RE: PLANNING APPLICATION 19/0581/RCU

NOTE

INTRODUCTION

1. I have been instructed on a direct access basis by Helen Sinclair, on behalf of a group of residents of Marsh Lane, NW7, to advise and comment on planning application 19/0581/RCU (**"the Application"**).

2. In particular, I have been asked whether the development is inappropriate development in the green belt and, if so, the test that must be applied by the Planning Committee in deciding whether to grant planning permission. These issues are addressed in section A of this Note.

3. In section B of this Note, I comment on the harms and benefits that the Committee will need to consider.

BACKGROUND TO THE APPLICATION

4. The Application is for the "use of agricultural land for care farming with retention of ancillary buildings, structures, pathways and access road" at SweetTree Fields, Marsh Lane, London, NW7 4EY.

5. The application site covers 6.42 hectares and is primarily enclosed by residential properties, and abuts an independently operated area of farmland to the northeast. The site abuts the Mill Hill Conservation Area, and a small part of the site falls within it. There are a number of substantial buildings on the site which it is proposed to retain[1], namely:

    a. An infirmary (20.2sqm);
    b. A farm shelter (176.4sqm, unenclosed);
    c. Composting toilet (3.3spm);
    d. 3 sheds (8.3sqm, 7.3spm, 3.4sqm);
    e. A store (27.6sqm);
    f. A stable (20.6sqm);
    g. A Pigsty (22spm);

[1] This detail is provided at paragraphs 2.4 and 4.5 of the applicant's planning statement.

h. A woodchip store (36.4sqm, unenclosed);
i. A yurt (45.3sqm);
j. An accessible composting toilet (13sqm).

6. The application is retrospective, the use having already commenced in breach of planning control. An application to use the site "for care farming with retention of ancillary buildings, structures and pathways" has already been made and rejected, by application 17/7627/RCU (**"the 2017 Application"**). The Council's reasons for refusing that application, given by decision notice on 25 June 2018, were that:

> "1 The proposed development by way of the intensification of the use and activities taking place on the site and the introduction of a site wide road network would detract from the openness of the green belt land and as a result, the scheme would be contrary to the purposes and objectives of including land within the green belt. The proposed development would also harm the character and visual amenity of the site and wider area, contrary to the National Planning Policy Framework and policies DM01 and DM15 of the Adopted Local Plan Development Management Policies Development Plan Document (2012).
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> 2 The intensification of the use of the site for agriculture would increase the amenity harm arising for the adjoining residential neighbours particularly in relation to noise, dust, odour and security, contrary to policies DM01 and DM04 of the Adopted Local Plan Development Management Policies DPD (2012)."

7. Following the rejection of the 2017 Application, the Council served an enforcement notice on 30 July 2018 (Ref ENF/00355/17), requiring the removal of the farm shelter, pigsty, shed 1, shed 2, shed 3, store, toilet and paths and roadways. The deadline for compliance with the requirements of the notice is 4 May 2019.

8. The Application substantially overlaps with the 2017 Application. The development described is the same. The applicant has, however, proposed modified conditions which:

    a. Reduce the number of animals on the farm[2];
    b. Restrict 'participant' numbers of 20, rather than restricting the number of people that can be on the site.

[2] See tables 4-5 of the applicant's planning statement.

SECTION A: CORRECT APPROACH TO ASSESSING DEVELOPMENT IN THE GREEN BELT

Is the Application inappropriate development in the green belt?

9. The application site is in the green belt and therefore it needs to be determined whether the development is inappropriate development in the green belt.[3]

10. Here, the applicant accepts that it is.[4] This has important consequences for how the Planning Committee considers the application.

What test must be applied by the Planning Committee?

National policy

11. Paragraph 133 of the NPPF explains that:

> "The Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence."

12. Paragraph 134 adds that the green belt serves five purposes, including to check the unrestricted sprawl of large built-up areas and to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

13. Paragraph 143 states that "inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances." Paragraph 144 adds that "when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt" and that "very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations".

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[3] Paragraph 145 of the NPPF confirms that new buildings in the greenbelt are inappropriate development, with the exception of buildings for agriculture and forestry (as well as certain other exceptions immaterial for present purposes). Paragraph 146 states that a material change of use which preserves the openness of the greenbelt and does not conflict with its purposes is not inappropriate development. Development on greenbelt land will be 'inappropriate' unless it falls within one of the specified situations in which development is appropriate – see *Fordent Holdings Ltd v SSCLG* [2013] EWHC 2844 (Admin) at paragraph 19. See too *R (Lee Valley Regional Park Authority) v Epping Forest DC* [2016] EWCA Civ 404 paragraph 8.

[4] See paragraph 6.87 of the applicant's planning statement.

14. The reference to 'any other harm' in paragraph 144 refers to all other planning harms resulting from the development, not just harms to the green belt.[5]

15. In applying the very special circumstances test, the Council will need to reach a judgment as to the extent of the harm to the green belt, which includes (1) the extent to which the purposes of the green belt are undermined and (2) the impact on the openness of the green belt (which is its 'essential characteristic'). All other planning harms will also need to be considered in determining whether very special circumstances have been shown.

16. The Courts have considered the nature of openness on a number of occasions and have confirmed that:

    a. Agricultural buildings falling within paragraph 145(a) of the NPPF are appropriate development in the green belt, whether or not they have an impact on openness[6];
    b. Openness has two aspects – visual and spatial. The absence of a visual impact does not rule out an impact on openness[7];
    c. An absence of harmful visual impacts generally does not equate to an absence of visual harm to the openness of the green belt[8];
    d. Openness is not merely the absence of built development, and can be harmed by a change in the use of the land.[9]

Local policy

17. Policy DM15 of the Council's Development Management Policies Document takes the same approach as the NPPF, stating that:

> "…ii. Except in very special circumstances, the council will refuse any development in the Green Belt or MOL which is not compatible with their purposes and objectives and does not maintain their openness.
> iii. The construction of new buildings within the Green Belt or Metropolitan Open Land, unless there are very special circumstances, will be inappropriate, except for the following purposes:
> a. Agriculture, horticulture and woodland…"

[5] See *Redhill Aerodrome* Ltd *v SSCLG* [2014] EWCA Civ 1386.
[6] See the discussion in *Europa Oil and Gas* [2013] EWHC 2643 (Admin); [2014] 1 P&CR 3.
[7] See *Turner v SSCLG* [2016] EWCA Civ 466 at [25].
[8] See *Samuel Smith Old Brewery (Tadcaster) v North Yorkshire CC* [2018] EWCA Civ 489.
[9] This is implicit in paragraph 146(e) of the NPPF.

SECTION B: HARMS AND BENEFITS OF THE DEVELOPMENT

Harm to the green belt

18. As above, it is common ground that the development is inappropriate development in the green belt for the purposes of both national and local policy. The yurt, for example, as a new, non-agricultural building is inappropriate development in the green belt. The proposed change of use away from agricultural use could likewise have an adverse effect on openness, and the first reason given for refusing the 2017 Application shows that this was the judgment of the previous planning committee. As such, permission should be refused unless very special circumstances can be shown which clearly outweigh the harm both to the green belt and any other harm.

19. The numerous agricultural buildings the Application seeks to retain are appropriate development in the green belt in accordance with paragraph 146(a) of the NPPF. However, it does not follow that they do not harm openness. When the very special circumstances test is being applied, all harms need to be considered, and this will include any adverse impact that the agricultural buildings would have on openness. There are strong reasons to consider that there would be an adverse effect on openness, not just from the visual impact of the numerous buildings placed throughout the site but their spatial impact and associated activity. Protecting against urban sprawl, giving the adjoining residential development, could also be said to be an important feature of the application site which would be undermined through the proposed development.

Any other harm resulting from the proposal

20. National policy requires that all harms, not just green belt harms, are clearly outweighed by other considerations. These would include:
    a. Harm to the amenity of adjoining residents. The planning judgment of the committee in refusing the 2017 Application is that there would be such impacts and that they were unacceptable and not capable of being controlled by condition (as can be seen from the second reason for refusal);
    b. Any harm to the conservation area;
    c. Any ecological harm. I note in this regard that the site is a Borough site of importance for nature conversation, and that the local RSPB have objected to the Application on the basis of ecological harm.

Benefits relied upon

21. The Application relies upon the public benefits which flow from the proposed use, particularly for disadvantaged groups. I agree with the Applicant that this is clearly a beneficial use. I note, however, that:
    a. The assertion in the Application that SweetTree Farm provides "the only appropriate site in the area that is suitable for a care farming use"[10] does not appear to be supported by any evidence. Ms Sinclair disputes that the assertion is factually accurate, and refers to there being a large working farm with all necessary facilities 0.7 miles away, with more land and a greater variety of animals. This is a factual dispute which the committee will need to resolve. The burden, however, is on the applicant to establish that the use could not be met elsewhere, if that is a factor they wish to be given weight;
    b. Local residents have expressed concern about 'planning creep', where the site is subject to development reducing its contribution to the green belt in stages. I have seen reference to the applicant originally proposing elements of residential use on the site, which would lend support to this concern.

Refusal of 2017 Application

22. Fundamentally, the Application remains the same development as was proposed and refused in the 2017 Application. In seeking to address the reasons for refusal of the 2017 Application, no changes to the use or retained buildings have been proposed by the applicant. The conditions which are now proposed could equally have been imposed in 2017, had the planning committee considered that they would make the development acceptable.

23. Where (as is the case here) in substance the same development proposal is resubmitted, the importance of consistent decision making in the planning process is a material consideration. This was confirmed by the Court of Appeal in the content of planning appeals to the Secretary of State in *North Wiltshire District Council v Secretary of State for the Environment and Clover* (1993) 65 P. & C.R. 137, where Mann LJ explained that:

> "In this case the asserted material consideration is a previous appeal decision. It was not disputed in argument that a previous appeal decision is capable of being a material consideration. The proposition is in my judgment indisputable. **One important reason why previous decisions are capable of**

[10] Planning Statement 6.75.

being material is that like cases should be decided in a like manner so that there is consistency in the appellate process. Consistency is self-evidently important to both developers and development control authorities. But it is also important for the purpose of securing public confidence in the operation of the development control system. I do not suggest and it would be wrong to do so, that like cases *must* be decided alike. An inspector must always exercise his own judgment. He is therefore free upon consideration to disagree with the judgment of another but before doing so he ought to have regard to the importance of consistency and to give his reasons for departure from the previous decision.

To state that like cases should be decided alike presupposes that the earlier case is alike and is not distinguishable in some relevant respect. If it is distinguishable then it usually will lack materiality by reference to consistency although it may be material in some other way. Where it is indistinguishable then ordinarily it must be a material consideration. A practical test for the inspector is to ask himself whether, if I decide this case in a particular way am I necessarily agreeing or disagreeing with some critical aspect of the decision in the previous case? The areas for possible agreement or disagreement cannot be defined but they would include interpretation of policies, aesthetic judgments and assessment of need. Where there is disagreement then the inspector must weigh the previous decision and give his reasons for departure from it. These can on occasion be short, for example in the case of disagreement on aesthetics. On other occasions they may have to be elaborate." (Emphasis added)

24. The same reasoning applies to decisions before a planning committee.

Section 70C TCPA 1990

25. I note that this is an application the local planning authority would be entitled to decline to consider the Application under s70C of the Town and Country Planning Act 1990, as it relates to development which is the subject of a pre-existing enforcement notice.

CONCLUSION

26. It is common ground that the development proposed is inappropriate development in the green belt. To lawfully determine the Application, the Committee will need to act in accordance with the legal principles set out in Section

A of this Note. Planning permission should be refused unless very special circumstances are shown.

27. The position of those instructing me is that the proposed beneficial use of the site does not amount to very special circumstances justifying permanent harm to the green belt. That is the same judgment that was reached by the planning committee in refusing the 2017 Application, and is a material consideration in the determination of the current Application.

RICHARD CLARKE
4 MARCH 2019

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