



Appeal Decision

Site visit made on 19 December 2023

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 January 2024

Appeal Ref: APP/R0660/W/23/3322631

**Land lying North of Park Lane, Park Lane, Pickmere, Northwich,
Cheshire WA16 0JX**

- 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 James Whitlow (of E James Whitlow) against the decision of Cheshire East Council.
 - The application Ref 22/1820M, dated 3 May 2022, was refused by notice dated 24 February 2023.
 - The development proposed is building for the storage of agricultural machinery and produce at land lying north of Park Lane, Pickmere.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. During the course of the appeal a revised National Planning Policy Framework (the Framework) was published on 19 December 2023 and replaces the previous version. However, as any policies in the Framework that are material to this decision have not fundamentally changed, I am satisfied that this has not prejudiced any party. Nonetheless, paragraph numbering in the revised Framework has changed and I will refer to the latest version in my decision.

Main Issues

3. The main issues in this appeal are:
 - Whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies,
 - The effect on the openness of the Green Belt,
 - The effect of the proposal on highway safety with regard to the access,
 - Whether sufficient information has been provided regarding the effect of the proposed development on Great Crested Newts as a protected species, and
 - If the proposed development constitutes inappropriate development in the Green Belt, would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.

Reasons

Whether inappropriate development in the Green Belt

4. The Government attaches great importance to Green Belts. Paragraph 142 of the Framework identifies that the fundamental aim of national Green Belt policy is to prevent urban sprawl by keeping land permanently open and that the essential characteristics of Green Belts are their openness and their permanence. It goes on to state that 'inappropriate development' in the Green Belt is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The Framework regards the construction of new buildings as inappropriate development in the Green Belt, subject to various exceptions set out in paragraph 154.
5. One of the exceptions in the Framework is 154a) for "buildings for agriculture and forestry". Policy PG3 of the Cheshire East Local Plan Strategy (the 'CELPS') seeks to protect Green Belt from urban sprawl and inappropriate development unless the development falls within the exceptions listed in the Framework and includes buildings for agriculture and forestry. I am therefore satisfied that CELPS Policy PG3 is broadly consistent with the Framework.
6. The proposal is for the erection of a building measuring approximately 18.28m long x 12.19m wide x 4.57m high to eaves and 6.09m high to roof ridge. The building would be of typical steel-framed box-profile sheeting, of a size and design not uncommon for agricultural buildings in the countryside. It would have a floor area of about 223m². Of this about 26m² would be given over to the storage of hay produced from the appellant's 1.15 hectare parcel of land on which the building would be erected. The majority of the building, about 197m², would be used for the storage of various items of agricultural machinery and equipment in association with the appellant's business.
7. The appellant operates an agricultural contracting and land management business. Typical agricultural contracting services they and the company offer include crop establishment (sub-soiling, ploughing and seed bed preparation), pasture maintenance (rolling, harrowing and manure applications) and harvesting (combining, grass haulage and baling).
8. Submitted photographs show various items of machinery and equipment that would be stored in the proposed building: two different tractors, two different silage trailers, two different ploughs, a manure spreader, hedge cutter and a baler. These are currently stored in a rented building somewhere near Northwich, although limited space means some items have to be stored outside. The future of the rented building is uncertain, which is why the appellant is looking to have his own.
9. The question is whether the intended purpose of the building, namely for the storage of agricultural machinery and produce, falls under the definition of 'agriculture' for the purpose of erecting an agricultural building in the Green Belt.
10. Section 336 of The Town and Country Planning Act 1990 provides that the definition of agriculture "*includes horticulture, fruit growing, seed growing, dairy farming, the keeping and breeding of livestock (including any creature kept for the production of food, wool, skins, fur, or for the purpose of the farming of the land), the use of land as grazing land, meadow land, osier land,*

market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and 'agricultural' shall be construed accordingly."

11. The storage of agricultural machinery and equipment does not fall within the above definition. However, there is no doubt that agricultural machinery and equipment of various types are needed to carry out the above defined 'agriculture' purposes. It is also not uncommon for farmers to hire various machinery and equipment as and when they need to, instead of owning their own, and also to employ a contracting firm to undertake various farming and agricultural operations on their land.
12. The appellant bought the appeal site about 10-11 years ago. Its 1.15 hectares are cropped to permanent grassland and used for the production of baled grass, silage, haylage and hay. Currently the appellant sells this on after harvest. However, the proposal would allow them to store it in the building for later sale and use and secure better prices.
13. The site is not part of a farmstead or complex of other farm buildings. I have not been advised of any other agricultural land the appellant's business owns or farms. Most of the machinery and equipment and appellant's activities relate to land elsewhere not in their ownership. Only a small proportion of the building would be used for the storage of hay – the rest of the building would be dedicated to the storage of the contracting machinery and equipment. When considering the amount of hay storage area and the small size of the appeal site, the production of hay is likely to be an ancillary function to the appellant's contracting and land management business. The evidence leads me to conclude that the appellant is not using all of the machinery and equipment to farm the appeal site, nor do they have other land they farm elsewhere. Hence the proposed building would be largely used for the storage of general agricultural machinery and equipment that does not have to be stored on the appeal site, as is currently the case, and which is not associated, for the most part, with the appeal site.
14. Whilst the appellant's business may well be one deemed suitable for rural areas and generally associated with agriculture, I find the proposed building intended largely for the storage of machinery and equipment does not fall within the definition of agriculture. It follows that the proposed building would not be a 'building for agriculture' under Framework paragraph 154a). Consequently, the proposal would constitute inappropriate development in the Green Belt.

Effect on openness and purposes of the Green Belt

15. I accept that a similar size and design of building for the purposes of agriculture would be 'not inappropriate' (i.e. acceptable) in the Green Belt under Framework exception 154a). But I have found the proposed building would not be for agriculture and hence the impact on openness needs to be considered.
16. Openness is one of the essential characteristics of the Green Belt. It requires consideration of both spatial and visual aspects. The absence of built development is a characteristic of the Green Belt.
17. There is currently a shipping container on part of the site where the building would be placed, although I do not know if this is legitimately sited and it is not

a building. The proposed building would occupy some 223m² of space on the ground and hence introduce a large building where none currently exists. The building would also occupy vertical space and have massing and volume. Hence the building would reduce the spatial and visual openness of the Green Belt. The provision of a stoned track along the edge of the appeal site would further reduce openness.

18. Vehicles and other traffic visiting the appeal site, beyond those that would normally be associated with any farming practices of the appeal site, have the potential to reduce openness. The appeal site is small and laid to pasture and would not attract much agricultural traffic throughout the year. However, a storage place for a variety of machinery and equipment would attract vehicle movements that would likely exceed what would normally be expected for a site of this size and nature, even if not all the time, together with parking of any employee cars. These activities would occur in a field divorced from nearby agricultural and farm buildings or complex.
19. I saw that visibility of the building from the wider adjacent countryside would be lessened by existing hedgerows and trees but would still be seen from residential properties to the south. Additional planting is proposed that would help screen the site further over time. Nonetheless, reducing visibility of the building does not mitigate against the spatial loss of openness.
20. Taking all factors into account, I find that the erection of a large building on the appeal site, the laying of a stone track and hard surfaced yard area and vehicles would together reduce the openness of the Green Belt. It would also represent an encroachment into the countryside and conflict with one of the aims of the Green Belt.

Highway safety

21. Access to the appeal site is via an existing gated track in the village located on the outside of a bend off Park Lane. The track is straight up to the site where the track would then deviate into the appeal site itself and progress to the building. Vehicles exiting the track onto Park Lane would have good visibility in either direction due to the bend in the road.
22. Either side of the track there is timber ranch-style fencing giving the track an open nature. Coupled with its straight alignment, vehicles travelling along the track would have unobstructed views in either direction. Vehicles approaching the site entrance from the east would not have the advantage of seeing vehicles coming along the track to exit onto Park Lane, due to the existing section of roadside hedgerow. However, vehicles exiting the appeal field would be able to see approaching vehicles and wait and there is a further wider area closer to the road behind gardens, where exiting vehicles could also wait if a vehicle turns off Park Lane.
23. The track gives access to other fields not in the appellant's ownership, and so is already used by agricultural vehicles. This is not an uncommon situation in rural areas where agriculture tracks are shared and emerge into villages. During my visit I did not encounter any other vehicles using the track and there was no visible evidence of the track being heavily used.
24. The evidence suggests the proposal would create 2 vehicles in and 2 vehicles out at busier harvest periods. Whilst the Highway Authority finds the access

would not be suitable, they do suggest that infrequent movements would mean less likelihood of vehicles encountering each other and conflicts at the access point.

25. From my observations and based on the evidence before me I am satisfied that any increase in vehicle movements, which are anticipated to be limited, would not likely cause significant highway safety issues to users of the track or at the access point on Park Lane. Accordingly the proposal would not conflict with SADPD Policy INF3, which seeks to ensure that development provides safe access and vehicle movements do not result in unacceptable highway safety impacts.

Protected species

26. The site is located close to a cluster of ponds which are a good terrestrial newt habitat and therefore the development may well have an adverse impact on Great Crested Newts (GCNs), which are a European Protected Species. The Council's Ecologist advises that survey work should be undertaken to assess the presence or absence of GCNs in any water body occurring within 250 metres of the appeal site. If GCNs are found, then a scheme for their appropriate conservation and mitigation would need to be submitted to the Council and the appellant would need to secure a licence from Natural England to develop the site.
27. The appellant has not carried out any GCN surveys. Instead they consider a condition could be imposed on a grant of planning permission that would prevent development commencing on site until a survey has been undertaken.
28. The imposition of conditions requiring surveys to be done after the grant of planning permission is not recommended. Paragraph 99 of Circular 06/2005-Biodiversity and Geological Conservation advises that "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 the planning permission is granted* [my emphasis], otherwise all relevant material considerations may not have been addressed in making the decision. The need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances...".
29. The optimal time for undertaking GCN surveys is between mid-April to the end of May. The application was submitted at the beginning of May, within the optimal survey window, and so the application could have been accompanied by a GCN survey, regardless of when the application was validated. I have not been advised of any exceptional circumstances as to why the necessary protected species surveys were not undertaken.
30. The fact remains that no information has been submitted to provide an up to date GCN survey and to demonstrate full compliance with relevant statutory protections or to demonstrate that appropriate mitigation or safeguarding measures can be put in place. As a result, there is insufficient information to establish that the protected GCN population would not be adversely affected by the proposed scheme.
31. Accordingly, the proposal would be contrary to CELPS Policy SE3 and SADPD Policy ENV2. Collectively these seek, amongst other things, to protect the

natural environment and safeguard biodiversity and that development that will have an adverse impact on legally protected species will not be permitted unless there are benefits that outweigh the impact of the development. Moreover, it advises that planning applications should be accompanied by an ecological assessment where necessary. It would also be contrary to the Framework which seeks to ensure that the planning system minimises impacts on biodiversity.

Other Matters

32. I acknowledge the appellant's concerns with the Council's handling of the application and the time taken to process and determine it and I am aware of the request for the local MP to assist in the matter. The appellant could have appealed against non-determination once the target date had expired, although I understand they did not want to incur the costs of an appeal and the delay this would involve. In reaching my decision I have been concerned only with the planning merits of the case.
33. My attention has been drawn to a number of applications the Council has allowed for various storage buildings for agricultural contractors. I have not been provided with the full details or circumstances of these to be able to consider similarities or differences. However, the Council advises me that none of the examples are located in the Green Belt, which is a fundamental difference with the appeal proposal. Furthermore, one example was approved 20 years ago, which would have been before the current development plan was adopted. I consider examples in neighbouring Councils of little relevance as they would have different development plan policies. Consequently, I am unable to make any meaningful comparisons between the appellant's examples and the appeal proposal before me, which in any event I must determine on its own merits.

Other Considerations and Green Belt Balance

34. I have found the proposed development would represent inappropriate development in the Green Belt which Framework paragraph 152 states is, by definition, harmful. I have also found there would be harm to openness of the Green Belt and one of the purposes of including land within it. Framework paragraph 153 requires that substantial weight is given to any harm to the Green Belt. Furthermore there is insufficient information to be able to establish that a European Protected Species would not be adversely affected by the proposed development. These are serious planning objections. Therefore, inappropriate development should not be approved except in very special circumstances, which will not exist unless the harm to the Green Belt, by reason of inappropriateness, and any other harm is clearly outweighed by other considerations.
35. The appellant advances a number of 'other considerations' to support their appeal. The proposal would provide certainty to the business in light of the uncertainty about the long-term use of rented buildings. There would also be some financial savings on renting a building. I have no reason to doubt that storing machinery indoors would be more secure than if left in the open, but I have not been advised that the machinery and equipment has to be stored at the appeal site, when there is little connection with farming operations.

36. The storage of hay would allow it to be sold for higher prices later in the winter, rather than selling it at the time of harvest at reduced prices. The appellant advises that if they have to continue to sell the hay immediately following harvest the viability of the enterprise would not be sustainable. However, the appellant has been harvesting hay from the field for a number of years and I have not been presented with any substantive evidence to indicate that circumstances have significantly changed after all that time to warrant the erection of a building for hay storage, nor have I been presented with any viability assessment to justify this claim. The proposal does not involve a smaller building just for the storage of hay if this is such a crucial part to the sustainability of the business. The absence of harm to highway safety carries neutral weight in the balance.
37. To conclude, I find that the other considerations do not clearly outweigh the totality of the harm to the Green Belt and the harm to protected species contrary to the development plan. Consequently, the very special circumstances necessary to justify inappropriate development in the Green Belt do not exist. Accordingly, the proposal would conflict with CELPS Policies PG3 and SE3 and SADPD Policy ENV2 and the Framework.

Conclusion

38. For the reasons above I conclude the proposed development would not accord with the development plan and there are no other considerations which outweigh this finding.
39. Accordingly, the appeal should be dismissed.

K Stephens
INSPECTOR