
Appeal Decision

Site visit made on 9 January 2018

by Robert Mellor BSc DipTRP DipDesBEnv DMS MRICS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th January 2018

Appeal Ref: APP/W1525/W/17/3181206

Land south of Brock Farm, Ingatestone Road, Stock, Essex CM4 9PD

- 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 Edan Homes against the decision of Chelmsford City Council.
 - The application Ref 16/02066/FUL, dated 28 June 2016, was refused by notice dated 29 March 2017.
 - The development proposed is '*Regenerate existing site access and creation of service road to proposed warehouse facility for short rotation coppice drying and storage. Application for land use for short rotation coppice to provide a sustainable energy fuel source for biomass systems*'.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Edan Homes against Chelmsford City Council. This application is the subject of a separate Decision.

Procedural Matters

Access

3. The response to Question 6 on the planning application form affirms that there will be a new or altered access to or from the public highway. The submitted drawing is at a small scale but it appears to show the shared use of an existing access. The description refers to the 'regeneration of existing site access'. It is not clear what is meant here by the term 'regeneration' and what if any alterations would be made to that access. A document entitled '*Access Observations and Comparisons*' appears to indicate that another currently overgrown access may be brought into use but the information before me does not include any drawings or details of that access. Instead the service road is shown to connect to the shared access that is currently in use.
4. The appeal has therefore been determined on the basis that the access junction would be unchanged. However there would be a new service road within the northern and western boundaries of the site.

Present use of the land

5. The appeal site is edged in red on the submitted drawings. It is part of a larger area of land in the same ownership or control as edged in blue on those

drawings. That other land includes a grass air strip, ponds, other unused open land and a collection of former agricultural buildings that are now in a mixture of uses including B1 Business, B8 storage and C3 residential. These include a large modern barn that was apparently erected under agriculture permitted development rules but now has permission for B8 storage use.

6. The response to Question 14 on the planning application form describes the current use of the site as: *'Mixed use site with B1, B8 and C3 present as well as a large area of open land.'* However, except where the access road would encroach onto a shared parking area, the land within the red line is vacant. There have been from recent land-raising operations across the site which are being investigated by the Council for a potential breach of planning control.
7. I saw no evidence of agricultural activity on the red or blue land during my visit. The appeal form response to Question I confirms that none of the land to which the appeal relates is, or is part of, an agricultural holding.

The nature of the development proposal

8. The application description includes a *'warehouse facility'*. The response to Question 18 on the planning application form refers to this as: *'B8 – storage and distribution'* with 1,300sqm gross internal floorspace. B8 storage and distribution is not an agricultural or forestry use but is a business use as defined in the Use Classes Order.
9. Section 55(2) of the Act provides amongst other things that the following operation or use of land shall not be taken for the purposes of the Act to involve development of land: *'(e) the use of any land for the purposes of agriculture or forestry (including afforestation) and the use for any of these purposes of any building occupied together with land so used'*.
10. Section 336 of the Town and Country Planning Act 1990 defines *'agriculture'* for the purposes of the Act as including: *'horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock ... and the use of land for woodlands where that use is ancillary to the farming of the land for other agricultural purposes'* [my emphasis].
11. The application description includes the use of land for short rotation coppice. There is the apparent agreement between the Council and the Appellant that the coppice woodland would be *'agriculture'*. However, the planting of the land as willow coppice would not qualify as agriculture because as woodland it would not be ancillary to the farming of the land for other agricultural purposes. The land is not in agricultural use or part of an agricultural holding. Neither would the coppicing qualify under any the other parts of the Section 336 statutory definition of agriculture for planning purposes.
12. Even though it appears that the coppice woodland would not be agriculture there is at least the possibility that it may qualify as forestry. There is no definition of forestry in planning law. A dictionary definition of forestry is: *'the science or practice of planting, managing, and caring for forests'*. A dictionary definition of a forest is: *'A large area covered chiefly with trees and undergrowth.'* If the coppice planting is of trees and covers a sufficiently large area it may potentially qualify as forestry in the fallback position. That is a legal issue which is not for me to determine but I have determined the appeal on the basis that it is at least a possibility.

13. On my site visit I saw that extensive operations have been commenced to level and raise parts of the appeal site. This appeared to have included the importation of large quantities of clay soil and some rubble. The description on the planning application does not include any land-raising operation and there are no submitted drawings of such engineering works to show the change in levels. I therefore do not take these works to be part of the development for which planning permission is sought and I have not included them in my assessment.
14. The appeal has been determined on the basis for which planning permission was first sought. This has 3 elements. In summary it is an application firstly to erect a warehouse facility, secondly to use the land for the planting of coppice woodland, and thirdly to construct a road to service the building and the land use and connected to the existing shared access. Whether planning permission is required for the coppice woodland is not for me to determine and I will proceed on the basis that planning permission has been sought for that use.

Policy Context

15. The appeal is required by statute to be determined in accordance with the provisions of the development plan unless material considerations indicate otherwise. The development plan here includes Chelmsford's Core Strategy and Development Control Policies Development Plan Document 2001-2021 (2008) (the DPD) as partially modified by the Focussed Review (2013) which is now part of the development plan. The appeal site is in the Metropolitan Green Belt.
16. Other material considerations here include the National Planning Policy Framework (the Framework). The Focussed Review modified parts of the DPD for consistency with the Framework.

Main Issues

17. I consider the main issues to be:
- whether the proposal would be inappropriate development in the Green Belt;
 - whether it would harm the openness or purposes of the Green Belt;
 - whether sufficient information has been provided to assess the transport implications of the development on local highways; and
 - whether any identified harm to the Green Belt or other harm would be clearly outweighed by any material considerations.

Reasons

Green Belt

18. DPD Policy DC1 '*Managing Development in the Metropolitan Green Belt*' seeks to keep land permanently open and that all development proposals preserve the openness of the Green Belt and do not conflict with its purposes. Planning permission will be refused for development unless it satisfies one of the exceptions listed in that policy.

The Warehouse Facility

19. In relation firstly to the warehouse facility, the Appellants rely on exception A(i) in Policy DC1 which would permit a new building provided it is for: *'purposes directly related to agriculture or forestry or is accommodation in connection with these uses in accordance with Policy DC33.'*¹ The supporting text confirms that development which does not comply will be regarded as inappropriate development harmful to the Green Belt and which will only be permitted in very special circumstances.
20. A building for *'B8 storage and distribution'* as described on the planning application form would be capable of any storage or distribution use. It would not be a *'building for agriculture or forestry'* or *'directly related to agriculture and forestry'*. It would thus be inappropriate development and by definition harmful to the Green Belt.
21. Current national policy in the Framework allows that *'buildings for agriculture and forestry'* are an exception to inappropriate buildings in the Green Belt. For reasons set out above I do not consider that this could be a building for agriculture or directly related to agriculture. But in case the coppice woodland qualifies as forestry it remains to consider whether the building would then qualify as a building *'for'* forestry or *'directly related'* to forestry. The Appellant relies on the development as being an agricultural building, which it cannot be. However the arguments of both the Appellant and the Council are capable of interpretation in relation to whether it is a forestry building simply by substituting the term *'forestry'* for *'agriculture'* or *'agricultural'* in the respective cases.
22. The application description provides that the *'warehouse facility'* would be for: *'short rotation coppice drying and storage'*. It would be possible to so limit the use of the building by planning condition and to prevent other uses within the B8 use class.
23. Insofar as the rotation coppicing of the land is directed at the production of woodfuel as a form of renewable energy an element of that project could include storage of the woodfuel. Paragraph 91 of the Framework provides that elements of many renewable energy projects may comprise inappropriate development in the Green Belt in which case they will require very special circumstances to proceed. It includes the statement that: *'Such very special circumstances may include the wider environmental benefits associated with increased production of energy from renewable sources.'*
24. The Appellant considers that is sufficient to declare that the building is intended to be used for agriculture [or forestry] in order for it to qualify as an exception under local and national policy. The Council maintains that the inclusion in Policy DC1 of the words *'directly related'* creates a test to be satisfied that the proposal is genuine. I agree. The inclusion of the word *'for'* in the Framework phrase *'buildings for agriculture and forestry'* may similarly be regarded as creating a test to show that the proposal is genuinely to be used for the stated purpose.
25. There is a history on the adjacent land in the same ownership where buildings that were erected for agricultural purposes have subsequently being converted

¹ Policy DC33 relates to agricultural and rural workers dwellings and is not relevant here.

for other uses when no longer used for agriculture. There has been a recent unsuccessful application and appeal to demolish these buildings and to replace them with housing.

26. Coppicing is a relatively novel form of renewable energy development and especially in this location. There is little information before me as to how the building would be used in connection for this activity. A supporting report indicates that it was intended that the coppiced woodfuel was intended to heat the adjacent housing development and that plant would be installed in the proposed building for this purpose. That no longer appears to be the intention in which case the harvested woodfuel would need to be moved to another location for combustion. That raises the question of whether the woodfuel crop needs to be stored here or could be stored where it is to be used. The drawings also include an office but it is unclear when or how such an office would be needed. The Council has pointed out that there are existing buildings on the blue land that might be available for storage purposes.
27. The proposed 1300sqm GIA building would be relatively large and constructed to a higher specification than is usual for typically utilitarian agricultural buildings. Also the Council points out that, because of the time taken to establish the coppice plantation until the first commercial cut, the storage facility would not be needed until at least 2022. Once the stored chips had been moved on it could fall vacant again for 2-4 years or possibly more. My understanding is that woodchip is not a high value product in which case it could take very many years, if ever, to recoup the investment in the building, the service road and any necessary land raising.

The Coppicing Land Use

28. DPD Policy DC1 sets out a presumption against all development in the Green Belt unless it is for one of the listed exceptions. The Framework does not include changes in the use of land in the list of development that is not inappropriate. For consistency with the Framework, the Focussed Review of the DPD in 2013 deleted DC1(C) which would previously have allowed changes of use of land as an exception subject to criteria. On that basis the change of use of land would not be inappropriate in the Green Belt according to the adopted development plan including the Focussed Review amendments. Nevertheless if the coppicing use is regarded as forestry as a fallback position and thus outside the definition of development in the Act then planning permission would not be needed for the planting and these policies would not apply.
29. If land raising is needed in order for the coppicing use to be implemented then that is likely to be an engineering operation which would require permission and which would need to be assessed for its effect on openness in order to determine whether or not it was inappropriate development in the Green Belt. However I do not consider that to be part of the development proposal before me.

The Service Road

30. Construction of the service road would also be an engineering operation. Engineering operations that preserve the openness of the Green Belt and do not conflict with its purposes are not inappropriate according to Policy DC1(B)(vii) which is consistent in that respect with the Framework.

31. The Council has not referred to the service road in its decision or statement and I do not consider that it would be materially harmful to openness.

Conclusions

32. In conclusion on this issue I consider firstly that the service road would not be inappropriate development and secondly that the coppice plantation would only be inappropriate development according to local and national policy if it is concluded that it is development and is not forestry. Forestry would not be development and forestry use would be exempt from the relevant policy requirements.
33. Thirdly, for the warehouse facility to qualify as development that is not inappropriate it would be necessary to confirm that it would be used only for directly relevant agricultural or forestry purposes. However the description as B8 storage and distribution on the planning application form, the lack of information about how the building would be used, and the suspect viability altogether indicate that it may not be forestry building. Neither is the site used for agriculture. There is thus insufficient information before me to confirm that the building qualifies as an exception or would not be inappropriate development. In the absence of such information I conclude that the warehouse facility would be inappropriate development in the Green Belt.
34. Local and national policy provides that inappropriate development is by definition harmful to the Green Belt.

Openness and Purpose of the Green Belt

35. I do not consider that the service road or the coppice planting (without land-raising) would harm the openness of the Green Belt. However the warehouse facility would be a substantial and bulky structure with what the Council estimates to be a built volume of about 7,500 cubic metres and a maximum height of 8.4m. The building would be sited on what is at present a low part of the site and provided with a sedum and wild flowers roof which may make it appear less obtrusive. However it would still represent a substantial intrusion of built development into open countryside. It is likely to be visible from the adjacent golf course and may be seen from a public footpath that crosses the blue land unless and until it is (temporarily) screened by the coppice planting.
36. I conclude that the warehouse facility would materially harm the openness of the Green Belt. Unless it can be demonstrated to be a genuine forestry building then it would also represent encroachment on the countryside, contrary to one of the purposes of the Green Belt.

Transport Implications

37. The Council refused planning permission in part because, whilst it was not part of the description of the development for which planning permission was sought, a report accompanying the application advised that it would be necessary to increase the depth of topsoil on the site by 250-300mm in order for the coppice planting to be successful and that levelling of the land would also be needed.
38. The Council calculated that this would require 29,000 tonnes of topsoil together with an uncertain amount of additional material to level the site. On the basis that this material would all need to be imported to the site the Highway

Authority and the Council expressed concern about the potential traffic implications, on which there was a lack of information from the Applicants. I saw that the road past the site from Stock is narrow in places and that there is a particularly narrow bridge to the west of the site.

39. From what I saw there has already been significant land-raising to level the site as well as the spreading of topsoil. This is likely to have included material imported from outside the site by lorry. It is unclear whether additional operations are proposed or if further material is to be brought in.
40. The submitted plans lack any information as to: the site levels before or after these works; the quantities of material involved; or the traffic movements required. As the land raising works are not included in the description and are not explicitly part of the subject planning application unless they are covered by permitted development rules then I consider that a separate planning application would be needed for those works. If permission is required it would be necessary to consider whether these works are inappropriate development in the Green Belt or otherwise. However as they are not explicitly part of the proposal before me I shall not consider these operations or their transport implications further.

Other Material Considerations and Conclusions

41. The Council has not objected to the design or appearance of the development and has not claimed any harm to the landscape character of the area whether from the building, the service road, or the coppice planting. I agree. Neither has the Council claimed any harm other than the harm to the Green Belt by reason of inappropriateness of the warehouse building and the loss of openness from its construction.
42. The DPD and the Framework at paragraphs 87 and 88 require that substantial weight be accorded to harm to the Green Belt and that development harmful to the Green Belt should not be approved except in very special circumstances. Paragraph 88 provides that very special circumstances will not exist unless the potential harm to the Green Belt is clearly outweighed by very special circumstances.
43. The Appellant does not consider the development to be inappropriate or harmful to openness and thus does not acknowledge any harm to the Green Belt. The Appellant has therefore not sought to claim any very special circumstances.
44. Whilst paragraph 91 of the Framework allows that the wider environmental benefits of renewable energy production may qualify as very special circumstances, in this case there is no evidence to quantify that benefit, for example in terms of the amount of energy which could be produced. Neither is it clear that the benefit of producing the energy crop could not be achieved without the erection of the warehouse facility on site or at the proposed scale. Moreover a successful coppicing scheme may require land raising and levelling which is not explicitly part of the proposal and which may or may not require separate permission.
45. Whilst there are 3 elements to the proposed development I do not consider that they are readily divisible. A split decision would thus not be appropriate. The coppicing may qualify as a forestry operation but would appear to depend

on land raising which is not part of the proposal before me. If it is forestry and does not require land-raising to proceed then it is also unlikely to require planning permission. The only potential justification for the warehouse facility relates to what the Applicant and the Council considered to be an agricultural activity but which I not consider to have been demonstrated to be a building for either agriculture or forestry. The service road is only needed to serve the other developments.

46. I conclude that the potential harm of the warehouse facility to the Green Belt is not clearly outweighed by any material considerations and that there are no very special circumstances to warrant the grant of planning permission. The development is in overall conflict with the development plan and national policy. The appeal should therefore be dismissed.

Robert Mellor

INSPECTOR