
Appeal Decision

Site visit made on 14 May 2020

by Matthew Woodward BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th June 2020

Appeal Ref: APP/N1920/W/19/3243370

Chapel Hall Farm, Land at Summerswood Lane, Borehamwood WD6 5PH

- 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 Chapel Hall Farm against the decision of Hertsmere Borough Council.
 - The application Ref 18/2126/FUL, dated 1 November 2018, was refused by notice dated 13 September 2019.
 - The development proposed is the alteration of levels by up to one metre.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I have taken the address from the appeal form as opposed to the application form in the interests of brevity. I have also taken the date that the application was refused from the appeal form as no date was given on my copy of the Council's decision notice.

Main Issues

3. The main issues in this case are:
 - Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies.
 - The effect of the proposal on highway safety.
 - The effect of the proposal on ground conditions, with particular regard to contamination; and,
 - If the development would be 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 proposal.

Reasons

Whether inappropriate development

4. The proposal would involve the importation of 'soils' in order to re-profile the land so it could be used for agricultural purposes. Both main parties consider that the works would comprise 'engineering operations' for the purposes of the

Framework, which states, under paragraph 146, that certain other forms of development, including engineering operations, are not inappropriate in the Green Belt provided that they preserve openness and do not conflict with the purposes of including land within it. I agree that the scheme should be assessed against paragraph 146 of the Framework.

5. The openness of the Green Belt has a spatial and visual aspect¹, and as far as the appeal site is concerned, it is populated by trees, vegetation and grassland and retains a green appearance despite the presence of nearby electricity pylons, bare earth, mounds of deposited material, and areas of scrub. Whilst I appreciate that trees and vegetation are not in full leaf throughout the year, the appeal site nevertheless retains an eminently rural countryside appearance. The trees, hedges and vegetation do serve to reduce the appeal site's general visibility from the surrounding land and from the nearby roads and footpaths. However, the limited degree of visibility does not necessarily diminish the Framework's requirement to keep Green Belt land open.
6. The proposal would result in the creation of a raised platform which, due to its height and extensive area, would appear as a conspicuous element appreciably higher than most of the land which immediately surrounds it, thus reducing the openness of the Green Belt. The appellant's intention to use the raised land for agricultural purposes would assist in assimilating the development with its rural surroundings. Furthermore, some of the surrounding countryside would remain more elevated than the resultant field. Nevertheless, the proposal would despoil the appeal site and reduce its verdant qualities by introducing an extensive raised platform which would comprise an intrusion into the countryside which would also fail to safeguard the Green Belt from encroachment. Consequently, the openness of the appeal site would not be preserved and one of the Framework's identified purposes of including land in the Green Belt would be compromised.
7. As a result of the foregoing, I find that the proposal would be inappropriate development in the Green Belt that would, by definition, be harmful to the Green Belt. It would fail to meet the requirements of paragraphs 134 and 146 of the Framework, Policy SADM26 of the Hertsmere Local Plan Site Allocations and Development Management Policies Plan 2016 (SADMPP) and Policy CS13 of the Hertsmere Development Plan Document Core Strategy 2013 (Core Strategy) which require that the openness of the Green Belt is preserved and that there is no conflict with the purposes of including land in the Green Belt.

Highway safety

8. The appellant envisages that the importation of materials would facilitate between 16 and 18 HGV deliveries each day over a period of 100 days². The appellant carried out traffic surveys which showed that an average of 600 vehicles passed the appeal site in both directions between the hours of 0700 and 1900; thus, I consider that it is fairly regularly used by vehicles throughout the day. As the appellant concluded as part of their highway survey, the horizontal and vertical alignment of the carriageway results in vehicles passing the appeal site at a lower average speed than the national speed limit of the road³.

¹ Planning Practice Guidance paragraph: 001 Reference ID: 64-001-20190722

² According to the appellant, 17000m³ of material would result in a total of 1700 HGV trips

³ 85th percentile speed of 40.3mph and 40.5mph for northbound and southbound traffic respectively.

9. Having regard to the foregoing, the number of vehicles importing materials on a daily basis is not insignificant given the narrow, winding nature of Summerswood Lane. Despite this, I have not been provided with a copy of a plan demonstrating that sufficient visibility could be achieved at the site entrance, taking into account the measured average speed of vehicles passing the appeal site. The boundary of the appeal site was largely overgrown on my site visit which, combined with a lack of plan or other information accurately quantifying the extent of obtainable visibility from the site access, limited the extent to which I was able to accurately assess the visibility along Summerswood Lane which would be available to HGV drivers when exiting the appeal site. Even if the vegetation on either side of the proposed access point could be cut back and managed, it has not been demonstrated by the appellant that it is under their control, nor that any such works would result in the required visibility.
10. The appellant would be willing to install convex mirrors opposite the appeal site to increase visibility along the lane for exiting drivers. However, no details of the size or position of the mirrors have been provided and, in any event, there is a risk that the use of mirrors would distort the angle of view and the distance at which vehicles travelling along the highway appeared for drivers exiting the appeal site. Furthermore, obtainable views of the mirrors could be adversely affected during inclement weather, making it difficult for drivers to safely determine whether it was safe to exit. Therefore, this form of mitigation does not adequately address my concerns relating to the safety and suitability of the proposed access.
11. Whilst the proposal would comprise a small increase in the overall number of vehicles using the road on an average day, the number of vehicles arriving and leaving the site daily as a result of the scheme would not be insignificant. Furthermore, the HGVs accessing the site would generally occupy a greater width of the carriageway than light vans/cars which more regularly use the road. Whilst I saw on my site visit several informal passing places where the road widened between the appeal site and the A1, they were few and far between. In addition, no swept path details or similar information has been provided to demonstrate that vehicles travelling to and from the site along the lane and utilising the access could do so without conflicting with vehicles travelling on the opposing side of the road. Consequently, even if the appellant was to employ a person to manage traffic arriving and departing from the site, it is not clear how they would be effective in managing site traffic and general traffic taking into account the lack of detailed information on the suitability of the lane and the access to accommodate the number of large vehicles proposed, and the fact that safe access has not been demonstrated.
12. The access as proposed was not present when I carried out my site visit. Taking on face value the appellant's assertion that access to the appeal site for use as agricultural purposes would be permitted development, the proposal before me would involve the importation of a large amount of material, which would not be an agricultural use and would not be permitted development. Therefore, details of access to serve this proposal are necessary, and I attach limited weight to permitted development rights in relation to an access which would serve a different purpose.
13. For the foregoing reasons I conclude that the development would have an unacceptable effect on highway safety, contrary to Policy SADM40 of the

SADMPP and Policy CS25 of the Core Strategy which require, amongst other matters, that development does not harm the safety of road users. The proposal would also fail to satisfy paragraphs 108 and 109 of the Framework which require that development provides safe and suitable access for all users which does not result in unacceptable impacts on highway safety. This matter weighs against the proposal.

Contamination

14. The application was accompanied by a report entitled 'Soil and Agricultural Quality' which the Council found inadequate in terms of its scope and detail in relation to previous activities on the appeal site which may have led to contamination. However, no comments have been received from the Council on the more recent 'Site Investigation Report'⁴, which concluded that there were no unacceptable levels of contamination at the appeal site.
15. As for the imported material, the appellant states that this would be covered under separate legislation, which would require a materials management plan to demonstrate that the soils would be clean and uncontaminated. Be that as it may, only sporadic details of the specification of material to be imported have been submitted by the appellant, and I cannot say with any degree of certainty that the material would not be contaminated. However, appropriate planning conditions could be imposed in the event that this appeal was allowed in order to ensure that deposited materials and engineering operations were subject to additional investigations. In these circumstances, I am satisfied that the proposal would not lead to unacceptable land contamination risks, in accordance with paragraph 178 of the Framework, Policy CS16 of the Core Strategy and Policy SADM20 of the SADMPP.
16. Having regard to the foregoing, I find that the development would not have an unacceptable effect on ground conditions, with particular regard to land contamination. However, the lack of harm in this respect is not a positive factor weighing in favour of the scheme.

Other considerations

17. The Framework requires me to come to a view as to whether or not, in Green Belt terms, there are other considerations that clearly outweigh the totality of the identified harm so as to amount to very special circumstances. In this regard, the proposed development would improve the agricultural quality of the land, thus ensuring the site had a productive end use in keeping with the surrounding area, a point not disputed by the Council. This is a matter to which I apply significant weight in favour of the appeal.

Other Matters

18. The specification of the material to be imported has not been clarified by the appellant, nor has the amount of material proposed been questioned by the Council. As a result, it is not clear to me whether or not the material which would be deposited on the site would comprise a waste product. Therefore, the proposal may constitute a material change of use of the land under S55 of the Act⁵, with potentially different planning policy considerations. However, irrespective of whether the proposal is considered as an engineering operation

⁴ Dated 6th December 2019

⁵ The Town and Country Planning Act 1990 (as amended)

or material change of use of the land, it would still require the same Green Belt assessment to be made under paragraph 146 of the Framework, thus my overall conclusion that the proposal would be inappropriate development in the Green Belt would not be altered. Therefore, it has not been necessary for me to explore this matter any further.

Conclusion and planning balance

19. The proposal would be inappropriate development in the Green Belt which is harmful by definition. According to the Framework, substantial weight should be attributed to any harm to the Green Belt. In addition, I have found that the development would lead to adverse highway safety impacts, a matter to which I apply significant weight.
20. Against this, whilst I find that the proposal would not result in unacceptable levels of contamination, this is a neutral factor which neither weighs in favour or against the appeal.
21. In terms of overall benefits, I attach significant weight to the site's proposed use as best and most versatile agricultural land, in line with paragraph 170 of the Framework. However, these benefits are not sufficient to clearly outweigh the harm I have identified.
22. I therefore conclude that the harm by reason of inappropriateness, and any other harm, is not clearly outweighed by other considerations, such that the very special circumstances necessary to justify the development do not exist. Therefore, the appeal should be dismissed.

Matthew Woodward

INSPECTOR