



Appeal Decision

Site visit made on 18 October 2022

by R J Jackson BA MPhil DMS MRTPI MCMi

an Inspector appointed by the Secretary of State

Decision date: 31 October 2022

Appeal Ref: APP/X0415/W/22/3294751

Shardeloes Farm Equestrian Centre, Cherry Lane, Woodrow HP7 0QF

- 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 Williams against the decision of Buckinghamshire Council - East Area (Chiltern).
 - The application Ref PL/21/2316/FA, dated 30 June 2021, was refused by notice dated 7 October 2021.
 - The development proposed is an agricultural track.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council refused planning permission for four reasons with the last stating that insufficient information had been submitted in relation to ecological matters. At the appeal stage the appellant submitted an ecological appraisal. However, the Council indicated that this did not resolve its objection on this issue.
3. The application form did not indicate the surfacing materials for the proposal. At the appeal stage this was clarified so that it is proposed "to construct the track using permeable paving which will then give the effect of a green pathway". As consultation took place on these clarified materials, and this could have been secured through a planning condition, I have considered the proposal on this basis.

Main Issue

4. The main issues 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 the openness of the Green Belt;
 - the effect on heritage assets and the settings of heritage assets;
 - the effect on the character, appearance and scenic beauty of the area being within the Chilterns Area of Outstanding Natural Beauty (the AONB);
 - whether there is sufficient information to assess the effect on ecology; and

- 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

5. The appeal proposal for an agricultural track would run in a predominantly east-west direction to the south of and parallel with the A413, although it would follow the existing ground level. At the eastern end it would join with an existing metalled way and at the western end would have a north-south element.

Whether inappropriate development

6. The site lies in the Green Belt. Policy GB2 in the Chiltern District Local Plan (the Local Plan), which was adopted in 1997, indicates that most development in the Green Belt is inappropriate. The latest version of the Framework was published in 2021. Paragraph 219 of the Framework indicates that existing policies should not be considered out-of-date simply because they were adopted prior to the publication of the Framework. Due weight should be given to development plan policies according to their degree of consistency with the Framework. In this case the Local Plan was prepared on the basis of previous national guidance and the Framework represented a change in policy. Policy GB2 pre-dates the publication of the Framework and is not fully consistent with it. I consider that it is appropriate to utilise the policies in the Framework in assessing whether the proposal represents inappropriate development.
7. Paragraph 150 of the Framework indicates that certain forms of development are not inappropriate development in the Green Belt provided that they preserve openness in the Green Belt and do not conflict with the purposes of including land within it. Included within these is 'engineering operations'. The parties agree that the provision of an agricultural track represents an engineering operation and I agree. Thus, whether it is inappropriate development depends on an analysis of whether it would affect openness and the purposes of the Green Belt.

The effect on openness and purposes

8. Openness has two dimensions, spatial and visual. I will discuss the visual dimension later in this decision.
9. Effectively, the proposal would be created by removing the topsoil and upper layers of the ground and then lay the base and surface of the track. Although the land is not flat, none of the gradients are steep and it is likely that the overall ground profile would remain. This would not affect openness. However, in use vehicles would traverse the route affecting to a limited extent spatial openness. While it is possible that they might utilise the route at present on the existing grass and vegetation, it seems to me the point of providing a track would be to make it more commodious and it would be likely to be used more frequently. Therefore, there would be a limited loss of spatial openness from the increased use.
10. In relation to the purposes of the Green Belt only one would be potentially affected: "to assist in safeguarding the countryside from encroachment". In my view through physical development there would be some encroachment, but in my view, this would be very limited.

The effect on heritage assets

11. The appeal site lies within the Grade II* Shardeloes Registered Park and Garden (the RPG) and the Shardeloes Parkland Conservation Area (the Conservation Area). It also lies in proximity to a number of listed buildings, in particular the Grade I listed Shardeloes house, the Grade II Entrance Gate and Screen to Shardeloes, Grade II Stable Block, Grade II Summer House, and Grade II Lodge.
12. Where the proposal would affect the setting of a listed building and a conservation area, I have had special regard to sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended).
13. Policy CA1 of the Local Plan indicates that permission will not be granted for new buildings in a Conservation Area which do not preserve or enhance the character or appearance of that Area. Policy CA2 indicates the development that does not preserve or enhance important views within or out of a Conservation Area will be refused. Policy LB2 indicates that permission will not be granted for development in the vicinity of a listed building which would adversely affect its setting. It seems to me that none of these policies is fully consistent with the Framework in that they do not include a balancing mechanism for considering any harm. I therefore will predominantly utilise the policies in the Framework in considering this issue.
14. Policy CA5 of the Local Plan indicates that any tree in sound condition which makes a significant contribution to the character and appearance of a Conservation Area should be retained and its amenity value protected. This policy is consistent with the aims of the Framework and can be given full weight.
15. Paragraph 199 of the Framework indicates that great weight should be given to the conservation of a heritage asset and this is irrespective of the level of harm that may occur. It is also emphasised that the more important the asset, the greater the weight should be. Paragraph 200 of the Framework indicates that any harm to the significance of a heritage asset, or from development within its setting, should require clear and convincing justification.
16. The RPG is the more extensive of the two designations covering the parkland. It extends to both sides of the A413 and further south to the A404, while the Conservation Area is a smaller area only extending between the A413 and a short distance to the south of Shardeloes house.
17. The significance of the RPG for the purposes of this appeal is that it represents a planned parkland that grew up in the seventeenth and eighteenth centuries. Elements were designed by notable practitioners including Charles Bridgeman, Nathaniel Richmond and Humphrey Repton, and it is clear from early maps that elements of the original planting structure remain today. The northern parkland, which includes the appeal site, includes the bottom of the River Misbourne valley and the extensive dammed lake. It is dominated by views to and from the house, which is located towards the top of the south side of the valley, although these views are often foreshortened by woodland. The A413 is a major feature in the RPG, but this route is also an historic feature since the original Aylesbury to Amersham turnpike was shown in a view from 1739, even if it has been upgraded in recent times. The main difference today is that the A413 is wider, being a dual carriageway, and clearly has been levelled since

ground levels on the southern side undulate both above and below the current road level. The area to the north of the former turnpike, which rises up to form an enclosure to the north for views from the house, was incorporated into the parkland through a design by Repton, although never fully realised.

18. The significance of the Conservation Area for this appeal relates to the connection between Shardeloes house and the valley floor and lake. The area between the house and lake is closely grazed, while beyond the lake is currently utilised as a meadow. The Council's Conservation Area Statement notes that the parkland is fairly well-preserved which has survived with little change to its plan since it was created. Trees and woodlands are seen as fundamental to the character of the Conservation Area with a three-fold importance, being attractive in their own right, demonstrating the history of the area and breaking the overall area into a series of sections.
19. The significance of Shardeloes house for the purpose of this appeal relates to its formal front façade with nine bays with a central 3-bay Portland stone portico with Corinthian columns and pilasters facing over the northern parkland. The western wing also addresses the parkland to the north.
20. The route as shown on the application drawings would cut through an existing small clump of woodland. This has been in existence since at least the mid-eighteenth century as it can be seen in the dated plans on the cover of the Conservation Area Statement. The loss of trees would harm the character and appearance and thus significance of both the Conservation Area and the RPG. It is not sufficient for the appellant to indicate that the route would be through a gap within the clump slightly to the south since firstly, this is not what is shown on the plans and secondly, without an arboricultural assessment it cannot be ascertained what effect it may have on adjoining trees.
21. There are already a number of ways throughout the northern section of the parkland in addition to the formal entrance route. Some of these are surfaced in grass but others are clearly used more intensively since the grass and topsoil has been worn away exposing the underlying geology. When completed the proposed way would largely assimilate into the parkland and would appear as another similar route. Given the distances involved there would be no harm to the setting of Shardeloes house from the physical structure of the proposal which means that the setting of the house would be preserved. Any agricultural vehicles utilising the way would appear as part of the normal maintenance of the parkland.
22. I am also satisfied that due to the distance and intervening vegetation between the proposal and the Entrance Gate and Screen to Shardeloes, Stable Block, Summer House, and Lodge that the proposal would have no effect on their individual settings which would each therefore be preserved.
23. However, notwithstanding the preservation of the settings of the listed buildings the proposals through its effect on the important clump of woodland would have a harmful effect on the RPG and the Conservation Area. In each case the effect should be judged against the effect on the heritage asset as a whole.
24. The Planning Practice Guidance indicates (Reference ID: 18a-018-20190723) that in general terms, substantial harm is a high test. It gives, as an example, an important consideration would be whether the adverse impact seriously

affects a key element of the heritage asset's special interest. It is the degree of harm to the asset's significance rather than the scale of the development that is to be assessed.

25. Here I consider that the effect on the trees would represent less than substantial harm although due to the high historic importance of this clump of trees within the overall landscape this would fall towards the upper end of this categorisation. That being the case in line with paragraph 202 of the Framework, this harm should be weighed against the public benefits of the proposal. I will consider that below.
26. Consequently, while the proposal would comply with Policies CA2 and LB5 of the Local Plan it would be contrary to Policies CA1 and CA5 as set out above, even if I have given the former of these lesser weight.

The effect on the AONB

27. The appeal site lies within the AONB. Paragraph 174 of the Framework indicates that planning decisions should contribute to and enhance the natural environment by protecting valued landscapes. Paragraph 176 goes on to indicate that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs.
28. Policy GC12 of the Local Plan indicates that any development which will detrimentally affect the character of the River Misbourne, particularly where the development impinges visually on the riverside landscape will not be permitted. Policy LSQ1 states that development should conserve and, where appropriate and practicable, enhance the special landscape character and high scenic quality of the AONB. The policy sets out various criteria to be used in assessing whether a development would do that. Insofar as is relevant to this proposal this includes the siting and visual impact of the development in relation to existing screening vegetation and landscape features with reference to screening effect. New landscaping may also be required.
29. The Council has prepared a Landscape Character Assessment for the county and within this the appeal site lies within the Misbourne Upper Chalk River Valley. The key characteristics include that it is a shallow chalk valley, with gently sloping rolling valley sides. The post-Medieval parkland at Shardeloes is mentioned with the house noted as a visually prominent feature. The function of the valley as a travel corridor is noted as is the tranquil, unspoilt and 'rural' character.
30. The Landscape Character Assessment identifies the strength of character and intactness of the Misbourne Upper Chalk River Valley as moderate on the basis that, despite the strong sense of key characteristics, the presence of the busy and noisy A431 reduces the intactness of the landscape character. Included within the Landscape Guidelines for this area is to conserve the mosaic of land use and cover and to conserve the Shardeloes park for its setting and historical landscape features.
31. In this regard, the effect on the landscape and thus the scenic beauty of the AONB closely follows my consideration of the effect on the RPG. Putting to one side for the moment the effect on trees, during construction there would be a moderate effect on the landscape, but once the landscape had recovered this would be minimal as the new accessway would be located at ground level.

32. There are a number of public rights of way that cross the parkland. However, due to the topography and intervening vegetation once the landscape had recovered there would be at worst only glimpses of the proposed way, and this would have no material effect on the scenic beauty of the AONB for visual receptors. It would similarly not affect the setting of the River Misbourne.
33. However, the proposed effect on the clump of trees would be significant in that it would materially reduce part of the historic parkland landscape and thus, the scenic beauty of this part of the AONB. This clump forms part of the inherent character of the scenic qualities of this part of the AONB landscape and the loss of any part of it would be significantly harmful.
34. Consequently, the proposal would be harmful to the character, appearance and scenic beauty of the AONB. It would therefore be contrary to Policy LSQ1 of the Local Plan. It would also, by not contributing to or enhancing the natural environment, be contrary to paragraph 174 of the Framework.
35. Reverting back to the effect of the proposal on visual openness in the Green Belt, I conclude that there would be no harm since the harmful landscape effects relate solely to the effect on trees rather than on openness, and openness relates to the lack of development not of vegetation.

Ecology

36. As set out above, the Council refused the application on the basis that it considered it had insufficient information to assess the effect on ecology. At the appeal stage, the appellant submitted an Ecological Appraisal which concluded that while the site provides some suitable terrestrial habitat for great crested newts (GCNs) and for common reptiles no further surveys were necessary but a qualified ecologist should supervise works, and work should stop if necessary.
37. Policy NC1 of the Local Plan and Policy CS24 of the Core Strategy for Chiltern (the Core Strategy) indicate that permission will be refused where it will significantly harm nature conservation interests of acknowledged importance and development should conserve and enhance biodiversity. Paragraph 180 of the Framework indicates that when determining applications if significant harm to biodiversity resulting from development cannot be avoided then it should be adequately mitigated, or as a last resort, compensated for, then permission should be refused.
38. The appeal site is identified as part of a Biodiversity Action Plan habitat of 'Woodpasture and Parkland'. However, the Ecological Report submitted with the appeal does not mention this and therefore I cannot be certain that this has been taken into account.
39. As well as the main lake the Ecological Appraisal refers to two small ponds approximately 780m west and 870m southwest of the appeal site. However, the Council has demonstrated that there are five additional ponds that are within 500m of the appeal site with connectivity between the ponds and the appeal site through grassland, hedgerow and woodland. These have not been assessed.
40. Circular 06/2005 'Biodiversity and Geological Conservation – Statutory Obligations and their impact within the Planning System' in paragraph 99 makes clear 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 a planning permission is granted. It continues that resolving matters should only be left to planning conditions in exceptional circumstances.

41. Given that the additional water bodies have not been surveyed for the presence or otherwise of GCNs I can only conclude that, at present, I have insufficient information to ensure that this protected species would not be harmed. This is not a case, to my mind, where exceptional circumstances would apply to allow me to impose a planning condition.
42. The Council has also referred to paragraph 174 of the Framework which references biodiversity net gain. The same paragraph in the Framework references development "minimising impacts on biodiversity" which would indicate a neutral effect would meet these provisions. However, since the impacts of the proposal are not known, it is not possible to ascertain whether those effects would be neutral.
43. Consequently, I can only conclude that I have insufficient information to allow me to conclude that the proposed development would not have an adverse effect on ecological interests and thus biodiversity. As such the proposal would be contrary to Policy NC1 of the Local Plan and Policy CS24 of the Core Strategy as set out above.

Other considerations

44. The appellant has indicated that the provision of the track would facilitate the maintenance of the field. However, the only evidence I have in front of me is that it is used as a wildflower meadow and this needs only minimal maintenance. Saying that there is a 'strong likelihood' that the field may be farmed differently does not provide sufficient certainty that this will occur or that future farming practices would require this track. On this evidence I can only give the need for the track very limited weight.
45. The appellant has set out three potential other considerations, promoting and retaining the rural economy, integration with the rural landscape leading to protection and enhancement and the conservation and enhancement of natural and historic environment. As can be seen from my conclusions above I do not agree that this will be the case and they do not weigh in favour of the grant of planning permission.

Planning Balance

46. The proposal would represent inappropriate development in the Green Belt as while it would be for an engineering operation it would have a harmful effect on openness and would conflict with one of the purposes for the Green Belt. Paragraphs 147 and 148 of the Framework make clear, inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances and substantial weight should be given to any harm to the Green Belt. I give it that weight.
47. Furthermore, the proposal would result in less than substantial harm to both the RPG and the Conservation Area and I have not been directed to or identified any public benefits from the proposal. I give this harm special consideration and great weight.

48. The proposal would also result in harm to the character, appearance and scenic qualities of this part of the AONB through the loss of trees which form an integral part of the landscape. I give this great weight.
49. I have also concluded that I have insufficient information to allow me to conclude that the proposal would not have an adverse effect on biodiversity.
50. Taken together I find that the other considerations in this case do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist.

Conclusion

51. While the proposal would comply with some parts of the development plan it would conflict with others. Overall, I conclude it would not comply with the development plan taken as a whole.
52. The proposed development would be contrary to the development plan and there are no material considerations that outweigh this conflict. Consequently, with reference to Section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended), the appeal should be dismissed.

RJ Jackson

INSPECTOR