
Appeal Decision

Site visit made on 17 May 2021

by Peter Mark Sturgess BSc (Hons), MBA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: Friday, 04 June 2021

Appeal Ref: APP/A0665/W/20/3247260

Land At junction Of Boathouse Lane, Chester High Road, Neston, Cheshire, CH64 3TD

- 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 Vernon against the decision of Cheshire West & Chester Council.
 - The application Ref 19/00525/FUL, dated 11 January 2019, was refused by notice dated 4 October 2019.
 - The development proposed is the creation of a single storey dwelling, partly submerged into the existing site, with associated landscaping and car parking, along with the addition of land available for community use.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. I note that during the course of the appeal the applicant has submitted proposals for a building on the site, partly set into the ground for community use. The Procedural Guide – Planning Appeals England states that the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the Council as local planning authority and on which interested people's views were sought.
3. Consequently, due to its proposed size and its potential for wider visibility outside the site, I consider that interested people's views should be sought on the proposed building. Therefore, and in accordance with the principles set out in the Wheatcroft case¹, I shall not be taking the proposed building into account in this decision and will be deciding the appeal on the basis of the proposal considered by the Council.

Main Issues

4. The main issues in this appeal 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 development on the openness of the Green Belt,

¹ Bernard Wheatcroft Ltd v SSE [JPL 1982 P87]

- whether the location is suitable for a new dwelling,
- whether the proposal takes account of its effect on the habitats or species that might be present in the area, and
- would any harm by reason of inappropriateness or any other harm, be clearly outweighed by other considerations so as to amount to very special circumstances required to justify the proposal.

Reasons

Appropriate development in the Green Belt

5. The Framework sets out that new buildings are inappropriate development in the Green Belt unless they are defined in one of the exceptions outlined in paragraphs 145 and 146. The exceptions set out in paragraph 146, as are some in 145, are seen by the Framework as not inappropriate provided that they do not affect the openness of the Green Belt. I shall return to the matter of openness later in this decision.
6. The exceptions set out in paragraph 145 allow for new dwellings in the Green Belt in certain specified circumstances. These exceptions include, limited infilling in villages, limited affordable housing for local community needs or the redevelopment of previously developed land. It is clear that the proposed dwelling lies outside the villages in the area, is a house for general occupation and is not located on previously developed land. Consequently, it does not fall within any of the exceptions to inappropriate development in the Green Belt set out in the Framework and is, therefore inappropriate development. The Framework defines inappropriate development as harmful to the Green Belt and should not be approved except in very special circumstances. I shall address the very special circumstances advanced by the appellant in support of the proposal later in this decision.
7. Policy STRAT9 of the Cheshire West and Chester Council, Local Plan (part one), Strategic Policies, adopted in January 2015 (LP Pt1), deals with developments in the Green Belt. It reflects the Framework by stating that it will apply the policies in the Framework that relate to development in the Green Belt. I therefore give this policy substantial weight in this decision.
8. I have found that the proposed dwelling does not fall within any of the categories/exceptions to inappropriate development either referred to in the Framework or Policy STRAT9. Consequently, I find the proposal conflicts with this Policy of LP Pt1.

Effect on the openness of the Green Belt

9. Openness has a spatial as well as a visual dimension. In spatial terms the character of the land would change from that of flat former agricultural land to land that is clearly domestic in character. As part of this change it would be developed with the trappings of residential occupation, such as a drive, gardens, and a formalised entrance. Moreover, the mound used to create and conceal the proposed dwelling would rise above the surrounding land and therefore reduce the openness of the Green Belt in this location. In visual terms the new entrance, the mound over the proposed dwelling and the access road would all be seen from outside the site. Consequently, reducing the visual openness of the Green Belt in this location.

10. I note that the appellant has referred to the proposed dwelling as having less impact on the openness of the Green Belt than some of the exceptions referred to in the Framework, in particular a large agricultural buildings. However, there are two aspects of Green Belts that need to be considered in this regard.
11. The first relates to inappropriate development. The Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. I have established above that the appeal proposal is inappropriate development and does not fall within any of the exceptions set out in the Framework, unlike agricultural buildings.
12. The second relates to openness. In this case I have also found above that the development would also harm the openness of the Green Belt. However agricultural buildings are not inappropriate development in the Green Belt irrespective of their effect on its openness.
13. Therefore, I find that the appeal proposal is in conflict with the Framework as it would not maintain the openness of the Green Belt in this location. Furthermore, Policy STRAT9 of the LP Pt1 seeks to apply the restrictions to development in the Green Belts set out in the Framework. In this respect I find the proposal in conflict with the development plan as it would harm the openness of the Green Belt.

Location of the proposed development

14. The proposal would result in the development of a single dwelling on land that appears to be currently unused. From the evidence I have seen it appears that the land was previously in agricultural use, although there is some suggestion that it has been used for car boot sales. The boundary of the site is made up of a mixture of fences, hedges, and mature trees. However, there are extensive views across the site from Boathouse Lane.
15. The nearest dwelling is that known as the Lodge on the opposite side of Boathouse Lane. Other land around the appeal site is open and agricultural in character. The settlements of Neston, Gayton, Parkgate and Heswall are all some distance from the appeal site. Other sporadic developments lie along the Chester High Road (A540) to the north. To the south is further agricultural land which opens out to give views across the estuary of the River Dee.
16. I have established that the area of the appeal site has a countryside/rural character and is away from principal settlements. However, and in terms of paragraph 79 e) of the Framework, the site is not isolated as it has a dwelling in close proximity on the opposite side of Boathouse Lane. Moreover, it is in reasonably close proximity to the settlement of Gayton. Therefore, the proposal should not be considered in terms of this paragraph of the Framework as it is not an isolated home in the countryside.
17. Whilst the appeal site is not isolated it does lie in a countryside location away from the main settlements in the area. The appeal proposal would introduce an incongruous development which would not be consistent with the countryside character of its location and lead to the loss of a greenfield site.
18. Moreover, whilst the appeal site is in reasonably close proximity to the settlement of Gayton, a bus route and the services that lie along the Chester High Road, those services are still limited in scope and some distance from the

appeal site. That would mean most of the services required by the occupiers of the proposed dwelling on a day to day basis would need to be accessed by means of the private car.

19. The policies of the development plan, including STRAT 1, STRAT2 and STRAT8 of the LP Pt1, direct the majority of new development to the main towns of the area. Everywhere outside those towns is identified as the rural area. Within the rural area there are settlements where new developments are supported, subject to certain criteria. Outside these settlements the rest of the area is defined as 'countryside'.
20. Policies R1 and DM19 of the Local Plan (part two) (LP Pt2) deal with developments in the countryside. Policy DM19 lists the type of development which will be supported in these locations. The proposal does not fall within any of the categories which apply to new residential development in the countryside listed in the policy. It is therefore in conflict with this policy of the development plan.
21. The Neston Neighbourhood Plan (NNP) when dealing with new residential development also expects at Policy NNH1, amongst other things, that it is appropriate in scale and design to its local context. The local context of the appeal site is open agricultural land set in the countryside. The introduction of a dwelling together with access, drive and garden would not be appropriate to its local context. In this respect the appeal proposal is in conflict with the NNP.
22. Consequently, I find that the appeal proposal is in conflict with the strategic policies of the LP Pt1 and the development management policies set out in LP Pt2, and Policy NNH1 of the NNP in that the appeal site is not a suitable location for a new dwelling.

The effect of the proposal on habitats and species

23. The appeal site is not made up of a priority habitat. It has been subject to two Preliminary Ecological Appraisals (PEA), in January 2018 and July 2019. Neither of the PEAs found evidence of protected species although both indicated that further work would be necessary prior to the development to ensure that protected species were not harmed during the implementation of the proposal.
24. It appears to me that both PEAs were carried out by qualified professional personnel and followed a methodology that was recognised by the relevant professional body. The PEA of January 2018, a time of year when protected species might not be active, stated that its data was valid for 24 months. Moreover, it was undertaken prior to the design of the proposed dwelling being finalised. For these reasons I give its conclusions limited weight in this decision.
25. The PEA of July 2019 found no incidental observations of any birds, mammals, amphibians, or reptiles, with no water bodies being present on the site. It recognised that the mature trees on the boundaries of the site might contain suitable roost sites for bats.
26. However, the PEA carried out in 2019 and in particular the 'walk over survey' was not carried out at a time recognised by Natural England as being appropriate for detecting the presence of Great Crested Newts. Moreover, whilst bats were recognised as likely to be present on the site due to the age of some of the trees on the periphery of the site, no specific bat survey has taken

place in order to inform the design, siting and layout of the proposed development.

27. In terms of Great Crested Newts, whilst there are no water bodies within the site there are ditches and ponds that are in range of the site for Great Crested Newts and evidence has been supplied by the Council, not disputed by the appellant, that the site constitutes suitable terrestrial habitat for this species. Circular 06/2005² sets out at paragraph 99 that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development is established before planning permission is granted.
28. Furthermore, whilst the site walk over did not identify the presence of any protected species it did not constitute a full protected species survey. Therefore, it might not have detected the presence of other protected species that might have been present on the site including reptiles and bats. This reinforces my view that the requirements set out in the Circular in terms of establishing whether any protected species are present on site prior to any development being permitted should be adhered to.
29. I note that the appellant has argued that there will be a net gain in biodiversity brought about by the development, however without knowing whether there are any protected species present on the site and how they might be affected by the proposed development this cannot be judged accurately.
30. Policy ENV4 of the LP Pt1 and Policy DM44 of the LP Pt2 seek to ensure that the impact of development on priority habitats or species is taken into account in decisions. Moreover, development should not result in any net loss of natural assets. Implicit in this policy is that the presence of any protected species which might be present on a development site should be assessed prior to the development taking place. The appeal site is within range of ponds and other watercourses that have the potential to contain Great Crested Newts and it offers a terrestrial habitat suitable for this species. No species-specific surveys have been submitted with the appeal proposal. I therefore find that the appeal proposal is in conflict with this policy as it could harm protected species or their habitat.

Other considerations

The quality of the design

31. I note that the proposal has been considered by the Cheshire West and Chester Design Review Panel. Whilst the panel recognised the innovative way the appellant had approached the siting of a large domestic structure within what they regarded as an important landscape, they also recognised there were considerable planning related challenges. These included significant issues in respect of the Green Belt and open countryside. In particular they appeared not to accept that the scheme would meet the requirements set out in paragraph 55 of the 2012 Framework.
32. These requirements are related to isolated homes in the countryside and are very similar to the requirements set out in paragraph 79 e) of the current

² Circular 06/2005: Biodiversity and geological conservation – statutory obligations and their impact with the planning system.

Framework. However, I have concluded earlier that the appeal proposal is not an isolated home in the countryside as it is close to another house and to the dwellings along the Chester High Road. Therefore, the provisions of this part of the Framework are not applicable to the appeal proposal.

33. I acknowledge that the appeal proposal has adopted an innovative approach to sustainability in order to produce a design which is of a high standard. However, it fails to respect the overall form and layout of the area as it would introduce a new dwelling into an area which has an agricultural/countryside character. This, for the reasons given above would harm this character. As a result, I cannot give great weight to the design as it does not fit in with the overall form and layout of the area.

The proposals for community use of part of the site

34. The appellant has suggested that these benefits can be achieved through the provision of an agreement under Section 106 of the Town and Country Planning Act 1990 (S106 agreement). There has been no completed and signed S106 agreement submitted with the appeal. Therefore, I am not able to take into account any provision it might have included.
35. Furthermore, there is no mechanism in place which would hold and manage the land identified for community use and the details supplied with the appeal show very little evidence of local support for the proposal. Moreover, the appellant has accepted '*that at the time of the refusal the community benefits of the application has some way to go*'.
36. Therefore, the provision use, and design of the proposed community facility appears to be at a very early stage of its development.

Enhanced planting and benefits for biodiversity/ecology

37. I acknowledge the work that has been done by the appellant to develop a plan for new planting on the site, in the absence of surveys designed to detect the presence of protected species on the site it is not clear that the proposal would have a positive effect on biodiversity and nature conservation.

Sustainable energy provision and the use of recycled materials

38. I acknowledge that the energy use would be considerably less than a conventional dwelling and the dwelling is proposed to be constructed from recycled materials. However, most new dwellings are capable of being made more energy efficient through the implementation of new technology and more innovative materials. Moreover, recycled construction materials would be available to others wishing to develop a more sustainable dwelling.
39. I note the efforts the appellant has made in the proposal in order to tackle the energy consumption of the building and to use recycled materials. However, it is difficult to see whether all these benefits, including the installation of new photovoltaic panels, could actually be realised without further harming the openness of the Green Belt in this location.

Benefits of an underground house to the openness of the Green Belt

40. I accept that it is unlikely that the land above the proposed dwelling will be built on. However, other land within the site will not have a dwelling below it and could be the subject of development proposals.

41. Moreover, whilst dwelling that is the subject of this appeal might prevent a further dwelling being proposed above it, this does not prevent the harm that would be caused to the openness of the Green Belt by the appeal proposal itself.

Use of the scheme as a demonstration project

42. I recognise that the proposed dwelling could have a role in helping to promote these aspects of its design and construction. However, it is still located in an area where it would not fit in with the overall form and layout, as explained above. Therefore, it would be more beneficial if any proposed demonstration project was located in an area where it would fit in with its overall form and layout.

Planning Balance and very special circumstances

43. I have found that the development is inappropriate development in the Green Belt as it would introduce a partially subterranean dwelling onto land that is currently agricultural in character. The Framework sets out that inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances.
44. I have also found that the development would harm the openness of the Green Belt. When considering planning proposals substantial weight should be given to any harm to the Green Belt by reason of inappropriateness and any other harm resulting from the proposals.
45. I have also found that the proposal is in conflict with the Policies of the development plan. It would constitute inappropriate development in the Green Belt, would be located away from the main settlements identified in the Policies and not be appropriate to its local context. Furthermore, in the absence of species-specific surveys, the proposal has not demonstrated that it would conserve any protected species that might be present on the site.
46. The appellant has argued that the other considerations concerning, the quality of the design, the proposals for the community use of part of the site, its contribution to the ecology and biodiversity of the area, its energy efficiency, the fact that it is partly underground, its design and techniques used in its construction should weigh in favour of the proposal. For the reasons given above I give these arguments limited weight in this decision.
47. I am required to give substantial weight to any harm to the Green Belt by reason of inappropriateness. Therefore, whilst I have had regard to the arguments put forward by the appellant, I find that they do not outweigh the harm I have found to the Green Belt, nor the conflict with the development plan I have identified. Consequently, the very special circumstances necessary to justify the development do not exist.

Conclusion

48. The appeal is therefore dismissed.

Peter Mark Sturgess

INSPECTOR