
Appeal Decision

Site visit made on 23 May 2023

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th June 2023

Appeal Ref: APP/A0665/W/23/3314292

Land to the side of 34 Toll Bar Road, Christleton, Chester, Cheshire CH3 5QX

- 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 Mrs Susan Churchill against the decision of Cheshire West and Chester Council.
 - The application Ref 22/00980/OUT, dated 9 March 2022, was refused by notice dated 12 July 2022.
 - The development proposed is erection of detached bungalow and detached garage using existing access to the site from toll bar road.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application subject of this appeal was submitted in outline with all matters reserved for future consideration save for access. I have considered the appeal on this basis.

Main Issues

3. The main issues are: (a) whether the proposal would be inappropriate development in the Green Belt, having regard to the development plan and the National Planning Policy Framework (the Framework); (b) whether adequate ecological information has been provided to determine the effect of the proposal on protected sites; and (c) if the proposal is inappropriate development 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

Whether inappropriate development

4. The appeal site is a broadly triangular piece of land that sits behind residential properties on Toll Bar Road and Greystone Road. A garage and a workshop lie on the land. Access from Toll Bar Road into the site is between 42 and 44 Toll Bar Road. The Shropshire Union Canal is to the north-east.
5. The site lies outside of the settlement boundaries of Chester and Christleton, in the Green Belt and the countryside for policy purposes, even though it has the appearance of being within a built-up area. As such, Policy R1 of the Local Plan (Part Two) Land Allocations and Detailed Policies (LP2) points to Policy STRAT 9 of the Local Plan (Part One) Strategic Policies (LP1) which sets out the Council's approach to development in the Green Belt and in the countryside. LP1 Policy STRAT9 confirms that only certain types of development will be permitted in the countryside. The proposal is not one of them. Nonetheless, in addition to

the restrictions laid out in LP1 Policy STRAT9, proposals also need to adhere to the provisions of the Framework, namely those found in paragraph 149.

6. Although the proposal's scale would be limited and the site lies within the village of Christleton, the appeal scheme must also represent 'infilling' to accord with Framework paragraph 149 e). Applying the LP1's definition of infill development, the proposal would fill a gap between 34 Toll Bar Road and 26 to 30 Greystone Road (save for the access), but as the appeal site lies behind the built-up frontage of Toll Bar Road and Greystone Road, it is not within a built-up frontage. Hence, the proposal would not accord with the LP1 definition of infill development and, by extension, Framework paragraph 149 e).
7. With regards to Framework paragraph 149 g) and the glossary in the Framework, the appeal site is not previously developed land owing to its garden use. As such, this exception cannot apply. But, if I am wrong, I consider that the proposal is likely to have a greater impact on the openness of the Green Belt than the existing development, even though that would be demolished. This is because the shape and size of the site will influence where any potential dwelling would be sited, and that would be joined by a new detached garage. The proposal would not therefore accord with Framework paragraph 149 g) regardless of whether the site is previously developed land.
8. I note the appellant's points about the site's Green Belt designation. However, these are matters for the plan making process, not the decision-making process as the Green Belt designation relates to land across the administrative area, not just the appeal site. However, the proposal would not conflict with any of the five purposes of including the land in the Green Belt.
9. I have had regard to the developments at Troopers Close and Canal Place/Caldy Brook, which both occupy land between Whitchurch Road and the canal. Whilst they display locational similarities, the scale and quantum of development are different to that proposal, and I do not know whether the pre-development circumstances were identical to those which I find before me in this case. As such, these developments do not justify the appeal scheme.
10. Outline planning permission was granted in October 1960 for a bungalow, and I understand that the site was washed over by Green Belt when that decision was taken. Be as that may, I need to determine this appeal based on current circumstances including local and national planning policies.
11. When I apply these, I conclude, in respect of this issue, that the proposal would be inappropriate development in the Green Belt. Furthermore, the proposal would not be one of the types of development permitted in the countryside given the site's location outside of the settlement boundaries of Chester and Christleton. Accordingly, the proposal would not accord with LP1 Policy STRAT9, LP2 Policy DM19 and Framework paragraph 149 e) and g).

Ecological information

12. The appeal site is next to a disused water channel which was once used to supply water to Chester to Crewe railway line and the Shropshire Union Canal. The water channel lies between the site and the canal.
13. A precautionary approach should be taken when considering protected species. It is also essential to establish whether or not protected species are present, and the extent that they may be affected by the appeal scheme before the grant of planning permission is granted.

14. The appeal site is a former tennis court and grassed. Mature hedgerows and shrubs also populate the site. A fence forms the boundary between the water channel and the site. However, the water channel and canal are within striking distance of the site. The canal is a water body that is designated as an Area of Nature Conservation Value. The water channel may not be maintained and silted up, but it is vegetated with species suited to a water-based habitat, among others. It is unclear whether the channel currently holds water or even holds water for period(s) of the year. Given this, and the channel's proximity to the canal and the appeal site, I cannot be certain, in the absence of an appropriate survey, that there is not a reasonable likelihood of Great Crested Newts being present on or close to the appeal site due to the potential habitat that exists. Great Crested Newts move and are likely to move between habitats. The absence of water features in the appeal site or neighbouring gardens does not alter my view.
15. The garage and workshop are next to the site's boundary with the water channel and the canal. Due to their location and the adjacent canal and water channel, there is a possibility that they, together with the nearby waterbodies, may provide suitable roost and foraging habitat for bats.
16. As adequate ecological information has not been provided in respect of Great Crested Newts and Bats, I conclude that I cannot be certain that the proposal would not result in any net loss or damage to habitats or features, and there are no exceptional overriding circumstances, mitigation or compensation measures before me to overcome that. On that basis, the proposal would not accord with LP1 Policy ENV4 and LP2 Policy DM44.

Other considerations

17. The appeal site abuts the Chester Canal Conservation Area which extends along the green-blue infrastructure of the canal and Christleton. The canal is a historical, natural, and cultural asset used for leisure and recreation. It also provides ecological habitat. Despite its proximity, the proposal would have a neutral effect on the significance of the Conservation Area given the relationship of housing along Toll Bar Road and Greystone Road to the canal.
18. By using the existing access, vehicles would be able to enter and leave the site in forward gear, whilst the site would allow for sufficient parking provision to be provided without affecting highway safety in Toll Bar Road. The site could also be developed for a house without compromising the living conditions of nearby residents or the character and appearance of the area.
19. The proposal would result in a new dwelling near to facilities and services. The dwelling would help contribute to the supply and mix in Cheshire West and Chester even if the Council can demonstrate more than the minimum level of supply. There would also be modest social and economic benefits arising from the proposal in the form of jobs, construction related spending and spending in the local economy by future occupants of the dwelling.

Conclusion

20. The proposal would be inappropriate development which the Framework clearly sets out is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Substantial weight should be given to any harm to the Green Belt. Harm also arises from the inadequate ecological information. Very special circumstances will not exist unless the harm to the Green Belt and any other harm is clearly outweighed by other considerations.

21. I consider that the other considerations do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist. As such, I conclude that the proposal would not accord with the development plan as a whole and there are no other considerations, including the Framework, that indicate that I should take a different decision other than in accordance with this.

22. For the reasons given above, I conclude that the appeal should be dismissed.

Andrew McGlone

INSPECTOR