
Appeal Decision

Site visit made on 3 November 2020

by Mark Dakeyne BA (Hons) MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 6 November 2020

Appeal Ref: APP/R0660/W/20/3254092

Thurlwood Upper Lock, Farams Road, Rode Heath, Cheshire ST7 3RS

- 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 Mrs Beverley Shenton against the decision of Cheshire East Council.
 - The application Ref 19/5007C, dated 23 October 2019, was refused by notice dated 12 December 2019.
 - The development is described as 'proposed dwelling (change of house type). Revised design and layout of previously approved dwelling ('The Smithy') 13/4758C'.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - (a) whether the proposal would be inappropriate development in the Green Belt; and,
 - (b) whether any 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 required to justify the proposal.

Reasons

Inappropriate development

3. The site is on the south-west side of the Trent and Mersey Canal within the Green Belt. Paragraph 145 of the National Planning Policy Framework (the Framework) states that the construction of new buildings in the Green Belt should be regarded as inappropriate development unless it is one of seven specified exceptions. The final exception (g) includes the partial or complete redevelopment of previously developed land which would not have a greater impact on the openness than the existing development. The definition of previously developed land within the Framework includes land that was occupied by permanent structures, including the curtilage of the developed land. Policy PG3 of the Cheshire East Council Local Plan Strategy adopted July 2017 (CELPs) includes a similar exception to the Framework but also refers to the impact on Green Belt purposes.
4. The appeal site includes the bases of structures which are still clearly evident and have not blended into the landscape. These are the remains of a group of buildings that previously occupied the site. The buildings are described as

comprising a smithy, barn, garage and public house. The Council accepted that the site comprised previously developed land in 2013 and on that basis granted planning permission for two dwellings to replace the two buildings that remained on the site at that time. That permission remains extant.

5. However, the house now proposed would be to the north-west of the permitted dwellings. There would not be any overlap between the footprints of the permitted and proposed dwellings. Therefore, if the appeal is allowed, it would be possible to build three dwellings on the site. Taking into account the evidence before me, the erection of the three dwellings would increase the footprint and bulk of buildings on the site compared to that which existed in 2013. The potential gap on the site of the permitted dwelling referred to as The Smithy could not be guaranteed. Therefore, there would be a greater impact on Green Belt openness.
6. In terms of Green Belt purposes, the new dwelling would be within the curtilage of the structures that previously occupied the site. Although the edges of the site have become overgrown, I was still able to see a rickety fence marking the boundaries. As the proposed dwelling would be well within the site boundaries and close to the site of previous structures and the permitted dwellings, the development would not result in encroachment into the countryside. There would not be any conflict with other Green Belt purposes.
7. However, because of the greater impact on Green Belt openness, I conclude that the proposal would comprise inappropriate development and conflict with Policy PG3 of the CELPS and the Framework. There would also be conflict with Policy PS7 of the Congleton Borough Local Plan First Review adopted January 2005 (CLP) as the development would not meet any of the exceptions for new dwellings set out in Policy H6 of the CLP. However, I give limited weight to Policy PS7 because it is not consistent with the Framework in excluding reference to sites which are previously developed land.

Other considerations

8. The appellant indicates that the proposed dwelling would be built instead of the permitted dwelling, The Smithy. However, although reference is made to covenants and an obligation under Section 106 of the Planning Act to ensure that both are not constructed, it is significant that no such mechanism to prevent part of the existing permission being implemented is before me. A planning condition could not be used to achieve the same end. Some of the land which would be occupied by The Smithy is owned by another party. But the fact that land is currently in a different ownership does not provide sufficient certainty that The Smithy would not be built in the future in addition to the dwelling now proposed.
9. The site, although now partly overgrown, contains the unsightly remnants of previous buildings, has been vacant for some time and there is evidence that it has been subject to fly tipping and other anti-social behaviour. The modest scale and traditional design of the proposed dwelling and the planting of native hedgerows and trees would be sympathetic to the canal side and edge of settlement location. The proposal, alongside the other development, would restore built form below the lock which would enhance the setting of the Trent and Mersey Canal Conservation Area. The creation of a landscaped garden on the north-western part of the site would prevent fly tipping and the other anti-social behaviour referred to.

10. The proposal includes a widening and resurfacing of Low Street as it turns north-west after passing over the canal bridge. These improvements would benefit the occupiers of the cottages further along the canal by making it easier for emergency and service vehicles to access both the proposed dwelling and the existing homes. The plans also show a parking area to allow maintenance of the canal and other off-site improvements to the bridge structure, Farams Road and a new landscaped towpath route which allows disabled access onto the canal, the latter having already been carried out.
11. I saw the scheme taking place at Cherry Lane, Rode Heath referred to by the appellant. It would appear that some development existed on that site before the new homes were built. However, whilst consistency in decisions is important, there is insufficient evidence before me to compare the two developments in terms of their impact on Green Belt openness. In any event I must consider the appeal before me on its merits against local and national Green Belt policy.

Conclusions

12. I have found that the proposal would be inappropriate development. I have not found any other harm. The Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Substantial weight should be given to the harm to the Green Belt. Very special circumstances will not exist unless the harm to the Green Belt is clearly outweighed by other considerations.
13. For the reasons given in paragraph 8, I give limited weight to the appellant's assurances about not fully implementing the extant permission. To my mind the absence of a legal mechanism to prevent the implementation of The Smithy is decisive. The improvements arising to the character and appearance of the area, the setting of the conservation area and from the offsite works could also be secured by a development of only two dwellings on the site. As a result, I give these benefits and the public support that arises from them only moderate weight. The development at Cherry Lane does not justify inappropriate development at the appeal site and therefore carries only limited weight.
14. I conclude that the substantial weight to be given to Green Belt harm is not clearly outweighed by the other considerations sufficient to demonstrate very special circumstances. As a result, there would be conflict with Policy PG3 of the CELPS and the Framework.
15. For the reasons given above the appeal should be dismissed.

Mark Dakeyne

INSPECTOR