



Appeal Decision

Site visit made on 8 November 2022

by K L Robbie BA (Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th May 2023

Appeal Ref: APP/A0665/W/22/3296126

Former Marsh Nurseries, Boathouse Lane, Parkgate CH64 6RD

- 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 Parkgate Nurseries Ltd against the decision of Cheshire West and Chester Council.
 - The application Ref 19/03423/OUT, dated 15 September 2019, was refused by notice dated 8 October 2021.
 - The development proposed is proposed development of live-work units, affordable homes, heritage centre and community car park.
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Decision

1. The appeal is allowed, and outline planning permission is granted for residential units at Marsh Nurseries, Boathouse Lane, Parkgate CH64 6RD in accordance with the terms of the application, Ref 19/03423/OUT, dated 15 September 2019, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The application was submitted in outline with all detailed matters reserved for a future reserved matters application. Elevational details and an indicative site layout were submitted during the course of the application which informed the Council's decision. The appellant's documentation confirms that the plans are indicative and for information only. I have determined the appeal on the basis that all are reserved matters for subsequent determination, as per the application form utilised to submit the application.
3. The description of development has changed from that used on the application form to 'residential development' on the notice of the Council's decision. I note that the revised description has been used by the appellant on the appeal form. I am satisfied therefore that the cases of the main parties have been put forward on that basis and my consideration of the revised scheme would not be prejudiced by use of the above description. I have therefore determined the appeal accordingly.
4. I have been supplied with a completed agreement by way of unilateral undertaking (UU). The UU covers matters related to financial contributions towards education, allotments, amenity greenspace, parks and recreation, youth play and sports pitches. It also provides mechanisms for the provision of affordable housing provision and mitigation for impacts to protected sites within the vicinity of the appeal site. I shall return to this matter later in this decision.

Main Issues

5. The appeal site falls within land designated as Green Belt. Therefore, the main issues are:
- Whether or not the proposal would be inappropriate development in the Green Belt including its effect on openness;
 - The effect of the proposed development on the Dee Estuary Special Protection Area (SPA), Special Area of Conservation (SAC) and Ramsar Site; and
 - If the proposed development is inappropriate development in the Green Belt, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

Inappropriate development in the Green Belt

6. There is no dispute that the appeal site is located within the Green Belt, where the Framework states, at paragraph 149, that the construction of new buildings should be regarded as inappropriate. There are a number of exceptions to this including the partial or complete redevelopment of previously developed land whether redundant or in continuing use which would not have a greater impact on the openness of the Green Belt than the existing development. Inappropriate development is by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
7. This appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act), and it is not ordinarily the role of such appeals to examine the lawful use of land or buildings. Indeed, it is open to the appellant to apply to have such matters determined under sections 191 or 192 of the Act. Any such matter would be unaffected by my determination of this matter. However, I consider the matter of whether or not the lawful use of the land is horticultural, and therefore whether the development amounts to the redevelopment of previously developed land, to be central to both party's cases in this instance, and indeed to my consideration of whether the proposal would be inappropriate development within the Green Belt. I therefore consider this matter below.
8. The site is currently occupied by an expansive range of glasshouses, sheds, storage containers and considerable areas of hardstanding used for the parking of vehicles and open storage. Historically, evidence indicates that the site has been used as a plant nursery and garden centre which ceased in 2019. Since then, the buildings and glasshouses have remained vacant. The exact nature of previous use of the site, however, is in dispute. I have been supplied with various sworn statements regarding the use of the site and photographs of it when it was in use. Local residents have expressed views that the use of the site did not constitute a garden centre for a variety of reasons. Whilst it may not have traded as a large garden centre selling a wide range of household goods and gift items found at many modern garden centres, it is clear from the evidence before me that many of the items were bought in and plants on sale were not grown on the site.

9. From the evidence before me, it would appear that on the balance of probability, the appeal site was last used as a mixed use which more than likely involved some horticultural element. However, also it appears to have included a significant element of bought in plants and goods. As such the land, for the purposes of this appeal, cannot be considered to have been entirely in horticultural use and, as a whole, therefore benefits from the exception set out in Framework paragraph 149 g) as previously developed land whether redundant or in continuing use.
10. As I have concluded that the proposal would benefit from the definition of previously developed land, the relevant assessment for the purposes of Framework paragraph 149 g) is therefore whether the development has a greater impact on the openness of the Green Belt compared to the existing development on the land.
11. A fundamental aim of Green Belt policy is to prevent sprawl by keeping land permanently open; the essential characteristics of Green Belts being their openness and their permanence. Openness is the absence of development, and it has both spatial and visual aspects.
12. The proposal is made in outline with all matters reserved and therefore it is difficult to assess the impact of the development on openness. The appeal site extends to approximately 1.8 hectares of land adjacent to the settlement boundary of Neston. With the exception of the access track and the overgrown area in the north-west of the site, it is characterised by sprawling development in the form of low-profile glasshouses, areas of hardstanding/car parking, and open storage including storage containers. The site has a generally degraded and unsightly appearance which is derived from its lack of recent use.
13. I have considered the indicative footprint of the proposed housing development. I am satisfied that when considering the site as a whole, the proposed developed area would not comprise a materially larger area than the combined areas of development as set out on the proposed masterplan¹. In addition, the proposed development would be most likely to be confined to the central part of the site where the previously developed land is most dominant. This is a matter which can be controlled at the Reserved Matters stage.
14. I have also considered that it is not just the extent of the footprint of the proposed development that would have an effect on the openness of the site. The location of the proposed housing, its scale and form, are also contributing factors. The existing built form is single storey and has a much lower profile than two storey housing would be. Consequently, taking into account the proposed development of those open areas and the mass and form of the houses, the appeal proposal would have an impact on the openness of the Green Belt.
15. However, as the appeal site is situated on the settlement fringe and by reason of the existing development on the site there is already some encroachment and loss of openness. The indicative position of the houses would, nevertheless, be a more consolidated form of development than currently exists on the site. Furthermore, new houses in this location would be capable of being absorbed into their surroundings without resulting in harm to the wider landscape.

¹ Plan reference 1901-018 Rev M

16. Having had regard to the contribution that the existing site makes to both visual and spatial aspects of openness, as well as the purposes of including land within the Green Belt, I do not find that the proposed development would have a greater impact on the openness of the Green Belt.
17. The Framework places great weight on the need to provide affordable homes and the re-use of previously developed land. It states that a development that re-uses previously developed land in the Green Belt and makes a contribution to affordable housing should not be considered to be inappropriate development unless the harm to the openness of the Green Belt would be substantial. A maximum of 5 affordable houses are proposed which would equate to a provision of approximately 30% in line with the requirement of Policy SOC1 of the Cheshire West and Chester Local Plan (Part One) (the Local Plan). As I have not found that the proposal would cause harm to the Green Belt it would also not be inappropriate development in line with the second strand of Framework paragraph 149 g).
18. For all the reasons set out above, the loss of openness to the Green Belt which would ensue from the indicative housing proposal would not be greater than the existing development on the site. I therefore conclude that the proposed development would be capable of not being inappropriate development in the Green Belt and consequently there would be no conflict with paragraph 145 g) of the Framework. There would be also no conflict with Local Plan Policy STRAT9 of the which directs that within the countryside replacement buildings are acceptable which are of an appropriate scale and design so as to not harm the character of the countryside.

Effect of the development on the protected sites

19. The appeal site lies within a kilometre of the Dee Estuary Special Protection Area (SPA), Special Area of Conservation (SAC) and Ramsar site. The area is noted for its estuary and intertidal flats and is designated for its size and biological interest. The area supports a range of notable estuarine habitats and associated vegetative communities, as well as notable aggregations of breeding and non-breeding birds.
20. The appeal proposal would result in an increase of up to 17 dwellings with a consequent increase in the number of people living close to the protected sites. This has the potential to increase water pollution impact and recreational disturbance. I find that the proposal, taken both in isolation and cumulatively, would be likely to have a significant adverse effect on the integrity of the SPA, SAC and Ramsar site. As competent authority, it is therefore, necessary for me to conduct an Appropriate Assessment in relation to the effect of the development on the integrity of the SPA, SAC and Ramsar site.
21. The SPA site conservation objectives seek to ensure that the integrity of the site is maintained or restored as appropriate and ensure that the site contributes to achieving the aims of the Wild Birds Directive by maintaining or restoring the extent and distribution of the habitats of the qualifying features; the structure and function of the habitats of the qualifying features; the supporting processes on which the habitats of the qualifying features rely; the population for each of the qualifying features; and the distribution of the qualifying features within the site.

22. Natural England are satisfied that suitable avoidance and mitigation measures are proposed in the form of a range of measures through the design of the scheme, measures undertaken during construction, pollution prevention measures and additional measures including advisory leaflets and signage secured by the UU, together with a Construction Environmental Management Plan (CEMP) secured by condition.
23. I therefore conclude that I am satisfied that with the proposed avoidance and mitigation measures appropriately secured, the development would not have an adverse effect on integrity of the Dee Estuary SPA, SAC and Ramsar sites. The development would therefore comply with the Conservation of Habitats and Species Regulations 2017 (as amended).

Other considerations

24. I appreciate that local residents value the locally distinct identity of Parkgate, and there is concern that the development may provide a precedent for further development of land nearby. Whilst I recognise that consistency in the planning process is important and like cases should be decided in a like manner, it is also important to emphasise that each case is determined on its own merits and on the basis of the particular evidence presented. As such, I am satisfied that my decision on this proposal would not fetter the Council from determining other planning applications on their own planning merits.
25. A variety of local services are available a short distance from the appeal site. Whilst some are more distant, they appear to be connected by well lit, surfaced footways. Hourly daytime bus services are available to Chester, West Kirby and Neston. Local roads are suitable for cycling and an off-road cycle route runs close to the appeal site which provides an alternative means of reaching local facilities. I therefore consider that the appeal site is well-connected to local services, and occupants would not be completely reliant on the use of private vehicles for their day-to-day needs. This is a matter which supports allowing the proposal.
26. Representations have been made regarding the proposed form of development, the use of land in the appellants ownership as a caravan and camping site, increase in traffic, the presence of listed buildings in Parkgate and the effect of the development on wildlife. The application is made in outline and therefore the form of development may change at the reserved matters stage, although in Green Belt terms I am content with the indicative details. At the Reserved Matters stage the public would be consulted again.
27. The use of the wider site in the appellant's ownership as a camping and caravan site is not material to my determination of the appeal before me and is therefore a neutral factor in my consideration. The highways authority did not object to the proposal and highway safety did not form one of the Council's reasons for refusal. I have no substantive evidence before me on this matter which would lead me to reach a different conclusion in relation to this issue and I am satisfied that the proposal would not lead to any unacceptable highway safety risk. I have not been made aware that the proposal would have any adverse impacts on the setting of any listed buildings in the locality and I did not observe any on my site visit.
28. Whilst I understand that my decision will be disappointing for some local residents, the evidence before me does not lead me to conclude that these

aforementioned matters either individually or cumulatively, outweighs my conclusions on the main issues.

Planning Obligation

29. The Framework at paragraph 57 and the CIL regulations 2010 (CIL Regs) at section 122 require that planning obligations must meet all the following tests: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. The planning obligation before me is submitted in the form of a unilateral undertaking (UU) signed and dated 29 March 2023.
30. The UU seeks to provide financial contributions towards a range of local facilities including education, allotments, local green spaces, youth play and sports pitches, the provision of on-site affordable housing and mitigation measures relating to the impact on the protected sites as set out above. I regard these matters as complying with the requirements of both paragraph 57 of the Framework and section 122 of the CIL Regs in that they are necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development and in addition satisfies the requirements of LP1 Policies STRAT11, SOC1 and SOC6 and also LP2 Policy DM35.
31. A revised UU was submitted during the course of the appeal, copied to the Council, to include provision for affordable housing to be provided at this level. On the basis of the evidence before me, I am satisfied that there is need for affordable housing in the locality and the on-site provision would satisfy the three tests set out in the CIL regs and the Framework. The level of provision is consistent with LP1 Policy SOC1 and I am satisfied that the UU can be relied upon by the Council to secure the provision of affordable housing on-site.
32. I am therefore satisfied that all the contributions and requirements contained within the UU are necessary to make the development acceptable in planning terms. Furthermore, on the evidence before me, they would be directly, and fairly and reasonably related in scale and kind, to the development proposed.

Conditions

33. In deciding which conditions are necessary and comply with the tests for conditions set out in the Framework, I have had regard to the proposed conditions set out in the officer's report, subsequently provided in full by the Council. I have undertaken some minor editing in the interests of precision and clarity. Those included in the schedule are found to be reasonable and necessary in the circumstances of the case.
34. I have imposed the standard outline conditions, time limits (1, 2 & 3) and approved plans (4) conditions. Given that the quantum of development is not specified in the description of development, and there is also a specific matter that I have considered necessary for the protection of protected sites which is relevant to this matter I have limited the number of units to that set out in the indicative plans submitted with the application (5). This condition provides certainty to the development permitted and ensures that the integrity of the protected sites is maintained. I have also imposed a condition to limit the volume, footprint and location of the development within the site as indicated within the proposed masterplan (6). This is necessary to ensure that the

development does not have a greater impact on the openness of the Green Belt than the existing development.

35. Some conditions require matters to be approved before development commences. This is necessary in the case of the CEMP (7), planting plan (8), habitat management and maintenance (9), external lighting (10) highway works (11), and sustainable drainage (12), because these either seek to address issues arising during the construction of the development or require incorporation into the final design. The appellant has indicated their willingness to accept these pre-commencement conditions. I have also imposed a condition to require the agreement of a scheme for the management and maintenance of a sustainable drainage scheme (13) which is necessary for flood risk management purposes.
36. I am satisfied that it would not be unreasonable to expect the construction phase of the development to be carried out at hours compatible with the residential location of the site. I have therefore imposed a condition relating to operations and deliveries (14) during the demolition and construction phase of the development. A condition relating to unexpected contamination (15) is also necessary in the interests of the health and safety of future occupiers of the site.
37. Conditions relating to vehicular access (17) and parking provision (20) are both necessary in the interests of highway safety. Conditions relating to newts (16), bat and bird boxes (18) and hedgehog routes (19) are necessary in the interests of the protection of protected species and wildlife. Finally, I have imposed a condition relating to water saving measures (21) in the interests of sustainability.
38. I have not attached the suggested condition relating to the installation of electric vehicle charging points as this is now covered by Building Regulations legislation, thus it would fail the tests of conditions set out in the Framework. Suggested conditions relating to affordable housing and mitigation for the potential impacts on the nearby protected sites have been incorporated into the revised UU and so are not necessary.

Conclusion

39. For the reasons set out above and having had regard to the development plan and all other matters raised, I conclude that the appeal should succeed, subject to the conditions set out in the attached schedule.

K L Robbie

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plan: 1901-022 Revision B (Existing Location and Site Plan).
- 5) The development hereby permitted shall be for a maximum of 17 dwellings.
- 6) The reserved matters proposal shall not exceed a total development footprint of 1075 sq. metres and a total development volume of 4991 cubic metres. No dwelling shall have a ridge height of more than 7 metres measured from original ground level and no part of the development shall extend further northwards than the proposed hedge line indicated on the proposed masterplan dated August 2019 (drawing 1901-018 Revision M).
- 7) No part of the development hereby approved shall commence until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall set out, as a minimum, site specific measures to control and monitor the impact arising in relation to construction traffic and ecology. The development shall be carried out in strict accordance with the approved CEMP.
- 8) Prior to the commencement of the development, a planting plan consisting of native hedgerows and wildflower species of local provenance, as detailed in the Biodiversity Metric 2.0 Calculation Tool for Former Marsh Nurseries dated 21 May 2020, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 9) Prior to the commencement of the development, a 27-year Habitat Management and Maintenance Plan outlining the management and maintenance of habitats detailed in the Biodiversity Metric 2.0 Calculation Tool for Former March Nurseries dated 21 May 2020 shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 10) Prior to the commencement of the development full details of any external lighting within the communal areas of the development shall be submitted to and approved by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

- 11) Prior to the commencement of the development, detailed plans of the works required within the highway to form a suitable access and footway to the site shall be submitted to and approved in writing by the Local Planning Authority. The works shall be carried out in accordance with the approved details prior to the first occupation of the development.
- 12) The development hereby approved shall not be commenced until details of a sustainable drainage scheme to serve the site, including methods and timetable of implementation and details of arrangements to secure the funding of the drainage scheme for the lifetime of the development have been submitted to and approved in writing by the Local Planning Authority. The scheme shall be based on sustainable drainage (SUDs) principles and an assessment of the hydrological and hydro-geological context of the development. The approved scheme shall be implemented wholly in accordance with the approved details and timetable.
- 13) The development hereby approved shall not be occupied until a management plan for the long-term maintenance of the drainage scheme pursuant to condition 12 of this planning permission has been submitted to and approved in writing by the Local Planning Authority. The management plan shall be implemented in accordance with the approved details.
- 14) No deliveries shall be taken in or despatched from the site or any operations associated with demolition and construction phases shall be carried out on site except between the hours of 0800 and 1800 Monday to Friday and between 0800 and 1300 on Saturdays. No deliveries shall be taken at or dispatched from the site on Sundays or Bank Holidays.
- 15) If during site preparation, demolition or development works contamination is encountered or is suspected in areas where it had not been anticipated:
 - Being from an existing risk source; and
 - Containing comparable risk assessed substances; and
 - Affecting an already risk assessed pathway or receptor that could be addressed by simple extension of the approved measures to a larger area, then the Local Planning Authority shall be notified promptly in writing confirming: the areas affected, the approved investigation, remediation and validation measures to be applied and the anticipated completion timescale.

However, if the contamination is:

- From a different source; or
 - Contains a new contaminative substance; or
 - Affects a new pathway or receptor, then revised proposals for detailed investigation and verification shall be submitted for the written approval of the local planning authority prior to all be urgent remediation works necessary to secure the area and control pollution risks.
- 16) The development shall be carried out in strict accordance with the Reasonable Avoidance Measures for Great Crested Newts as described in

Section 5.3 Amphibians of We Know Services Ecology Survey and Assessment dated July 2019.

- 17) The approved vehicular access shall not be brought into use until visibility splays have been provided at each side of the access point which have first been submitted to and approved in writing by the Local Planning Authority. The splays shall be kept clear of any object, vegetation or other obstruction to a height of 1.0 metre above the level of the adjacent carriageway at all times thereafter.
- 18) The development hereby approved shall not be occupied until details of a scheme of bird and bat boxes are submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented in full prior to the first occupation of the development and retained at all times thereafter.
- 19) Prior to the first occupation of the development hereby approved, a hedgehog commuting route through the completed development shall be provisioned through the creation of holes of at least 13cm height x 13cm width at the base of closed boundaries. A plan illustrating the commuting route shall be submitted to and approved in writing by the local planning authority. The commuting route shall be retained at all times thereafter.
- 20) Prior to the first occupation of the development hereby approved a scheme for turning areas and parking for cars, cycles and powered two-wheelers shall be submitted to and approved in writing by the local planning authority. The scheme shall include the number, type and design of each parking facility. The scheme shall be implemented in full prior to the first occupation of the development and the turning and parking spaces retained for use thereafter.
- 21) No dwelling hereby approved shall exceed a water consumption of 110 litres per day in line with the higher target set out in the National Housing Standards.