets against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/15/00802/FULL1, dated 19 February 2015, was refused by notice dated 22 June 2015.
 - The development proposed is the demolition of existing buildings and removal of existing yard area and other structures; erection of 2 part two storey, part 3 storey buildings to provide new sea cadet premises and parade ground together with 39 apartments; provision of 41 car parking spaces (including 7 for sea cadets), refuse and cycle stores and associated landscaping and tree planting.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Prior to the hearing opening, a High Court judgement of 15 February 2016 was brought to my attention given the proximity of the subject site to the appeal site and the parallels in terms of Green Belt considerations. Although the transcript was not available at the time of the hearing, the parties had been present for the oral judgement and were able to give me their views as to the implications for the current appeal. The full transcript was subsequently submitted and the parties were given the opportunity to provide written comments. I have had regard to the judgement in reaching my decision and consider it in more detail below.
3. On 1 October 2015, after the Council had issued its decision, the National Technical Standards were implemented. The standards replace a number of previous individual housing standards and local policies must now be applied only by reference to the nearest comparable national standard. The Council provided additional evidence during the hearing (**Document 3**) having taken account of this matter and I consider this further below.

Main Issues

4. The main issues are:

- (a) whether the proposal is inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the Framework) and whether it would have a greater effect on the openness of the Green Belt;
- (b) the effect on the character and appearance of the area;
- (c) whether acceptable living conditions would be created for future occupants’;
- (d) the effect on employment land availability;
- (e) if the development is inappropriate, 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 the development.

Reasons

Whether inappropriate development and the effect on openness

5. The site is located entirely within the Green Belt. Policy G1 of the Council’s Unitary Development Plan (2006) (UDP) restricts development in the Green Belt other than for specified purposes, none of which apply to the appeal proposal. This general approach to Green Belt protection is consistent with the National Planning Policy Framework (the Framework) though it was accepted by the Council during the hearing that the exceptions to inappropriate development contained in the Framework offered more flexibility than Policy G1 and this is an important material consideration.
6. Paragraph 79 of the Framework makes it clear that the Government attaches great importance to the Green Belt and the protection of its essential characteristics, those being openness and permanence. Paragraph 87 confirms that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. New buildings are to be regarded as inappropriate development, subject to a number of express exceptions outlined in paragraph 89.
7. It is agreed between the parties that the entire site, comprising a commercial building, the existing sea cadet’s premises and extensive hard standing, would constitute previously developed land for the purposes of the Framework. Paragraph 89 allows for the redevelopment of such land, whether redundant or in continuing use (excluding temporary buildings). However, this is subject to the caveat that development 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.
8. The Council had advanced a case in its written submissions that the proposed residential use should be considered independently of the proposed operational development in terms of its acceptability in the Green Belt. However, it confirmed during the hearing that it would not pursue this argument in light of the above High Court judgement, which found that the intended use was granted by virtue of the planning permission for the buildings being sought in that case.
9. The site comprises two distinct premises, the existing sea cadets building and parade ground on one side and an existing commercial building and hard standing on the other. The buildings on both parts of the site are single

- storey, low level buildings and are set back within the site away from Bromley Common with large open spaces in front, albeit that they are largely covered with hard standing. A mixture of palisade and chain link fence surrounds the perimeter of the site along with boundary tree planting and hedgerows.
10. Bromley Common (A21), Turpington Lane and Magpie Hall Lane surround the appeal site on three sides. Established residential development faces the site beyond a footpath and grass verge to the North East and dense residential development exists to the North West, forming a recent residential development known as the Blue Circle scheme. Beyond Bromley Common, a busy road, are largely undeveloped open fields. The playing field associated with a school to the South East provides green open space on the other side of Magpie Hall Lane.
 11. Although there has been significant development in the vicinity of the site and within the Green Belt the site is nonetheless a contributor to the openness of the Green Belt, particularly in respect of the transition it provides between the undeveloped Green Belt and the dense urban form beyond. The proposed development would involve substantial two-three storey buildings which the appellant accepts would be significantly larger than those existing on the site in terms of both height and footprint. Furthermore, the building would be located on parts of the site which, whilst developed, are visually open.
 12. Although I have had regard to the site context and the dense urban development located close by, this does not alter the Green Belt designation and the need to maintain its essential characteristics. Furthermore, individual appeals are not the place to debate the merits of the Green Belt designation, notwithstanding that the Council may seek to remove developed areas from the Green Belt through the plan making process at some point in the future.
 13. Openness is epitomised by the absence of buildings and whilst the existing buildings on the site undoubtedly have an impact in this respect, the proposed increase in volume and spread of mass and bulk across the site into areas currently absent of buildings would result in a greater impact on openness.
 14. Whilst the site is not undeveloped countryside and is closely related to built development, the proposal would erode the wider openness of the Green Belt and this would be at odds with the Green Belts essential characteristics, openness and permanence. In addition, the development would conflict with the defined purposes of the Green Belt, specifically to assist in safeguarding the countryside from encroachment and check unrestricted sprawl of large built-up areas. As a consequence, the development does not fall within the exceptions outlined in the Framework and the proposal would be inappropriate development in the Green Belt, which is by definition, harmful. I attach substantial weight to this harm.
 15. I have had regard to the recent appeal decision at Bromley Common Liveries¹ which was allowed (and was subject to the above referenced High Court Challenge), including the Inspector's findings that the development was contained within the extent of previously developed land. However, this case also involved a reduction in the footprint and volume of buildings on the site and I do not, therefore, consider it comparable to the current appeal.

¹ APP/G5180/W/15/3005057

Character and appearance

16. The Council raises no objection to the detailed design and appearance of the proposed buildings and I have no reason to reach a different conclusion. However, the buildings would be significantly larger than those existing on site and would become prominent in the public realm. I have already established the effect of this on the openness on the Green Belt but it is also clear that the introduction of the buildings and the erosion of the sites open nature would affect character and appearance, particularly the transition between the open Green Belt and the urban settlement.
17. This in itself would be harmful but it is clear that the buildings have been designed to reflect their context, specifically the residential flats on the opposite side of Turpington Lane, which have recently been constructed. The existing buildings on the site are of no architectural merit and are in a poor condition, as are their grounds. The proposed development would be well related to the existing built form surrounding and would, on balance, improve the appearance of the site.
18. Although the proposed entrances to the buildings would be located to the rear, there would be numerous windows in the street facing elevations to provide passive surveillance and the perception of an active frontage. Furthermore, the layout and vehicular entrance to the site are such that the main entrance would be clearly apparent and I do not share the Council's concern regard legibility of permeability. Although the introduction of front doors might be a benefit to the scheme, I attach little weight to this matter.
19. Overall, I conclude that there would be a slight benefit to the character and appearance of the area and I find no conflict with Policies BE1, G1 or H7 of the UDP, which, amongst other things, seek a high standard of design and layout and set out detailed housing density and design criteria; Policies 7.1, 7.4, 7.5, 7.6 and 7.16 of the London Plan (2015) which seek to create good quality spaces, a sense of place and reinforce local character; or the design objectives contained within the Mayor's Housing SPG (2012), the Council's General Design Principles SPG (SPG1) or the Residential Design Guidance SPG (SPG2). I attach moderate weight to this matter.

Living conditions

20. A range of concerns are raised regarding the proposed residential units which the Council consider, in combination, would result in unsuitable living accommodation for future occupants'. Of primary concern is the failure of flat 'type F' , of which 8 are proposed, to meet the minimum floor area required for a two person flat by both the London Plan and the Nationally Described Space Standards. Although this type of flat would only fall slightly short of the 50sq.m requirement, instead providing 48.1sq.m, this leads to a deficiency in the size of both the bedroom and combined living area.
21. Although it may be the case that these flats would be occupied by individuals rather than two people requiring less space, the rooms are shown to accommodate a double bed and the flats would be available for dual occupation. The London Plan imposes minimum floor space requirements in recognition of development pressures in London and to ensure that aspirations for a good standard of accommodation in the city are maintained. It is suggested that the dimensions are necessary to facilitate a good standard of

accommodation and it is pertinent that the same standard has now been implemented in the Nationally Described Space Standards.

22. In addition to this deficiency, it was also highlighted that the majority of the flats would not benefit from any private amenity space as required by the Mayor's Housing SPG, which seeks at least 5sq.m per dwelling. The appellant did not dispute this matter and accepted that the introduction of balconies would assist in addressing this deficit, though none were proposed. I noted that the adjacent flats, that had been recently constructed, incorporated such features and this may well represent a possibility for the appeal scheme. I was invited to consider a condition in this regard but the balconies would have a material impact on both the appearance of the building and potentially neighbours' living conditions. As such, I consider that this is beyond the scope of a condition. Given the lack of internal space identified in respect of many of the proposed flats, the lack of private amenity space would be likely to further compound this issue.
23. A good amount of communal garden space would be provided within the development and this could be landscaped to provide a good quality space for future occupants', notwithstanding the proximity to refuse stores, car parking and internal pathways. I also noted the presence of public open spaces in the vicinity of the site which could be utilised by future residents. However, this would not compensate or outweigh the otherwise unacceptable living conditions I have identified.
24. I have had regard to concerns regarding the level of wheelchair accessibility and the incorporation of level thresholds but the Council conceded during the hearing that this matter could be dealt with by way of condition and I have no reason to reach a different conclusion.
25. However, it seems to me that unsatisfactory living accommodation would be provided for many future occupants. This would be in conflict with Policies H7 and BE1 of the UDP which seek adequate private and communal amenity space and a good standard of living accommodation; Policies 3.5 and 7.6 of the London Plan which seek minimum internal space standards, the provision of suitable garden areas, and high quality internal and external spaces; and the objectives contained within the Mayor's Housing SPG, SPG1 and SPG2 to create a good standard of accommodation. I attach moderate weight to this matter.

Employment land

26. Policy EMP5 of the UDP states that the redevelopment of business sites or premises outside the Designated Business Areas will only be permitted where the site is no longer suitable for a use within Classes B1, B2 or B8 and full and proper marketing of the site confirms the unsuitability and financial non-viability of the site or premises for those uses. The supporting text explains that this is in recognition of the diminishing number of such uses due to pressure for residential development in the Borough and recognises the benefits to meeting the needs of local business', as well as the sustainability benefits of allowing people to work close to home.
27. Although paragraph 22 of the Framework seeks to avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose, I see no inconsistency between

this policy and the requirements of Policy EMP5, which simply requires that the prospects of being used for a business use are tested.

28. During the hearing, the appellant provided a report from a Commercial Agent (**Document 2**) which provided an appraisal of the market potential for the site. It was also confirmed that the site had been marketed since June 2015 and marketing particulars are included within the report. The comprehensiveness of the marketing exercise is unclear as limited information has been provided in respect of the number of people directly mailed or otherwise approached, or the detail of any queries and feedback given. However, the report nonetheless identifies a great range of queries that were received in respect of potential business and employment uses.
29. Furthermore, a letter was submitted in respect of the original planning application from a local businessman who had apparently been attempting to purchase the site for some time with the intention of creating small workshops and business units. This positive approach was reaffirmed during the hearing. The appellant dismissed all of these queries on the grounds that alterations may have been necessary to the buildings, that planning permission was unlikely to be granted or that the proposed use would not provide a financially viable return. I am unconvinced by this unilateral approach by the appellant given the clear policy support for business uses, the support expressed by the Council during the hearing, and the lack of any financial information to demonstrate non-viability.
30. The report suggests that the marketing exercise has focused on finding an occupier that could utilise the existing buildings on the site and comply with the requirements of the existing planning permission. This will have significantly narrowed the market, yet I have not been provided with any convincing reason why wider B1, B2 or B8 uses should not be marketed, notwithstanding the appellant's own opinion that these are not suitable on the site. Although residential properties are located in close proximity, a business use has successfully operated for a number of years and there is no reason why some form of business use could not remain compatible. Therefore, I cannot conclude that there is no reasonable prospect of a business use on the site or that the site is unsuitable for such a use. As such, the proposed development would be in conflict with Policy EMP5 of the UDP. The unjustified loss of local employment space weighs against the development and I attach this matter moderate weight.

Other considerations

31. Reason 4 of the Council's decision is concerned by the lack of evidence to demonstrate appropriate energy savings but it was agreed during the hearing that this matter could be dealt with by way of a condition if planning permission were to be granted. I have no reason to reach a different conclusion.
32. I have had regard to the appellant's fallback position that the extant business use could be re-established on the site and that this could become harmful to neighbours' living conditions or harm the openness or appearance of the site. However, the buildings are existing and have operated a business use without issue for many years. It was also agreed between the parties that the existing planning permission on the site imposes strict restrictions on vehicle parking, loading and manoeuvring and prevents outside storage.

33. The scope for any intensification or harmful external use under the existing planning permission is, therefore, limited. Although the hours of operation are not controlled by an existing planning permission, environmental legislation is available outside of the planning system to prevent nuisance to neighbours'. In any case, the likelihood of such a fallback position coming forward is limited given the appellant's view regarding the viability of modernising the buildings. No positive intention to pursue this fallback as been expressed by the appellant and I attribute this matter little weight.
34. There is dispute between the parties as to whether the Council can demonstrate a deliverable five year housing land supply in accordance with paragraph 47 of the Framework. However, even if I were to accept the Appellant's view that this requirement was not met, the presumption in favour of sustainable development would not apply. Paragraph 14 and footnote 9 of the Framework make it clear that land designated as Green Belt is one example of a specific policy in the Framework which indicates that development should be restricted. Given the harm to the Green Belt that I have identified in this case, the decision taking criteria set out in paragraph 14 are not engaged, regardless of the five year housing land supply position.
35. Whilst this is so, that is not to say that the absence of a five year housing land supply and the need for local housing are not matters to be weighed in the overall planning balance, particularly in the context of the need to boost significantly the supply of housing. However, Planning Practice Guidance (PPG) is clear that unmet housing need is unlikely to outweigh the harm to the Green Belt and other harm to constitute the very special circumstances necessary to justify inappropriate development in the Green Belt². No detailed evidence has been provided to discount the Council's position set out within its 'Five Year Supply of Deliverable Land for Housing (June 2015) report. However, even if I were to accept the appellant's position this matter would only attract limited weight, bearing in mind the limited contribution that would be made by the 39 units proposed.
36. There is no dispute between the parties that there is a need for the provision of affordable housing in the area. The scheme would make a valuable contribution of 14 units to this need. This weighs in favour of the development and is a matter to which I attach moderate weight.
37. The development would involve replacement of the existing dated sea cadets' premises with a modern facility. Whilst this would be likely to be a benefit as a community facility, I have seen no evidence that the existing building is unsatisfactorily meeting the community need at present or that its replacement is necessary. Therefore, I attach little weight to this matter.
38. Although not a refusal reason, the Council suggests that financial contributions are necessary to mitigate the impact of the development on local education and health infrastructure. The appellant disagrees and no planning obligation has been provided.
39. It is said that the contributions sought have been calculated by reference to standard formula contained in the Council's Planning Obligations SPD (2010). However, no detail has been provided as to how this money would be spent by the Council, nor has any assessment been carried out in respect of capacity at

² Planning Practice guidance Reference ID: 3-034-20141006

local schools and health centres. Therefore, I am unable to conclude that the contributions are necessary as a result of the development and otherwise meet the tests of Regulations 122 and 123 of the Community Infrastructure Levy Regulations (2010). As such, I have not taken them into account in reaching my decision and this is a neutral matter in my considerations.

Conclusion

40. I have identified that the proposed scheme would constitute inappropriate development in the Green Belt for the purposes of the Framework and would harm openness. In addition, the development would fail to provide acceptable living conditions for future occupants' and harm the availability of local employment sites. I have considered the grounds presented in support of the development but together they do not outweigh the harm the scheme would cause. Consequently, the very special circumstances necessary to justify the development have not been demonstrated.
41. In light of the above, I conclude that the appeal should be dismissed.

Michael Boniface

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

John Escott BA Dip TP MRTPI	Agent
Adrian Tutchings FRICS	Chartered Surveyor
Bruce Walker	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

David Bord BA (Hons) PG Dip MRTPI	Principal Planning Officer
Claire Glavin MRTPI	Planning Policy Officer

INTERESTED PERSONS:

Gary Parmar	Interested party
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DOCUMENTS

Document 1	Mayor of London's Draft Interim Housing Supplementary Planning Guidance (May 2015)
Document 2	Letter from Linays Commercial dated 22 December 2015
Document 3	Statement concerning housing and energy policies, Housing Standards Minor Alterations to the London Plan (December 2015) and Housing Standards Policy Transition Statement (May 2015)
Document 4	Agreed Statement of Common Ground
Document 5	Adopted version of Council's General Design Principles SPG and Residential Design Guidance SPG
Document 6	Extracts from Planning Obligations SPD (December 2010) and calculations in relation to healthcare contribution