



Appeal Decision

Site visit made on 6 February 2023

by Ian Radcliffe BSc(Hons) MRTPI MCIEH DMS

an Inspector appointed by the Secretary of State

Decision date: 14 February 2023

Appeal Ref: APP/R0660/W/22/3306297

1 Rectory Croft, Church Lawton, Stoke-on-Trent ST7 3FE

- 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 Graveney against the decision of Cheshire East Council.
 - The application Ref 22/0108C, dated 3 January 2022, was refused by notice dated 22 June 2022.
 - The development proposed is the change of use of unused land at the rear of the property to a garden with a path across to reduce the gradient, the erection of a greenhouse and potting shed and the creation of a pond.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The proposed development commenced prior to the making of the planning application. However, since then works have been carried out to largely return the site to an undeveloped state.
3. The description of development in the heading above is based on that used on the planning application form. In Part E of the appeal form it is stated that the description of development has not changed but, nevertheless, a different wording has been entered. Neither of the main parties has provided written confirmation that a revised description of development has been agreed. Accordingly, I have based the description of the development on the one given on the original application.
4. The description of development on the planning application form included wording that is not a description of development, such as the types of planting proposed and the personal circumstances of the appellant's household. In the description of development used in the header above, I have therefore deleted these phrases.
5. Since the planning application was determined by the Council the saved Congleton Borough Council Local Plan policies quoted in the decision notice have been replaced by the Cheshire East Local Plan Site Allocations and Development Plan Policies Document (SADPD). I have determined the appeal on this basis.

Application for costs

6. In the appellant's appeal statement reference was made to the costs incurred in reinstating the land following the Council's refusal notice and a list of related expenditure was attached. During the appeal process the appellant was contacted and advised that this did not constitute an application for costs that could be

accepted. He was referred to government guidance on the matter in the event that he wished to submit an application. However, nothing further was received.

Main Issues

7. If the appeal was allowed and permission was granted for the change of use of the appeal site to a residential garden, the features listed in the description of development could be carried out under permitted development rights and would not require planning permission. On this basis the main issues in this appeal are:
- whether the proposed change of use of land to a garden is inappropriate development in the Green Belt for the purposes of development plan policy and the National Planning Policy Framework ('the Framework');
 - the effect of the proposal on the character and appearance of the area; and,
 - if the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to very special circumstances necessary to justify the development.

Reasons

Whether inappropriate development

8. The appeal site is a fenced area of grassland to the rear of the back garden serving the house at 1 Rectory Croft. In conjunction with similar land to the rear of houses to the east it serves to prevent the settlement in which No 1 is located encroaching into the open countryside.
9. On the basis of what I have read and seen, it appears that the change of use of the appeal site to a garden commenced before work took place to revert it back to grassland. Now only a path with a loose surface across part of the site remains.
10. Paragraph 150 of the Framework advises that material changes in the use of land do not constitute inappropriate development in the Green Belt, provided that they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it. I consider that the most relevant purpose in this case relates to safeguarding the countryside from encroachment.
11. Once undeveloped open countryside becomes a garden its appearance will change through planting, hard landscaping such as rockery or paving and the erection of structures such as greenhouses, sheds or children's climbing frames. If permission was granted for the proposed change of use, a condition preventing hard landscaping, outdoor buildings and other domestic paraphernalia could not be used to control development on the site because it would fail the test of reasonableness. Such development, located next to Old Knutsford Road, would be readily visible in public views from the highway via the field gate and, in the colder months of the year when the boundary hedge is not in leaf, through the roadside hedge. I therefore find that the proposed change of use, both visually and spatially, would fail to preserve openness and would encroach into the countryside.
12. For the reason given above, the proposal would therefore be contrary to paragraph 150 of the Framework. It would also be contrary to policy PG3 of the Cheshire East Local Plan Strategy ('Local Plan') which, by virtue of the Local Plan pre-dating the

current version of the Framework, does not include material changes in the use of land as a form of development that is not inappropriate.

13. The proposed development would therefore constitute inappropriate development. Such development would, by definition, be harmful to the Green Belt as described in paragraph 147 of the Framework

Character and appearance

14. Whilst the house at No 1 and its garden are located within the infill boundary for Lawtongate and Lawton Heath the land to its rear forming the appeal site is located outside of it and is open countryside.
15. The appeal site has the appearance of open pasture. Together with the grassland on its eastern side it serves to separate this part of the settlement from the canal, as well as Snape's Bridge and a brook a short distance to the north.
16. The proposed change of grassland to garden would have a domesticating effect on the land and cause material harm to the character and appearance of the countryside. For this reason, and because the existing curtilage is not small, it would be contrary to policy RUR12 of the Local Plan which governs the extension of residential gardens outside settlement boundaries. I attach moderate weight to the harm that would be caused.

Flood risk

17. As the site has been identified as being at medium / high risk of flooding from the nearby watercourses a flood risk assessment is required by policy SE13 of the Local Plan. No such assessment has been provided. It has not been demonstrated therefore that the proposed change of use of the site would be acceptable in terms of flood risk, contrary to policy SE13 of the Local Plan. This finding adds further moderate weight against the proposal.

Other considerations

18. I have found that the proposal would be inappropriate development in the Green Belt and thus should not be approved except in very special circumstances. It is therefore necessary to consider the grounds put forward by the appellant, to determine whether there are any material considerations which would amount to very special circumstances that would outweigh the harm by reason of inappropriateness, and the harm that I have identified to the character and appearance of the area and flood risk.

Fly tipping and litter

19. It is stated that the appeal site, which is next to Old Knutsford Road, will once more suffer from considerable fly tipping and litter if the use of the site does not change to garden land. Maintaining land free of litter and fly tipping though is dependent on the activity of land owners rather than the planning status of the land. As a result, I attach little weight to this matter in favour of the appeal.

Time and expense

20. Significant time and money was spent by the appellant clearing, planting and landscaping the appeal site. The carrying out of work to turn the land into a garden

before planning permission was obtained was at the applicant's risk. This is a matter therefore that I attach minimal weight to in support of the appeal.

Working proactively with applicants

21. The Framework encourages local planning authorities to work proactively with applicants to secure development that will improve the economic, social and environmental conditions of the area. However, in this case the proposed scheme would constitute inappropriate development that would harm the environment. No amount of working with the appellant would alter this or the Council's fair assessment, taking into account other considerations, that planning permission should be refused. I therefore attach negligible weight to this consideration in favour of the appeal.

Nearby structures and equipment

22. On land to the rear of neighbouring properties to the east, a variety of play structures and equipment can be seen, including a tree house, climbing frame and trampoline. Reference is also made to a hen house and patio close to the stream. I have not been provided with any further information regarding these matters and it is for the local planning authority to investigate any complaints about potential planning breaches. As a result, I attach little weight to this matter in favour of the appeal.

Disability

23. Decision makers are required by the Public Sector Equality Duty (PSED) contained in the Equality Act 2010 to advance equality of opportunity and to eliminate unlawful discrimination in relation to, amongst others, people with disabilities.
24. When accessing the appeal site from their back garden the appellant and his wife struggle with the gradient of the downward slope of the appeal site. I have had due regard to the PSED in considering their disability related need for a gentler sloped access, which the proposed stairs and path shown on a plan accompanying the application would address if the appeal was allowed. However, as an alternative route with a gentle gradient is available along the pavement from the front of their house that makes use of the field gate on Old Knutsford Road, I attach little weight to the equality implications of the proposal in favour of the appeal.

Stress

25. The appellant's involvement with the Council included being advised that planning permission was required and finding out that permission had been refused. I recognise that this caused uncertainty and stress. However, unfortunate as this may be, I cannot attach any material weight to the effect that due process and the carrying out of remedial work to the site had upon the wellbeing of the appellant's household.

Conclusion

26. The proposal represents inappropriate development, which by definition, would be harmful to the Green Belt as described in paragraph 147 of the Framework. Paragraph 148 of the Framework advises that substantial weight should be given to any harm to the Green Belt. I have also found that the proposal would harm the character and appearance of the area and that its suitability, in terms of flooding,

has not been demonstrated. Clearly, therefore the degree of harm caused would be significant.

27. I find that the other considerations put forward by the appellant fall far short of clearly outweighing the harm identified and thus the very special circumstances necessary to justify the development do not exist. As such, the proposal would be contrary to Green Belt policy contained within the Framework and policy PG3 of the Local Plan. The appeal should therefore be dismissed.

Ian Radcliffe

Inspector