



Appeal Decision

Hearing Held on 5 February 2020

Site visit made on 5 February 2020

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 March 2020

Appeal Ref: APP/G5180/W/19/3234830

Potters Yard, Turpington 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 against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/19/01505/FULL1, dated 29 March 2019, was refused by notice dated 2 July 2019.
 - The development proposed is erection of two detached bungalows for affordable housing.
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Decision

1. The appeal is allowed and planning permission is granted for erection of two detached bungalows for affordable housing at Potters Yard, Turpington Lane, Bromley BR2 8JN in accordance with the terms of the application, Ref DC/19/01505/FULL1, dated 29 March 2019, subject to the conditions in the schedule attached to this decision.

Application for Costs

2. At the Hearing an application for costs was made by Langford Walker against the Council of the London Borough of Bromley. This application is the subject of a separate Decision.

Preliminary Matters

3. The Council's second reason for refusal refers to a lack of information on the provision of affordable housing, particularly in relation to an identified affordable housing provider. However, the appellants have submitted an Undertaking in respect of affordable housing and the Council has confirmed that this addresses its concerns on this matter and that it no longer contests the second reason for refusal. The Undertaking meets the tests set out in paragraph 56 of the National Planning Policy Framework (the Framework) and I have proceeded to determine this appeal giving due consideration to the Undertaking.
4. Subsequent to the Hearing, the Supreme Court has issued a judgment¹ in respect of the consideration of openness of the Green Belt. This states that the

¹R (on the application of Samuel Smith Old Brewery (Tadcaster) and others) (Respondents) v North Yorkshire County Council (Appellant) [2020] UKSC 3

matters relevant to openness in any particular case are a matter of planning judgement, not law. However, in any event I would have considered the visual qualities of the appeal proposal in respect of the Green Belt, and whilst I have had regard to the Supreme Court's judgment it has not had a material effect on my consideration of this appeal.

Main Issues

5. The main issues in this appeal are:
- Whether the development would represent inappropriate development in the Green Belt; and
 - If the development is deemed inappropriate, whether the 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 necessary to justify the development.

Reasons

Whether Inappropriate Development

6. The appeal site is part of a compound which was last used as a storage and distribution centre, and which has a long and complex planning history. However, of particular relevance to this appeal is planning permission which has been granted for 3 detached bungalows and associated landscaping. The 3 bungalows would be located in broadly the same position as the existing buildings on the site. The appeal site is located on an area which was identified as landscaping under the previously approved plans.
7. The appeal site is within the Green Belt. The Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The construction of new buildings should be regarded as inappropriate in the Green Belt, subject to a number of exceptions including those listed in Paragraph 145 of the Framework.
8. The exceptions listed at paragraph 145(g) include the limited infilling or the partial or complete redevelopment of previously developed land (PDL). It is common ground between the parties that the appeal site and the compound in which it sits comprise PDL within the terms of the Framework.
9. The first strand of 145(g) states that development of PDL should not have a greater impact on the openness of the Green Belt than the existing development. The Council sets out that the proposal in combination with the previously approved dwellings would be more harmful to openness than the extant development on the site. This is expressed in both quantitative terms and contextually, including the spread of built development beyond the area of existing buildings. When assessed objectively and in context, I consider that the proposal would have a greater impact on the openness of the Green Belt than the existing development and would therefore not comply with this strand of the exception.
10. The second strand of 145(g) refers to development which would meet an identified affordable housing need within the area of the local planning

authority, and which would not cause substantial harm to the openness of the Green Belt.

11. The Council acknowledges that there is a need for affordable housing in the Borough. In respect of the second strand of paragraph 145(g) the Council's position is that this is based on meeting an identified local need on the basis of supporting evidence. However, the Framework refers to development which would "contribute to meeting an identified affordable housing need within the area of the local planning authority". The evidence before me suggests that the identified need is Borough-wide rather than a specific sub-area and that the development would contribute to meeting that need. It is therefore reasonable that this exception as applied to this appeal should be considered on the basis of need across the whole Borough, rather than at a more local level such as a specific settlement or community.
12. I have previously concluded that the proposal would have a greater impact on openness of the Green Belt compared to the existing development. However, the second strand of 145(g) goes on to refer to development which would not cause **substantial harm** to the openness of the Green Belt (my emphasis).
13. The Council contends that the proposal would represent a significant increase in built development above ground on the site compared to both the existing buildings and the permitted housing development. Whilst that may be so within the confines of the compound, the Framework sets out that the assessment of substantial harm relates to the Green Belt. On that basis, I consider that a wider assessment in respect of the effect of the proposal on the openness of the Green Belt is appropriate.
14. The appeal site is in a prominent location on the edge of a built-up area and is readily visible from nearby dwellings as well as the busy highway of the A21. Despite the existing buildings and hard surfacing on the site, it has a relatively open character and contributes to the openness of the Green Belt. The site contributes to the important transition between the built-up area and the openness of the wider Green Belt, both in terms of the site itself and in combination with the limited scale of built development on the adjacent Sea Cadet site. The proposed bungalows would also be set closer to the A21 than the existing and permitted development on the compound and the main Sea Cadet building. That said, I saw that the appeal site is of a separate character to the wider Green Belt due to the self-contained and previously developed nature of the compound as well as the visual context established by nearby built development and the demarcation arising from highways, particularly the A21.
15. Furthermore, the proposed bungalows would be of a limited scale and the proposal would include an open area of landscaped amenity space adjacent to the most prominent northern and western boundaries of the site. Due to this layout, the site would continue to make a positive contribution to the transition between the built-up area and the wider Green Belt, albeit that this contribution would be diminished compared to the existing and permitted site layouts. The bungalows would generally be viewed against the backdrop of either the existing buildings or the approved housing development, and despite the reduction in openness and the suburban character of the bungalows, in my view the proposal would not appear as significant unrestricted urban sprawl or encroachment into the countryside.

16. Whilst I have had regard to the sensitive location of the site and have concluded that the proposal would lead to harm in respect of openness; due to the context, scale and arrangement of the proposal I consider that the harm in respect of openness would be limited. The proposal would therefore not lead to 'substantial harm' to the openness of the Green Belt as is referred to in paragraph 145(g) of the Framework.
17. On that basis I conclude that the proposal would be not inappropriate development in the Green Belt under the second strand of Paragraph 145(g) of the Framework. The proposal would therefore not conflict with Policy 7.16 of the London Plan 2016 and the Framework in respect of resisting inappropriate development in the Green Belt.
18. With regard to the Council's Local Plan, the proposal would have a greater impact on the openness of the Green Belt than the existing development and would therefore conflict with Policy 49 in respect of development on PDL. However, the consideration of inappropriate development in Policy 49 of the Local Plan 2019 (the Local Plan) is not consistent with the Framework in respect of affordable housing on PDL, and on that basis I give the conflict with Policy 49 limited weight in respect of this proposal. Furthermore, mindful of the evidence in respect of an identified need for this form of affordable housing² in the area, the Undertaking submitted by the appellants and the identified wider need for affordable housing in the Borough as a whole, I give the provision of affordable housing on a site which is PDL substantial weight in favour of the proposal.
19. On the basis of the substantial weight to be given to the provision of affordable housing on PDL and having regard to the development plan and Framework when read as a whole, material considerations indicate that the proposal should be determined otherwise than in accordance with the Local Plan.
20. The appellants also consider that the proposal would meet the exception listed in paragraph 145(f) of the Framework in respect of affordable housing for local community needs. However, given that I have concluded that the proposal is not inappropriate development under paragraph 145(g) I do not need to consider this matter further.

Other Considerations

21. The appellants have emphasised a number of other considerations which they consider weigh in favour of the proposal. However, as I have concluded positively in favour of the appeal with regard to the first main issue, I do not need to assess these other considerations further.

Other Matters

22. Notwithstanding the effect on the openness of the Green Belt, the proposal would be of a scale and design which would not harm the character and appearance of the area. The proposal would also complement the permitted housing development on the site, even allowing for the partial loss of proposed landscaped amenity space. It is common ground between the main parties that they have no objections in relation to loss of employment land, living conditions of nearby residents and highways issues - based on what I have seen and read I have no reason to disagree.

² Including letters from Clarion Housing Group of 4 December 2019 and 28 January 2020

Conditions

23. The Council has suggested a number of planning conditions which I have considered against the advice in the Guidance. As a result, I have amended some of the conditions for clarity.
24. In addition to the standard 3 year time limitation for commencement, I have imposed a condition requiring the development to be carried out in accordance with the submitted plans in the interests of certainty.
25. A condition requiring the submission of a surface water drainage scheme is appropriate in the interests of proper and sustainable site drainage. These details should be submitted and approved at the pre-commencement stage so that all appropriate drainage measures can be assessed at an early stage and none ruled out by ground works, building operations or associated infrastructure.
26. A Construction Method Statement addressing (amongst other things) traffic movements, storage and the hours of construction is required prior to the commencement of development in the interests of the living conditions of nearby residents and highway safety. Due to the history of the site, a condition to deal with contamination is required to ensure that risks to residents and property are minimised. The submission of an acoustic assessment and proposed mitigation if appropriate is required in the interests of living conditions of residents. These details should be submitted to and approved by the local planning authority at the pre-commencement stage as they relate to matters which need to be established before the commencement of building operations.
27. Conditions requiring details of materials as well as landscaping are appropriate in respect of character and appearance. A condition in respect of refuse storage is appropriate in the interests of character and appearance and the living conditions of residents. A condition regarding cycle parking is appropriate in the interests of sustainable transport. A condition requiring the provision and retention of parking and manoeuvring space is required in the interests of highway safety.
28. Exceptionally, due to the sensitive location of the site in a prominent position on the edge of the Green Belt, a condition removing permitted development rights in relation to buildings, means of enclosure and other alterations is required in the interests of character and appearance as well as the openness of the Green Belt.
29. A condition requiring that the dwellings are built in accordance with Building Regulations Part M4(2) would be in the interests of ensuring the dwellings would be both adaptable and accessible, and is appropriate due to the single storey accommodation provided by the dwellings and their use for social housing.

Conclusion

30. I conclude that the proposal would be not inappropriate development in the Green Belt. Whilst the proposal would conflict with Policy 49 of the Local Plan, material considerations indicate that the proposal should be determined otherwise than in accordance with the Local Plan.

31. For the reasons given above, and taking account of all material planning considerations, I conclude that the appeal should be allowed.

David Cross

INSPECTOR

Appearances

FOR THE APPELLANT:

John Escott
Jonathon Clay
Bruce Walker

Robinson Escott LLP
Cornerstone Barristers

FOR THE COUNCIL

David Bord BA(Hons), PG Dip, MRTPI Council of the London Borough of Bromley

Documents Submitted at the Hearing

1. Policy 2 of the London Borough of Bromley Local Plan 2019.
2. Policy G2 of the Draft London Plan 2019 (consolidated changes version).
3. Complete Undertaking Pursuant to Section 106 of the Town and Country Planning Act 1990.
4. London Borough of Bromley Housing Performance Report, 5 November 2019.
5. Appellants' Opening Submissions.
6. Court of Appeal judgment in Turner v Secretary of State for Communities and Local Government & East Dorset Council [2016] EWCA Civ 466

Documents Received Following the Hearing

1. Supreme Court judgment in R (on the application of Samuel Smith Old Brewery (Tadcaster) and others) (Respondents) v North Yorkshire County Council (Appellant) [2020] UKSC 3.
2. Council's Response to Application for Award of Costs.
3. Appellants' Reply to Response to Application for Costs by London Borough of Bromley.
4. Appellants' comments on pre-commencement conditions.

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: TL/479/BP600; TL/479/SP/600; TL/479/SS600; TL/479/601; TL/479/602.
- 3) a) Prior to commencement of the development hereby approved (excluding any ground clearance or demolition) a scheme for the provision of surface water drainage shall be submitted and approved in writing by the local planning authority.
(b) Before the details required to satisfy Part (a) are submitted an assessment shall be carried out of the potential for disposing of surface

water by means of a sustainable drainage system (SuDS) to ground, watercourse or sewer in accordance with drainage hierarchy contained within the London Plan Policy 5.13 and the advice contained within the National SuDS Standards.

(c) Where a sustainable drainage scheme is to be provided, the submitted details shall:

i. provide information about the design storm period and intensity, the method employed to delay (attenuate) and control the rate of surface water discharged from the site as close to greenfield runoff rates (8l/s/ha) as reasonably practicable and the measures taken to prevent pollution of the receiving groundwater and/or surface water.

(d) The drainage scheme approved under Parts a, b and c shall be implemented in full prior to first occupation of the development hereby approved.

- 4) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
- i) Details of construction traffic movements including cumulative impacts which shall demonstrate the following:-
 - (i) Rationalise travel and traffic routes to and from the site as well as within the site.
 - (ii) Provide full details of the number and time of construction vehicle trips to the site with the intention and aim of reducing the impact of construction related activity.
 - (iii) Measures to deal with safe pedestrian movement.
 - (iv) Full contact details of the site and project manager responsible for day-to-day management of the works
 - (v) Parking for operatives during construction period
 - (vi) A swept path drawing for any tight manoeuvres on vehicle routes to and from the site including proposed access and egress arrangements at the site boundary
 - (vii) Loading, unloading and storage of plant and materials;
 - ii) wheel washing facilities;
 - iii) measures to control the emission of dust and dirt during construction;
 - iv) delivery, demolition and construction working hours.
 - v) measures to reduce demolition and construction noise.
 - vi) other site specific Highways and Environmental Protection issues as requested on a case by case basis.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 5) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in

writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within 14 days of the report being completed and approved in writing by the local planning authority.

- 6) An acoustic assessment shall be submitted to the Local Planning Authority for approval in writing prior to the commencement of the development. The assessment shall determine the worst-case day time and night time ambient and background noise levels affecting this location and predict the internal noise levels in the proposed residential dwellings. A scheme of mitigation as necessary in light of the results of the assessment (covering facade, glazing and ventilation specifications to achieve suitable internal noise levels in line with guidance in BS8233:2014) shall be submitted to the Local Planning Authority for written approval prior to the commencement of the development and once approved shall be installed fully in accordance with the approved scheme and permanently maintained thereafter.
- 7)
 - (i) Prior to commencement of above ground works details of treatment of all parts on the site not covered by buildings shall be submitted to and approved in writing by the Local Planning Authority. The site shall be landscaped strictly in accordance with the approved details in the first planting season after completion or first occupation of the development, whichever is the sooner. Details shall include:
 1. A scaled plan showing all existing vegetation to be retained and trees and plants to be planted which shall include use of a minimum of 30% native plant species of home grown stock (where possible) and no invasive species
 2. Proposed hardstanding and boundary treatment
 3. A schedule detailing sizes and numbers of all proposed trees/plants
 4. Sufficient specification to endure successful establishment and survival of new planting.
 - (ii) There shall be no excavation or raising or lowering of levels within the prescribed root protection area of retained trees unless agreed in writing by the Local Planning Authority.
 - (iii) Any new tree(s) that die(s), are/is removed or become(s) severely damaged or diseased shall be replaced and any new planting (other than trees) which dies, is removed, becomes severely damaged or diseased within five years of planting shall be replaced. Unless further specific permission has been given by the Local Planning Authority, replacement planting shall be in accordance with the approved details.

- 8) Prior to commencement of above ground works, details (including samples) of the materials to be used for the external surfaces of the building which shall include roof cladding, wall facing materials and cladding, window glass, door and window frames, decorative features, rainwater goods and paving where appropriate shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 9) (a) Details of arrangements for storage of refuse and recyclable materials (including means of enclosure for the area concerned where necessary) shall be submitted to and approved in writing by the Local Planning Authority prior to construction of any above ground works.
(b) The arrangements as approved under part (a) shall be completed before any part of the development hereby permitted is first occupied, and permanently retained thereafter.
- 10) (a) Details of arrangements for bicycle parking (including covered storage facilities where appropriate) shall be submitted to and approved in writing by the Local Planning Authority prior to construction of any above ground works.
(b) The arrangements as approved under part (a) shall be completed before any part of the development hereby permitted is first occupied, and permanently retained thereafter.
- 11) Before commencement of the use of the development hereby permitted parking spaces and turning space shall be completed in accordance with the details as set out in this planning permission and thereafter shall be kept available for such use and no permitted development whether permitted by the Town and Country Planning (General Permitted Development) Order (England) 2015 (or any Order amending, revoking and re-enacting this Order) or not shall be carried out on the land indicated or in such a position as to preclude vehicular access to the said land.
- 12) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order amending, revoking and re-enacting this Order) no buildings, structures, extensions, alterations, walls or fences of any kind shall be erected or made within the curtilages of the dwellings hereby permitted without the prior approval in writing of the Local Planning Authority.
- 13) The development hereby permitted shall be built in accordance with the criteria set out in Building Regulations M4(2) 'accessible and adaptable dwellings' and shall be permanently retained thereafter.

End of Schedule