
Appeal Decision

Site visit made on 17 January 2022

by Alexander O'Doherty LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th May 2022

Appeal Ref: APP/K3605/W/21/3283365

Chasemore Farm, Bookham Road, Downside, Cobham KT11 3JT

- 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 A Black (Chasemore Farm) against the decision of Elmbridge Borough Council.
 - The application Ref 2019/2640, dated 17 September 2019, was refused by notice dated 30 June 2021.
 - The development proposed is described as, "Construction of sustainable Muck Barn, Implement Barn, All Weather Paddocks, a lake and associated infrastructure".
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This decision is issued in accordance with section 56 (2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes that issued on 10th February 2022.

Decision

1. The appeal is allowed and planning permission is granted for development described as "Construction of sustainable Muck Barn, Implement Barn, All Weather Paddocks, a lake and associated infrastructure" at Chasemore Farm, Bookham Road, Downside, Cobham, KT11 3JT in accordance with the terms of the application, Ref 2019/2640, dated 17 September 2019, subject to the conditions in the attached schedule.

Preliminary Matter

2. Differing to the description of development in the banner header above, the Council's decision notice more accurately describes the development as shown on the supporting plans as, "Two detached barn buildings and four all weather paddocks incorporating fence to a height of 1.35m with associated hardstanding and landscaping". I have used this description in my consideration of the appeal since it best describes the proposed development in precise and concise terms. Additionally, I have considered the proposed lake, which was included in the description provided in the application form (albeit as a typo) and is shown on the relevant plans.

Main Issue

3. The main issue is whether the proposal would be inappropriate development in the Green Belt.

Reasons

4. The National Planning Policy Framework (the Framework) establishes that the construction of new buildings within the Green Belt is inappropriate. There is a

closed list of exceptions to this in paragraph 149 of the Framework. One of which relates to the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it (paragraph 149 b)).

5. This principle is reflected in Policy DM17 of the Elmbridge Local Plan (adopted 2015) (Local Plan) which provides that, amongst other things, in order to uphold the fundamental aims of the Green Belt to prevent urban sprawl and to keep land within its designation permanently open, inappropriate development will not be approved unless the applicant can demonstrate very special circumstances that will clearly outweigh the harm.
6. Part b. of Policy DM17 provides that built development for outdoor sport, recreation and cemeteries will need to demonstrate that the building's function is ancillary and appropriate to the use and that it would not be practical to re-use or adapt any existing buildings on the site and that proposals should be sited and designed to minimise the impact on the openness of the Green Belt and should include a high quality landscape scheme. Although the Framework does not mention these further requirements, this does not mean that Policy DM17 is inconsistent with it, as both Policy DM17 and the Framework presume against new buildings in the Green Belt subject to exceptions, with Policy DM17 merely providing an additional criteria.
7. No concerns have been raised with respect to the proposed 4 all-weather paddocks incorporating a fence to a height of 1.35m with associated hardstanding and landscaping, and the proposed lake. I have no reason to disagree. It is further common ground that the appeal scheme would be appropriate facilities for outdoor sport and recreation.
8. The Framework denotes openness as an essential characteristic of the Green Belt. The openness of the Green Belt has a spatial aspect as well as a visual aspect. 'Open' can mean the absence of development in spatial terms, and it follows that openness can be harmed even when development is not readily visible from the public realm.
9. The proposed structures would be located very close to the existing Isolation Unit and so would not be seen as isolated structures in the landscape. Although the proposed muck barn would be taller than both the Isolation Unit and the proposed Implement Barn, and would have a fairly large footprint, the proposed structures would be set well-back from Bookham Road. New hedge planting would also surround much of them, albeit this would take some time to be fully established. Wider views of the proposed structures would be further restricted on 2 sides by the woodland. Taking account of the scale, footprint, and materials of the proposed structures, when viewed from Bookham Road a wide array of the woodland backdrop would still be visible. Hence, the proposal would have a limited impact on the openness of the Green Belt in visual terms.
10. I have taken account of the quote from the Green Belt Boundary Review¹ document, provided by the Council. The proposed structures would result in built form on site being extended further towards the M25. Although a wide

¹ Elmbridge Borough Council Green Belt Boundary Review Methodology and Assessment, Arup (Issue Rev C) (14 March 2016)

expanse of open space would remain around them the mass created by their height and overall scale would have a limited reducing effect on the openness of the Green Belt in spatial terms. Nevertheless, taking account of the various case law referred to by the appellant², it must be emphasised that it is implicit within paragraph 149 b) of the Framework that some form of impact to the openness of the Green Belt, arising from the construction of new buildings for the provision of appropriate facilities for outdoor sport and recreation, may be allowed for under that paragraph.

11. Furthermore, the word 'openness' is open-textured and a number of factors are capable of being relevant when it comes to applying it. In this regard, I accept the principle demonstrated in appeal decision Ref APP/N5090/W/16/3151579 that relevant factors may include whether the proposed structures are intrinsic or inherently ancillary to the outdoor sporting or recreational activities. Indeed, a requirement for a building's function to be ancillary and appropriate to the use is given in Policy DM17.
12. Chasemore Farm is run as a professional stud farming business. As horse faeces contain dangerous diseases and bacteria, it follows that Chasemore Farm has a specific requirement for a muck management system. Although Chasemore Farm is apparently operating successfully without the structures proposed in this appeal, and the Council has stated that the site has been in operation for over 10 years (which has not been disputed by the appellant), I have no reason to doubt the appellant's assertions that best practice with respect to what constitutes a modern and sustainable professional stud farming business has evolved over the last 10 years.
13. The proposed structures would replace the existing system where regular vehicular trips are made, transporting the muck from the site to a neighbouring farm, where the muck is stored and composted before being returned to the farm. On this basis, the proposals offer a modern and more sustainable alternative to both the existing system and traditional open air muck heaps. Thus, I consider that the structures proposed are ancillary to the activities undertaken at Chasemore Farm which fall within the ambit of paragraph 149 b), and that the proposed structures would meet the identified modernisation requirements.
14. Considering the evidence provided relating to the volume of manure produced at Chasemore Farm, the size and scale of the proposed structures would be commensurate with their proposed use, which includes access for machinery. As such, the proposed facilities would preserve the openness of the Green Belt.
15. Moreover, as the proposed structures would be located near to the existing Isolation Unit, a bank of woodland, and in their wider context amongst broad expanses of open space, they would only cause a limited amount of encroachment into the countryside. Consequently, the proposal would assist in safeguarding the countryside from encroachment, which is one of the 5 purposes of the Green Belt.
16. I therefore find that, taking into account the ancillary nature of the structures proposed in the context of the specific operations presently undertaken at

² Including *R (oao Amanda Boot) v Elmbridge BC* [2017] EWHC 12 (Admin); *Lee Valley Regional Park Authority, R (oao) v Epping Forest DC & Anor (Rev 1)* [2016] EWCA Civ 404; *Europa Oil and Gas Limited v SSCLG* [2013] EWHC 2643 (Admin); *R (oao Samuel Smith Old Brewery (Tadcaster) & Ors) v North Yorkshire CC* [2020] UKSC 3

Chasemore Farm, and the surrounding context, the proposal would not constitute inappropriate development in the Green Belt for the purposes of the Framework and Policy DM17 of the Local Plan. The aims of which I have set out above.

Conditions

17. I have had regard to the conditions suggested by the Council. I have considered them against the advice on conditions set out in the Framework and the Planning Practice Guidance. A condition is necessary, in the interests of clarity and enforceability, setting out the approved plans.
18. To safeguard the character and appearance of the area, I have imposed a condition requiring that the development permitted is constructed in the materials as set out in the application form and on a relevant plan. I have not referred to other materials, as if other materials are required this should be considered through a separate application.
19. Conditions are necessary requiring a Reptile Mitigation Strategy Report and a detailed Landscape and Ecological Management Plan to be approved in writing by the Local Planning Authority, and requiring the development to be carried out in accordance with various ecological reports, to ensure that the development does not result in any adverse impact upon protected species, biodiversity or ecology. The Council's suggested text for condition No 6 in this appeal decision referred to matters of detail which are not required considering the comprehensive scope of the ecological reports referred to in that condition, and therefore those details have been omitted.
20. To reduce flood risk, conditions are necessary requiring details of the design of a surface water drainage scheme and a verification report to be approved in writing by the Local Planning Authority. The Council's suggested text for condition No 7 in this appeal decision referred to matters of detail which the Council can assess when considering the submitted scheme, and therefore those details have been omitted.
21. A condition is necessary to ensure that the potential for any unforeseen ground contamination is appropriately dealt with.
22. Conditions Nos 4, 5, and 7 must be pre-commencement conditions, to ensure that any potential flood risk, which may impact human health, and any potential adverse impacts upon protected species, biodiversity or ecology, are assessed by the Council before development takes place.
23. The appellant has suggested a condition relating to a landscaping scheme but as the proposal would have a limited visual impact on the openness of the Green Belt such a condition would not be necessary.

Conclusion

24. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations, I conclude that the appeal should be allowed.

Alexander O'Doherty

INSPECTOR

SCHEDULE OF CONDITONS

- 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: Site Plan & Details (drawing no. 1129-01 Rev. N), Muck Barn Plan (drawing no. 1129-02 Rev. G), Site Plan & Details (drawing no. 1129-03 Rev. M), Location Plan (1129-05 Rev. A), Location Plan - Site Options (drawing no. 1129-08), Proposed Roof Plans (drawing no. 06), Existing Site Plan & Proposed Paddock Fence Details (drawing no. 07), Lake Section A-A (drawing no. CF.003 Rev. R1), Lake Section B-B (drawing no. CF004 Rev. R1), Lake Section C-C (drawing no. CF005), Lake Section D-D (drawing no. CF006 Rev. R1), Lake Section E-E (drawing no. CF007 Rev. R1), Lake Site Plan with Bank Treatment Detail (drawing no. CF017 Rev. R1), Stud Plan Showing Amended Lake (drawing no. CF018).
- 3) The external surfaces of the development hereby permitted shall be constructed in the materials set out in Part 7 of the Application Form (dated 17 September 2019) and as shown on the approved plan: Site Plan & Details (drawing no. 1129-01 Rev. N).
- 4) Prior to the commencement of the development hereby permitted, a detailed Reptile Mitigation Strategy Report shall be submitted to and approved in writing by the Local Planning Authority. The report shall demonstrate that the development would not result in loss of reptile habitat or killing and injuring of reptiles. The development shall be carried out and thereafter maintained and managed in accordance with the approved Reptile Mitigation Strategy Report.
- 5) Prior to the commencement of the development hereby permitted, a Landscape and Ecological Management Plan (LEMP) should be submitted to and approved in writing by the Local Planning Authority. The LEMP should include details of proposed impact avoidance and mitigation for the protected species. In addition, the LEMP should include details of enhancement measures and adequate details of the following:
 - Description and evaluation of ecological features to be managed and created;
 - Specifications, number and location of proposed ecological features, where appropriate;
 - Aims and objectives of management;
 - Appropriate management options to achieve aims and objectives;
 - Prescriptions for management actions;
 - Preparation of a work schedule for securing biodiversity enhancements in perpetuity;
 - Details of the body or organisation responsible for implementation of the LEMP;

- Ongoing monitoring and remedial measures; and
- Details of legal/funding mechanisms.

Development shall be carried out and thereafter maintained in accordance with the approved LEMP.

- 6) Development shall be carried out in accordance with the Recommendations within the Preliminary Ecological Appraisal by aLyne Ecology (Version 002 dated 27 May 2020); the Reptile Survey Report by aLyne Ecology (Version 001 dated 3 June 2020); the Ecohydrological Impact Review at Down Wood, Chasemore Farm by JBA Consulting (Ref: Q21-0488-L-L001-1 dated 27 April 2021); and in accordance with the content of the Letter from Sarah Lyne of aLyne Ecology dated 21 October 2020. The development shall thereafter be managed and maintained in accordance with the recommendations as set out in those documents.
- 7) Prior to the commencement of the development hereby permitted, details of the design of a surface water drainage scheme shall be submitted to and approved in writing by the Local Planning Authority. The design must satisfy the SuDS Hierarchy and be compliant with the national Non-Statutory Technical Standards for SuDS, the National Planning Policy Framework and the Ministerial Statement on Sustainable drainage systems (dated 18 December 2014). Development shall be carried out and thereafter managed in accordance with the approved details.
- 8) Once the surface water drainage system has been implemented, a verification report carried out by a qualified drainage engineer shall be submitted to and approved in writing by the Local Planning Authority. This must demonstrate that the surface water drainage system (referred to in condition 7, above) has been constructed as per the agreed scheme (or detail any minor variations), provide the details of any management company and state the national grid reference of any key drainage elements (surface water attenuation devices/areas, flow restriction devices and outfalls), and confirm any defects have been rectified.
- 9) If, during development, ground contamination is found to be present at the site it must be reported immediately to the Local Planning Authority. Development must be halted and an investigation shall be agreed, in writing, with the Local Planning Authority. The investigation shall be carried out by a competent person, to assess the condition of the land with respect to contamination. In the event that remediation is required, a written method statement detailing how the identified contamination shall be dealt with and risks mitigated shall be submitted to the Local Planning Authority for written approval. The agreed remediation method statement shall be implemented prior to the development being brought into use. Upon completion of the remediation, and prior to the development being brought into use, a written report providing verification that the required works with regards to remediation of contamination have been carried out in line with the agreed method statement shall be submitted to the Local Planning Authority for written approval. The verification shall be carried out and reported by an independent, competent person, stating that remediation was carried out in accordance with the approved remediation scheme and that the site is suitable for the permitted end use.