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# Appeal Decision

Site Visit made on 22 June 2021

**by Graham Wyatt BA (Hons) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 10 September 2021**

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**Appeal Ref: APP/X1925/W/21/3269173**

**Bury Farm, Church Path, Little Wymondley SG4 7JN**

- 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 Mr A Gates against the decision of North Hertfordshire District Council.
  - The application Ref 20/02653/FP, dated 9 November 2020, was refused by notice dated 11 January 2021.
  - The development proposed is described as the "change of use of two areas of an area of agricultural yard to an outside storage area (B8)".
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. The development has already been carried out. I have therefore dealt with the appeal on the basis that permission is sought to retain the areas for B8 (storage and distribution) use.
3. The appellant has provided a noise impact assessment<sup>1</sup> (NIA) which I have considered under the principles established by the Courts in Wheatcroft<sup>2</sup>. I am satisfied that the NIA does not change the development to such a degree that to consider it would deprive those who should have been consulted on the change, the opportunity of such consultation. I have therefore determined the appeal taking into account the contents of the NIA.
4. Since the submission of the appellant's appeal, the revised National Planning Policy Framework (the Framework) was published and came into force on 20 July 2021. In light of this I have sought the views of the main parties in writing and I have taken any subsequent responses into account in reaching my decision.

## Main Issues

5. The main issues in this appeal are:
  - whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and development plan policy,
  - the effect of the proposal on the openness of the Green Belt and the character and appearance of the area,
  - the effect of the development on the living conditions of adjoining occupiers with particular regard to noise and disturbance, and

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<sup>1</sup> Noise Impact Assessment, Cass Allen Associated, 8 February 2021

<sup>2</sup> Bernard Wheatcroft Ltd v SSE & Harborough DC [1982] P&CR 233

- 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 very special circumstances necessary to justify the development.

## Reasons

### *Inappropriate Development*

6. The Framework states at paragraph 137 that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Furthermore, the essential characteristics of the Green Belt is their openness and permanence. The construction of new buildings should be regarded as inappropriate in the Green Belt, other than in a limited range of specified exceptions, as set out in Paragraphs 149 and 150 of the Framework. As the development proposes a change of use of the land from agriculture to outside storage, it need not be considered as inappropriate development within the Green Belt provided, in accordance with paragraph 150 e) of the Framework, it preserves its openness and does not conflict with the purposes of including land within it.

### *Openness and Character and Appearance*

7. The appeal site covers two distinct areas that are set within a wider parcel of land that is within agricultural use. The first area is being used for the storage of aggregates and is split into four bays. The second area contains a compound surrounded by metal palisade fencing and an open area that contains a metal shipping container and various building items such as bricks and piping.
8. The Courts have confirmed that the openness of the Green Belt has a spatial aspect as well as a visual aspect. This means that the absence of visual intrusion does not in itself mean that there is no impact on the openness of the Green Belt as a result. But equally this does not mean that the openness of the Green Belt has no visual dimension.
9. The Framework is very clear that openness is one of the key attributes of the Green Belt, and any such reduction, and therefore harm, needs to be apportioned substantial weight in the determination of this appeal. Openness is an essential characteristic of the Green Belt and although it is not defined in national policy or the development plan, in considering the effects on openness, I have taken into account the spatial and visual impacts of the proposal and the findings in the court judgments drawn to my attention and in the *Samuel Smith* Supreme Court judgment<sup>3</sup>.
10. The appellant argues that in this instance, given the nature of the site and the surrounding area, it is not open to begin with and as such, an assessment of the visual impact is not material to the proposal. The appellant also argues that the use of the areas to store building materials and machinery would be very similar to the use of the sites for agricultural use and the site areas involved are very small when one considers its wider context.
11. Although the development does not contain buildings, the storage of construction materials, vehicles and aggregates on the sites would reduce spatial openness by reason of bulk and volume. Additionally, the Council confirm that public footpath 012 passes in close proximity to the appeal sites. Consequently, the use of the land to store materials that I witnessed during my site visit, such as bricks, breeze

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

blocks, drainage pipes, cement mixers and skips, visually erodes the openness of the site. There is limited information on the screening effectiveness of proposed planting and in any event, this would not address the loss of spatial openness which conflicts with the purpose of the Green Belt to assist in safeguarding the countryside from encroachment.

12. Moreover, I am not persuaded that the use of the sites for agricultural purposes would be less harmful spatially than the proposed use or that it would have the same effect on openness. Agricultural uses are an accepted and expected form of development within a countryside environment, which cannot be said of the items currently stored at the appeal sites. Additionally, paragraph 149 a) of the Framework confirms that buildings for agriculture and forestry are not inappropriate development within the Green Belt.
13. Furthermore, a B8 (storage and distribution) use is wide ranging and although the areas are small in relation to the totality of the site within the appellant's ownership, their use for the storage of landscaping and ground working materials and machinery nonetheless reduce the openness of the Green Belt and therefore, I apportion significant weight to this harm.
14. Turning to the effect of the development on the character and appearance of the area, I share the Council's opinion that when viewed in isolation, the harm created by the aggregate bays could be similar to stored materials used for agricultural purposes. However, it must be recognised that the effect of a development on the character and appearance of an area is quite different to its effect on the openness of the Green Belt. Thus, notwithstanding my findings on the aggregate bays effect on the character and appearance of the area, this does not diminish the harm I have found to the openness of the Green Belt.
15. The western site is much larger and contains a shipping container and an area surrounded by palisade fencing which lends itself to a more commercial or industrial appearance and is quite out of keeping with its rural setting. I find this particular element harmful to the character and appearance of the area and is visible from footpath 012 and surrounding properties. Although I accept that additional planting could shield the development, it would take a considerable time to become established and cannot be relied upon to remain in perpetuity.
16. Thus, I have concluded that the development harms the openness of the Green Belt. As such it is inappropriate development within the Green Belt. It would also result in harm the character and appearance of the area. Thus, it would be in conflict with Policies 2 and 36 of the North Hertfordshire District Local Plan No.2 with Alterations 1996 (LP), Policies SP1, SP5, SP9, ETC2 and D1 of the emerging North Hertfordshire Local Plan 2011-2031 (eLP), Policies GB1, SLBE1, HOD2 and HOD3 of the Wymondley Neighbourhood Plan 2016 (WNP) and paragraphs 130 and 137 of the Framework which seek, amongst other things, to ensure planning permission will only be granted for new buildings, extensions, and changes of use of buildings and of land which are appropriate in the Green Belt, and which would not result in significant visual impact.

#### *Noise*

17. There are several residential properties near to the site, the occupiers of which have identified noise emanating from such sources as vehicle reversing beepers, gravel scraping, rubble tipping, large vehicle engine noise and generators. However, the appellant's NIA argues that the use of the appeal sites by Maytree Landscapes is similar to agricultural activities at Bury Farm. It concludes that any

increased noise associated with the proposed use is marginal and would only be experienced towards the edge of the gardens nearest to the storage areas.

18. Although agricultural activities may have peak occurrences during harvest or maintenance and improvement of the site, from the evidence that has been provided by neighbouring occupiers, the B8 use of the site has introduced other vehicles associated with Maytree Landscapes such as vans, low loaders, small and large excavators and large lorries delivering aggregates. It is evident that vehicle movements into, around and out of the site, collecting and delivering materials, tools and equipment every day have had a greater effect on the living conditions of surrounding occupiers than the agricultural use of the site.
19. Furthermore, although I accept that the weather conditions were suitable for the survey, the measured length of time that noise incidences were recorded for the NIA is quite short and only represent a very limited snap shot in time. There is very little before me to demonstrate that the activities recorded for the NIA were part of a typical day, whereby a greater number of vehicle movements associated with Maytree Landscapes may occur, either now or in the future, and those during the collection and delivery of materials such as aggregates or during more favourable weather conditions.
20. Although the appellant states that a condition restricting the hours of operation and the use of the sites to Maytree Landscapes only would be agreeable, I have not been provided with any mechanism to control the use, the amount or the type of storage at the site, including the number or type of vehicle, or how this would lessen the impact of the proposed storage use on the living conditions of adjoining occupiers.
21. Thus, based on the evidence submitted, I am not persuaded that the activities associated with the use of the appeal sites for storage and distribution would not amount to harm to the living conditions of surrounding occupiers through noise and disturbance. It would be in conflict with Policy 36 of the LP, Policies SP1, ETC2 and D3 of the eLP, Policy SLBE1 of the WNP and paragraph 130 of the Framework which seek, amongst other things, to ensure that developments provide a high standard of amenity in keeping with the character and environment of the area.

### **Other Considerations**

22. The Framework states at paragraph 148 that substantial weight should be given to any harm to the Green Belt, and that inappropriate development should not be approved except in very special circumstances. It explains that very special circumstances will not exist unless the harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
23. The appellant puts forward several matters that are considered to represent the very special circumstances required to outweigh the harm to the Green Belt. This includes living close to the site, the use of the site by a local firm which employs local people, the use of a small area of land within a larger agricultural unit, the diversified income stream as a result of Maytree's use of the site and upcoming changes to current agricultural policy which could see farmers subsidies reduced. Moreover, the appellant relies upon Maytree's assistance with the upkeep and maintenance of the farm, some of which can be dangerous activities and require more than one person to achieve the desired outcome.
24. Although I acknowledge the financial pressures the appellant faces and that there are current uncertainties over subsidies farmers can expect to realise, the line of reasoning that the change of use would support the farm would apply equally to

most diversification projects. Moreover, the other matters raised do not apply solely to the appeal site and would apply equally to other sites that are not within the Green Belt or those that are considered suitable for the development. Furthermore, although the director of the company lives close by and is a benefit, I would not consider this to amount to a very special circumstance required to outweigh the harm to the Green Belt.

25. Moreover, although Little Wymondley is identified as an appropriate location for further employment provision through the eLP, it is evident that this is for sites that are located within the settlement boundary. As the appellant confirms the site lies beyond the settlement of Little Wymondley, it is not certain that further employment uses at the site would be considered favourably. Moreover, notwithstanding Policy ETC2 of the eLP, the WNP requires any such development to be appropriate in terms of location, scale and type.
26. As such, I do not find the appellant's arguments to amount to the very special circumstances required to clearly outweigh the harm to the Green Belt.

### **Green Belt Balance and Conclusion**

27. I have found harm to the Green Belt by reason of the development's inappropriateness. Weighed against that are the other considerations set out above. However, for the reasons given those would not, in their totality, clearly outweigh the harm to the Green Belt that I have identified. The very special circumstances necessary to justify the development therefore do not exist and the development would conflict with the Green Belt protection aims of the Framework and those of Policy 2 of the LP, Policy GB1 of the WNP and Policy SP5 of the eLP.
28. The development would conflict with the development plan taken as a whole and material considerations do not indicate that the decision should be made other than in accordance with the development plan. Therefore, I conclude that appeal should be dismissed.

*Graham Wyatt*

**INSPECTOR**