



Appeal Decision

Site visit made on 4 June 2019

by I Bowen BA(Hons) BTP(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 August 2019

Appeal Ref: APP/A1910/W/18/3219155

Berry Farm, Upper Bourne End Lane, Hemel Hempstead HP1 2RR

- 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 Gabor Varga of Bourne End Ltd, against the decision of Dacorum Borough Council.
 - The application Ref 4/02935/17/FUL, dated 17 January 2018, was refused by notice dated 31 July 2018.
 - The development proposed is erection of two polytunnels and barn for the purpose of agriculture.
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Decision

1. The appeal is allowed and planning permission is granted for erection of two polytunnels and barn for the purpose of agriculture at Berry Farm, Upper Bourne End Lane, Hemel Hempstead HP1 2RR in accordance with the terms of the application, Ref 4/02935/17/FUL, dated 17 January 2018, subject to the conditions set out in the attached Schedule.

Preliminary Matters

2. Whilst not explicit in the description of the development, it is clear from the application form, the Council's refusal notice and other appeal evidence that the proposal includes surfacing of an existing track (the access track) connecting the appeal site to the highway. It is stated that the access track would be covered with compacted hardcore and chalk in order to provide a suitable weather-proof surface and to avoid degradation of the landscape through the creation of multiple vehicle ruts in unmade ground.
3. The submitted information also indicates that a number of proposed tracks and other circulation space to serve the proposed buildings (the internal tracks), together with a car parking area to be located at the end of the access track, would be similarly surfaced.
4. Notwithstanding the details of the planning application, the appellant has since suggested that the extent of surfacing could be restricted simply to top-dressing on an ad-doc basis to repair ruts as they occur, and that such works might fall within permitted development rights.
5. Regardless of the appellant's description of the scale of the proposed surfacing, it is not the purpose of the appeal to determine whether permitted development rights for any part of the proposed scheme exist. Given the hard surfacing as described forms part the proposal, the effect of granting planning permission would be to entitle any length of those surfaces to be top-dressed.

Accordingly, I have determined the appeal on that basis and I consider the merits of this aspect of the proposal later in this decision.

Background and Main Issue

6. The site lies in the Green Belt. The National Planning Policy Framework (the Framework) reflects the great importance that Government attaches to Green Belts. Paragraph 143 of the Framework makes clear that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
7. As noted above, the development would incorporate works to provide surfaced internal tracks, a car parking area and surfacing of the existing access track. I concur with the main parties that such works would constitute engineering operations. The Council's refusal notice and appeal statement of case contend these operations would be inappropriate development. Framework Paragraph 146 b) makes clear that engineering operations are not inappropriate development in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it.
8. The application shows the proposal would also comprise buildings in the form of two steel-framed polytunnels, a barn, a perimeter deer-proof fence, raised growing beds and irrigation tanks for the purposes of agriculture.
9. In this regard, the Framework states, in paragraph 145, that the construction of new buildings should be regarded as inappropriate, except in a certain, named exceptions, including buildings for agriculture and forestry. The main parties do not dispute that the proposed buildings as described above would be for agricultural use and would not be inappropriate development in the Green Belt. I see no good reason to disagree and this is a matter I return to in 'Other Matters' below.
10. Consequently, on the basis of the submitted evidence, the main issue is whether the proposed engineering operations would be inappropriate development in the Green Belt having regard to the Development Plan and national planning policies.

Whether inappropriate development in the Green Belt

11. According to the appellant's assessment, the proposed buildings would be located some 300m away from Upper Bourne End Lane and would be reached via the largely unmade existing access track which slopes gently downwards away from the road across open countryside.
12. Policy CS5 of the adopted Dacorum Core Strategy 2006-2031 (September 2013) (the DCS) defers to national planning policies on the Green Belt. However, whilst it also includes local criteria to guide "small-scale" development (which I consider later in this decision), it is silent on engineering operations. Accordingly, in line with Framework Paragraph 146 b), I consider below whether the proposed engineering operations would preserve the openness of the Green Belt and whether they would conflict with the purposes of including land within it.
13. Turning first to the access track, the Council confirms that this already lawfully exists. Whilst some Interested Parties cast doubt in this respect, I have no substantive evidence to dispute the Council's view. I am further not aware of

- any restrictions on of its use by the appellant for agricultural purposes. The track is broad, extending to some 8m in width according to the submitted evidence, and is flanked by post and wire fencing.
14. In the vicinity of the access gate at Upper Bourne End Lane, the track is made up of compacted earth and stones and this gives way to a more grassy appearance as it proceeds towards the main part of the appeal site.
 15. Openness in Green Belt terms is essentially the absence of built development but can include visual as well as spatial considerations. As the surfacing of the track would be at the same level as the surrounding ground, this would not fail to preserve the physical openness of the Green Belt.
 16. Given its width, the top-dressing of the track would have the potential to introduce a hard and prominent visible feature in the landscape which could affect openness. Nevertheless, in this regard the appellant has indicated that the surfacing would only take place within the vehicle wheel tracks and that natural vegetation would, in time, grow in the central strip and through the surface dressing.
 17. Such measures would, in my judgement, be sufficient to preserve the openness of the Green Belt subject to the use of an appropriate material. Whilst chalk is naturally occurring in the area and may be appropriate for top-dressing the track, I see no good reason why details for a suitable material, or mix of materials, could not be agreed in writing with the Council prior to any such works taking place.
 18. Moreover, the track could lawfully be used by the appellant without enhancement. On the basis of the submitted evidence, I consider there is a realistic prospect that the appellant would, subject to planning permission, proceed with the development of the buildings even in the event of consent for surfacing of the track being withheld. In such a case, it would be likely that over time, a multitude of vehicle routes would be created which would itself be harmful to the landscape of the countryside.
 19. Similarly, whilst it would be reasonable to expect an increased intensity of the use of the access track, vehicular movements would be transitory and would not lead to a loss of Green Belt openness in this regard.
 20. I therefore find that this element of the proposal would not fail to preserve the openness of the Green Belt and, for the same reasons as given above, would not be unacceptably harmful to the landscape. It would not therefore fail to safeguard the countryside against encroachment which the Framework indicates is one of the purposes of including land within the Green Belt.
 21. I have had regard to the submissions of an Interested Party who has referred to guidance on farm tracks prepared by the Peak District National Park Authority. That document, amongst other matters, advises that new, extended or altered tracks, or track maintenance can have a significant impact on the appearance of the landscape and that new track development across an open landscape can appear as a scar for many years, and be readily visible to the public. It is further advised that light covered surfacing should be avoided as it can increase the visual prominence of the track.
 22. However, the status of that document is not clear and I am mindful it is intended to apply to a specific National Park rather than Green Belts. These are

fundamentally different forms of designation. Furthermore, it would be reasonable to expect that the landscape type and underlying geology of the Chilterns are distinct from those of the Peak District. Whilst I have had regard to the advice contained in that document to the extent it appears to offer relevant generic advice on farm tracks, the above factors limit the weight I attach to it.

23. In any event, as indicated above I am not persuaded in this case that the finishing of the track could not be achieved through the imposition of a suitable planning condition so as to ensure no harm to the openness of the Green Belt or encroachment on the countryside would result.
24. Similarly, I find for the same reasons that the proposed internal tracks, associated circulation areas and car park would not lead to any loss of openness or conflict with the purposes of including land within the Green Belt, subject to being dressed with a suitable material.
25. I accept it is likely that cars would be parked for much of the day in the proposed parking area. However, the extent of the proposed parking area would be commensurate with the scale of the proposed agricultural enterprise. In this respect, it would be reasonable to expect the use of the buildings to require some parking provision which would, in any event, take place in broadly the same location on a similar scale. Consequently, the surfacing of a parking area finished in suitable materials would not, in itself, fail to preserve the openness of the Green Belt though increased activity, or represent encroachment into the countryside.
26. Reference has been made by an Interested Party to a planning permission¹ on the adjoining land owner's property where, it is submitted, conditions were imposed by the Council prohibiting non-agricultural vehicles and the laying of further hardstanding. The appellant contends that the proposal was for a different type of development. In any event, I have been provided with no substantive details relating to that case and therefore cannot be certain the planning circumstances were comparable to the current appeal proposal. I therefore attach little weight to this matter.
27. Similarly, whilst reference has been made to planning permission having been granted for a farm track² at Long Lane, Bovingdon, I am not familiar with the full background to that case and it has not therefore been determinative in my decision.
28. Drawing this main issue together, I conclude that the proposed engineering operations would not fail to preserve the openness of the Green Belt and would not conflict with the purposes of including land within it by encroaching into the countryside. As such, they would not be inappropriate development and no very special circumstances are required to be demonstrated to justify them. Accordingly, I find no conflict with the policies of the Framework. For the reasons given above, I also find no conflict with DCS Policy CS5 in respect of this main issue.

¹ 4/00664/18/ROC

² 4/03236/17/FUL

Other Matters

29. As noted in my background and main issues section above, the construction of the proposed buildings would be for agricultural purposes and would not be inappropriate development in the Green Belt, having regard to the Framework. Those aspects of the scheme did not therefore form part of the reason for refusal of the planning application. I concur that no conflict arises with the Framework in this respect.
30. I am mindful, however, that whilst DCS Policy CS5 defers to the Framework for Green Belt purposes, it also requires amongst other matters, new buildings not to have a significant impact on the character and appearance of the countryside and to support the rural economy.
31. I am aware that elements of the development would be perceptible from a public footpath that runs fairly close to the south west boundary of the appeal site. I have also noted that the population in the area is expanding which may well increase the number of people wishing to enjoy use of that path. However, the site does not lie within the Chiltern Hills Area of Outstanding Natural Beauty or any other recognised area of landscape sensitivity. Furthermore, having regard to the submitted plans and my observations on site, I am satisfied that the proposed siting of the buildings is such that they would not be unacceptably prominent, would be of a reasonable scale to support the intended enterprise and would not be significantly harmful to the character and appearance of the countryside overall. Furthermore, the buildings would support rural employment in line with CCS Policy CS5.
32. I therefore find, having regard to local and national planning policies, the proposed buildings would not amount to inappropriate development in the Green Belt and would not be harmful to the character and appearance of the countryside.
33. The appellant and the neighbouring land owner are in agreement that the access track is solely within the ownership of the latter. However, the appellant has a formal right of way to use the access by virtue of an easement which also permits surfacing of the right of way, subject to obtaining any necessary planning consent. Whilst the adjoining land owner is concerned over the laying of material and the potential for disputes with other land owners, that is a private matter which does not go to the merits of the appeal proposal. I therefore attach little weight to this matter.
34. I have also had regard to concerns raised in respect of past importation of waste onto the site and the potential for contamination. However, I note the Council's technical advisor did not raise an objection in this respect and I have no substantive evidence to the contrary which would indicate that permission should be withheld on this basis.
35. A range of other matters have been raised by other parties. These include alleged past breaches of planning control and damage to Upper Bourne End Lane, lack of facilities for workers and the suitability of the land to support the cultivation of the intended crops. However, they are not matters which pertain to the merits of this proposal before me.

36. Similarly, whilst doubts have been cast on the level of existing employment at the site, that is not a matter which is determinative to the assessment of the proposed development.

Conditions

37. In addition to the standard condition for timely implementation of the permission, the Council suggested a number of conditions which I have considered against the Framework and Planning Practice Guidance. As a result, I have omitted some and amended others as follows.
38. In the interests of certainty, a condition is necessary requiring the development to be carried out in accordance with the submitted plans.
39. A condition requiring the materials of the buildings to be as shown on the submitted plans would not be precise or enforceable as no such materials are specified in the drawings. However, the materials were described in the application and a condition would be reasonable and necessary to require the development to be carried out in accordance with them. I therefore impose such a condition.
40. The Council suggested a condition requiring the submission of details of landscaping works. However, no clear justification is provided to explain why it would be necessary to require a full topographical survey to be submitted. In this regard, the appellant has already submitted some topographical information which I regard as adequate in allowing the Council to assess and discharge conditions relating to the details of the scheme.
41. However, it would be necessary for details of the proposed levels of the proposed buildings, proposed means of enclosure and irrigation tanks to be approved by the Council in the interests of safeguarding the character and appearance of the area. Similarly, as the application does not provide details of any supporting infrastructure which may be required to serve the development, it is necessary for such information to be submitted to the Council and approved as part of the landscaping scheme. It would be necessary for the details of the landscaping scheme to have been approved prior to commencement of the development as they would be fundamental to the construction and laying out of the development. Whilst the Council also suggested such works should be completed prior to commencement of the development, I am not persuaded that this would be necessary in all respects. I have therefore required an implementation timetable to be prepared to be submitted to, and agreed, by the Council.
42. A condition requiring the proposed buildings to be used solely for agricultural purposes is not necessary, as the terms of the permission do not in any event permit any other lawful use. I have therefore omitted such a condition.

Conclusion

43. For the reasons given, the appeal is allowed, subject to necessary conditions.

Ian Bowen

INSPECTOR

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: HHBF 0001 Rev 1; 200-03; BRHH 0223 Rev 1; BRHH 0224 Rev 1; HEMSEC1; BerryTopo/1; site location plan marked "Berry Farm, Upper Bourne End Lane".
- 3) No development shall commence until there shall have been submitted to and approved in writing by the local planning authority a scheme of landscaping together with an implementation timetable. The scheme shall include details of:
 - the extent of all new hard surfacing and materials to be used including the access track, internal tracks and circulation space and car parking area;
 - the proposed slab, finished floor and ridge levels of the proposed barn and polytunnels in relation to the existing and proposed levels of the site and the surrounding land;
 - means of enclosure;
 - elevations, scale and materials of irrigation tanks and associated structures;
 - proposed and existing functional services above and below ground (e.g. drainage, power, communications cables, pipelines etc, indicating lines, manholes, supports etc).

The approved works shall be carried out in accordance with the approved scheme and the implementation timetable.
- 4) The external facing materials shall be as specified in the application unless otherwise agreed in writing by the local planning authority.