



Appeal Decision

Site visit made on 15 November 2022

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2022

Appeal Ref: APP/M0655/W/22/3301539

Pool Farm, Pool Lane, Warrington WA13 9BW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by GP Broadsmith & Son Ltd against the decision of Warrington Borough Council.
 - The application Ref 2021/39151, dated 8 April 2021, was refused by notice dated 5 April 2022.
 - The development proposed is 'Outline planning permission for the erection of up to nine affordable residential dwellings including access with all other matters reserved for subsequent applications (revised application to 2019/35381)'.
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Decision

1. The appeal is dismissed.

Procedural and Preliminary Matters

2. The application was submitted in outline with all matters reserved save for the detail of the proposed access to the site and I have determined the appeal on that basis. I have had regard to the location plan showing the position of the access point, the detailed design of a junction with Pool Lane, and proposed visibility improvements at the junction of Pool Lane with Warrington Road. As the layout of development is reserved for a later time, the layout shown on the block and access plans have been considered as illustrative only.
3. For the purposes of the planning application, the appellant completed a Certificate B under Article 14 of the Town and Country Planning (Development Management Procedure) (England) Order 2015. However, the appellant has confirmed that Certificate A is now applicable for the purposes of the appeal.
4. Since the time of the Council's decision, the appellant has introduced additional information in support of the proposed development. This includes a statement and assessment of the viability of an existing dairy business being undertaken at Pool Farm. The Procedural Guide to Planning Appeals – England states that the appeal process should not be used to evolve proposals and is clear that revisions intended to overcome reasons for refusal should normally be tested through a fresh application. I have had regard to the Wheatcroft Principles, the interests of fairness and the degree of engagement of all parties with the issue of the new information. Although the Council has had an opportunity to respond to it, others haven't. I have therefore determined the appeal on the basis of the information and plans that were before the Council when it made its decision and on which all parties were consulted.
5. The Proposed Submission Version Local Plan has been considered at initial examination which completed in October this year. However, the plan remains

subject to amendment and further scrutiny. The details of the policies and any amendments or outstanding objections are not before me. Accordingly, I find it is a matter of minimal weight in the appeal and there is no dispute between the main parties on this matter.

6. A completed deed of planning obligation made pursuant to s106 of the Town and Country Planning Act 1990 (as amended) (the Act) has been submitted with the appeal. It includes obligations to come into effect if planning permission is granted. I return to this matter later in my decision.
7. The appeal property lies close to Statham Lodge, a Listed Building. The main parties agree that the proposed development would not have an adverse effect on the setting of the building. Pursuant to the duty under s66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, having considered the proposal and visited the site I also agree. This is because of the distance between the sites and the visual containment of the lodge due to a well-defined boundary and tree coverage. Accordingly, it is my view that the development proposed would preserve the setting of the designated asset and I shall make no further reference to this matter.

Background and Main Issues

8. The site lies within the Green Belt. There is no dispute between the main parties that the proposal would constitute an inappropriate form of development in the Green Belt. Having visited the site and had regard to the evidence before me, I concur with that view. Accordingly, the main issues are:
 - the effect on the openness of the Green Belt
 - 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

Green Belt openness

9. The Government attaches great importance to Green Belts, the essential characteristics of Green Belts are their openness and their permanence. Section 13 of the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
10. Policy CS5 of the Warrington Borough Council Local Plan Core Strategy [2014] (the LPCS) confirms that the extent of the Green Belt in the borough will be maintained to serve its recognised purposes. It verifies that development in the Green Belt will be considered in accordance with relevant national policy.
11. The existing site is mainly an area of rough grass with a large tree and vegetation growth towards the front of the site. The scheme proposes the relocation of the existing access on to Pool Lane which currently serves commercial premises to the north of the site. The site includes an unmade rural pathway identified as a continuation of Oldfield Road along its southern boundary. The path is lower lying and is delineated by a hedge line and trees. It extends to meet a footway within the settlement area to the east.

12. To the south of the path is a short row of residential properties and an open field. Beyond the eastern hedged boundary lies open rough ground. The site is flanked to the north by the converted rural buildings in commercial use, an informal storage area and residential property associated with the appellant's agricultural enterprise.
13. Aside from a driveway and some minor fencing, the site is substantially devoid of development. Buildings in the locality are clustered with intervening open spaces typical of a countryside setting. The introduction of up to 9 dwellings with associated amenity and parking spaces would bring about a significant change in the character and layout of development in the locality.
14. The houses would introduce a large amount of new development on to a site where there is currently very little. Any effects on the spatial openness of the locality would be dependent on the final design and arrangement of the scheme. However, as one indicated to be of 2-storey buildings, I have little doubt that there would be a significant adverse effect on the spatial aspect of openness.
15. Longer distance views of the site would be limited because of tree cover in the area. However, views from Pool Lane, the Oldfield Road path and paths crossing the adjacent field to the east would see a consolidation of the existing distinct groups of buildings on this part of the lane. This amalgamation would result in a moderate loss of visual openness to the Green Belt.
16. In support of the proposals the appellant highlights that the site was identified as having a 'weak contribution' measured against the Green Belt purposes in the Council's recent Green Belt Assessment. However, as an exercise carried out on an individual site basis, this is a matter of limited weight in the context of the wider assessment of effects on openness and in relation to the strategic aims of Green Belt policy. Whilst I have had regard to it in my assessment of harm, it does not remove the requirement to attribute substantial weight to it.
17. I also note the supporting reference to an Inspectors conclusion of the likely effects on openness of a development of a Green Belt site in Colney Heath¹. However, little detail of that scheme has been provided to enable me to draw similarities or conclusions otherwise. It is not therefore a strong argument in favour of a proposal identified to cause harm.
18. For the reasons above, in addition to the definitional harm of inappropriate development, I find the proposal would cause significant harm to the openness of the Green Belt.

Other considerations

19. In support of the proposal, the appellant highlights the fact that the Council is unable to demonstrate a 5-year housing land supply and has experienced an under-delivery of housing in recent years. This includes affordable housing. The appellant contests that whilst there are downward revisions to projected housing figures produced in support of the emerging local plan, the relevant proportion of affordable need has increased. This, or the affordable housing need in the Lymm area being described as 'acute', are not contested by the Council.

¹ APP/B1930/W/20/3265925

20. Although the appellant's evidence highlights a substantial shortfall in the Lymm area, there is little to demonstrate that this is derived from the rural area such that the proposal could be necessarily justified as a rural exceptions site as referred to in Paragraph 78 of the Framework. Such sites are required to demonstrate evidence of a need derived from either current residents, or have an existing family or employment connection². Furthermore, the Green Belt location would exclude any specific support for a First Homes development or the application of the tilted balance in Paragraph 11 of the Framework.
21. The appellant forwards the scheme as one designed to provide for key workers. Under the Affordable Homes Update Written Ministerial Statement³ key workers meeting first-time buyer definitions, could be prioritised by the Council. Although there is little evidence before me to demonstrate that there is a specific key worker need in the locality of the site, as a type of affordable accommodation lying in close proximity to the services and facilities in Lymm such homes would nevertheless be a significant benefit of the scheme.
22. In support of the proposal for affordable housing the appellant has provided a unilateral undertaking under s106 of the Act. However, the document only requires the submission and implementation of a Housing Scheme and restriction of occupancy to Eligible Persons. In the requirement to submit the Housing Scheme there is no mechanism for the Council to provide input into the detail or agree it. It would be wholly left for the appellant or any successor in title to determine. Moreover, 'Eligible Persons' is undefined. Although reference is made to Qualifying Persons, including an extensive range of self-defined 'Key Workers', even if that were to be accepted, there is no defining requirement that they would be restricted to those whose needs are not met by the local housing market.
23. Accordingly, there is no mechanism to secure the homes as affordable in perpetuity. There are no arrangements for managing the affordable housing and little detail of nomination rights by either the Council, a Registered Provider (RP) or other housing manager. Although the appellant has provided a statement of interest by an RP, this only amounts to a confirmation of local affordable housing need.
24. I note the appellant's suggestion that the format would allow a degree of flexibility once the site is sold. However, I find the undertaking would fail to sufficiently detail the nature of the affordable housing delivery, occupancy or its management. It would not provide certainty or a suitable and binding basis to deliver local need affordable housing in perpetuity. Moreover, as a completed deed, there is no mechanism to amend it or seek alternative wording within the scope of this appeal.
25. Although the delivery of affordable homes of a type meeting local needs would attract significant weight in a manner consistent with a previous appeal⁴ decision referenced by the appellant, in the absence of a comprehensive mechanism to secure the terms of occupation and as affordable units in perpetuity, I find the weight of the benefit therein is considerably diminished.

² Planning Practice Guidance Para.12 Ref ID 67-012-20210524

³ Ministry of Housing, Communities and Local Government, Lord Greenhalgh 24 May 2021

⁴ APP/M0655/W/18/3200416

26. I note the finding in appeal APP/M0655/W/21/3271800 referred to me by the appellant. Here weight was given to all residential development types in a Green Belt location. Although that scheme was found not to be inappropriate development in the Green Belt, nevertheless, the proposal would contribute to general housing delivery and the modest amount of housing would be entitled to modest weight in a context of undersupply.
27. The site has been proposed for housing through the local plan procedures and receives support from the local Parish Council for affordable housing use. However, as it has not been re-allocated, this, or the proposed allocation of an adjacent site in an emerging plan, are not matters in favour of the proposals at the current time. They do not change the Green Belt status of the land.
28. I acknowledge that sites developed solely for affordable units would require more limited land take for their delivery in comparison to affordable units provided in association with market-led schemes. This could preserve the extent of the Green Belt elsewhere. Whilst the argument could have some merit, pursuant to my finding in relation to securing the detail of the homes as affordable units, the weight to be attributed to it is limited.
29. I recognise that as a small, underused site unsuitable for commercial agricultural use, a willing developer could build the site out quickly. Subject to an upgrade of the Oldfield Road path surface to provide inclusive accessibility to amenities in Lymm and accessibility to the countryside for others, these aspects of the development would be moderate benefits.
30. The sale of the land could support the existing rural based business at Pool Farm. As a business stated to have been subject to pressures from reducing trends of dairy product consumption, the effects of the Covid-19 pandemic and reduction in subsidies due to Brexit, the appellant states that this would allow further investment without financial risk to the enterprise. This could help to maintain existing jobs and a continuity in supporting community events and agricultural training.
31. The Framework supports the sustainable growth and expansion of all types of business in rural areas. However, the proposed use of the land would be unrelated to the farming activities. In the absence of detailed financial projections and costs in conjunction with a proposed business plan for the dairy unit, it is unclear whether the release of the land for development would be a sustainable approach to supporting it. Whilst I have little doubt that the sale of the land would provide an opportunity to invest, in the substantial absence of evidence to justify the quantum of necessary development, the benefit therein is limited to only moderate weight.
32. I acknowledge that the construction and occupation of the dwellings would contribute to the wider economy through supporting construction jobs and increasing local spend. As a development of limited scale, this benefit is also limited in comparison to the wider Lymm area economy.
33. According to the appellant, a proposed commuted sum to achieve biodiversity net gain against losses that would occur on the appeal site would deliver a 20% gain. This would represent a 100% increase over the 10% stipulated in the Environment Act 2021, which is yet to take force.

34. Notwithstanding that biodiversity enhancements are a stated aim of the Framework, or that the Council have declared climate and ecological emergencies, I am not directed to a policy requiring the elevated level of enhancement suggested by the appellant. Policy QE6 of the LPCS only requires the mitigation and compensation of identified adverse impacts.
35. As a proposal included in the obligation under s106 of the Act, it would conflict with Regulation 122 of the Community Infrastructure Levy Regulations 2010 which makes it unlawful for any planning obligation to be taken into account as a reason to grant planning permission if it does not meet the 3 tests set out in the Regulation. The enhanced level of provision would not be necessary to make the development acceptable in planning terms. Although I recognise that any biodiversity enhancement would be a benefit, it cannot be secured in the manner proposed and cannot therefore be taken into account. As with the provisions relating to affordable housing, which must also be fatally discounted, this is not a matter which could be duly amended within the scope of the appeal to rectify it. It is therefore a matter of negligible weight in the planning balance.
36. I note some local concerns in relation to the highway implications of the proposed development. Although Pool Lane has limited width at various points along its length there is sufficient intervisibility and opportunities for vehicles to pass. The limited number of additional vehicles would not have a significant impact on highway capacity in the locality.
37. I note the frustrations expressed by the appellant in relation to the level of communication from the Council leading up to this appeal. However, this is not a matter for the appeal.

Planning Balance and Conclusion

38. The proposal would amount to inappropriate development in the Green Belt. The Framework states that inappropriate development is, by definition, harmful to the Green Belt and that substantial weight should be given to that and any other harm to it. The proposal would also cause harm to its openness.
39. For the reasons stated above, I find that the considerations presented by the appellant, including those in relation to affordable housing delivery, biodiversity net gain and the benefits to an existing rural business, amongst others, when taken individually or together, do not outweigh the totality of the identified harm to the Green Belt. Consequently, the very special circumstances necessary to justify granting planning permission do not exist.
40. The proposal would conflict with Policy CS5 of the LPCS and the Framework read as a whole. There are no other material considerations to indicate a decision otherwise than in accordance with the development plan. I therefore conclude that the appeal should be dismissed.

R Hitchcock

INSPECTOR