



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/23/3323053

Meadowland Farm, Marthall Lane, Ollerton WA16 8RW

- 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 Broadway against the decision of Cheshire East Council.
 - The application Ref 22/1753M, dated 27 April 2022, was refused by notice dated 20 March 2023.
 - The development proposed was originally described as "Demolition of existing dwelling houses (per COU approval 20/4580M) to be replaced by 2no. detached dwellinghouses under very special circumstances for replacement dwellings in the green belt."
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. An extant Prior Approval¹ exists (hereafter the 'Prior Approval scheme') for change of use of two of the agricultural buildings to 2 dwellinghouses and demolition of the smaller building. It was evident on my site visit that the approval has not been implemented as the agricultural buildings remain on site and were in use for limited general farm storage as well as some cars. There were no existing dwellings in their place. Hence, the above description of development is misleading. Notwithstanding the description above, the Council determined the application on the basis that it was the existing agricultural buildings that would be demolished to facilitate the erection of 2 dwellings, and I shall do the same.
3. 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

4. The site lies within the Green Belt. The Framework regards the construction of new buildings as inappropriate development in the Green Belt, subject to a number of exceptions set out in paragraph 154. There is no dispute between the parties that the proposed development would not fall within any of the exceptions in the Framework. Hence there is no dispute that the proposal

¹ LPA ref: 20/4580M approved January 2021, and granted under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

constitutes inappropriate development in the Green Belt. I concur with that position.

5. In light of this, the main issues in this appeal are:

- The effect of the proposal on the openness of the Green Belt and on the purposes of including land within it,
- Whether sufficient information has been provided regarding the effect of the proposed development on bats 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

Openness of the Green Belt and purposes

6. 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. Openness has both a spatial and a visual aspect regardless of how visible the site and the development would be.
7. The proposal would involve the demolition of three agricultural buildings that are aligned and contiguous with each other, plus a separate smaller outbuilding further to the west. In their place two detached 4-bedroom dwellings would be erected.
8. According to the submitted evidence the proposed dwellings would have a combined floor area and combined volume that would be less than the existing agricultural buildings. This would potentially see some numerical betterment in terms of openness.
9. Notwithstanding this, the proposed dwellings would be orientated in a different alignment to the existing buildings, almost at right angles to them, and hence would occupy the space on the ground differently. The shape of the footprint of the existing farm buildings is a simple rectangle. The proposed dwellings would be 'H' shaped with a link between the main parts of each dwelling. The proposed dwellings would also be about 1.5 metres taller than the existing buildings. Hence, the proposed 2-storey dwellings would have a very different form, bulk and massing to the existing buildings that would impact on openness.
10. Despite some use of timber cladding and red brick the proposed dwellings would be a modern suburban addition to the countryside. There would be accommodation over two floors with a non-agricultural style and pattern of fenestration. The double depth of the dwellings, with a link between, them further distances their design from their agricultural surroundings. As a result, the new dwellings would bear little resemblance to the simple style and design of the functional agricultural buildings, and the agricultural feel of the site would be lost. It is true that the western-most dwelling would be further from

the road than the existing buildings, but the one closest to the road would only be nominally set back. This has little mitigating effect.

11. Furthermore, the western-most proposed dwelling would be erected on what is currently hardstanding with no building on it. The introduction of a dwelling here would significantly reduce openness. It would also be a visual and spatial encroachment towards the open countryside, contrary to one of the purposes of the Green Belt. The provision of domestic gardens and introduction of domestic paraphernalia around the dwellings would also further reduce openness. Whilst the volume and floor areas of the proposed buildings might well be less than the existing buildings, the proposal would nonetheless occupy more of the spatial extent of the site than the existing buildings currently do.
12. Taking all aspects into account, the proposal does not fall within any exceptions in the Framework. It is therefore inappropriate development in the Green Belt for the purposes of CELPS Policy PG3 and the Framework. There would also be an overall reduction in openness and conflict with one of the purposes of including land within the Green Belt contrary to paragraphs 142 and 143 of the Framework, respectively. Consequently, the proposal would constitute inappropriate development in the Green Belt such that planning permission should only be granted in very special circumstances.

Protected species

13. The appellant has not submitted a Bat Survey with his application. Instead he is relying on the bat survey² that was undertaken and submitted for the Prior Approval scheme. The Bat Survey found that bats use the buildings, but bat roosts were not significantly present. The Bat Survey was carried out in August-September 2020 and recommended the installation of bat boxes built into the gable walls.
14. Bats are a 'European Protected Species' under the Conservation of Habitats and Species Regulations 2017. 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, 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..."*.
15. I accept that the Prior Approval scheme could be implemented within what's left of the time period based on the existing bat survey. However, the Bat Survey was undertaken for the express purpose of converting the barns, under a Class Q Prior Approval. That is a very different type of development to the appeal proposal before me, which would see the demolition of all of the barns and hence the removal of any existing bat habitats for foraging and even occasional roosting. As bat activity was found during the last Bat Survey there is a reasonable likelihood that after 3 years bats are still using the buildings, although their activity may well have changed, even if the buildings have not. A new Bat Survey would be required.

² Bat survey and Nesting Bird Survey at Meadowland Farm 2020 – prepared by Rachel Hacking Ecology

16. As the advice above states planning conditions requiring surveys to be carried out should only be imposed in exceptional circumstances. No further information has been submitted to demonstrate full compliance with relevant statutory protections or to demonstrate that appropriate mitigation or safeguarding measures can be put in place for this different development proposal. Nor is there any submitted evidence from a professional Ecologist to explain why the existing Bat Survey, now over 3 years old, can still be relied upon for a totally different development proposal. No exceptional circumstances have been put forward. As a result, it has not been satisfactorily demonstrated that protected species would not be adversely affected by the proposed development.
17. Accordingly, the proposal would be contrary to CELPS Policy SE3 and Policy ENV2 of the Site Allocations and Development Policies Document (the 'SAPDP'). Collectively these seek, amongst other things, to protect the natural environment and safeguard biodiversity. 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, amongst other things, protected species.

Other Considerations and Green Belt Balance

18. 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 the openness of the Green Belt. Framework paragraph 153 requires that substantial weight is given to any harm to the Green Belt. Furthermore, the proposal would not make sufficient provision for bats, which are a protected species. 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.
19. The appellant advances a number of 'other considerations' in support of the application. If the appeal should fail, the appellant has every intention of carrying out the conversion and building works under the extant Prior Approval scheme and that this represents a significant fallback position.
20. There is a more than a theoretical possibility that the fallback scheme would be progressed and implemented. However, for significant weight to be afforded to a fallback position, there needs not only to be a reasonable prospect of it being carried out in the event the appeal is dismissed, but it would also need to be equally, or more harmful, than the scheme for which permission is sought. A Prior Approval is not a planning application such that the planning merits of the case, including the impact on the Green Belt, would not have been considered. However, it is possible to compare the overall impact of the fallback scheme on the Green Belt and openness to the appeal proposal.
21. The Prior Approval scheme would retain 2 of the agricultural buildings, with their existing footprint, shape and form. There would also be minimal alterations made to their external appearance and the elevations facing the

road in particular would be left largely unchanged. As a result, the appearance, form, bulk and massing of the existing buildings would not be significantly altered, such that the existing buildings would retain their agricultural appearance, form and feel after conversion, unlike the appeal proposal which would see them demolished and new dwellings erected. Indeed, under a Class Q Prior Approval conversion scheme only certain types of building operations are allowed and only those reasonably necessary for the building to function as a dwellinghouse.

22. Moreover, the Prior Approval scheme has a smaller red-line site area than the proposed scheme and does not extend towards the countryside to the west. With a smaller site area, less of the site would be developed under the Prior Approval scheme. Domestic garden areas would also be smaller with less scope for domestic paraphernalia and visual intrusion into the countryside.
23. I accept that the proposed development would see some overall reductions in floor area and volume when compared to the Prior Approval scheme. However, for the reasons set out above the Prior Approval scheme would overall be less harmful than the scheme for which planning permission is being sought. Consequently the fallback scheme cannot be afforded significant weight.
24. My attention is drawn to a Council decision to allow a new dwelling in lieu of an agricultural building at Long Meadow Barn³. Whilst there was a reduced scale of development, the Council found the proposed scheme had a more positive impact on openness than the fallback scheme and allowed the proposed scheme. I do not find that to be the case with the fallback and appeal scheme before me, hence the circumstances at Long Meadow Barn differ and the example is not directly comparable. Whilst it may be the case that residential development could be achieved by other routes, such as with a Class Q Prior Approval, it does not set a precedent to allow more harmful development regardless. In any event, I must determine the appeal before me on its own merits.
25. To conclude, I find that the other considerations do not clearly outweigh the totality of the harm to the Green Belt. There would also be 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

26. For the reasons set out above and having regard to all matters raised, I conclude that the appeal should be dismissed.

K. Stephens
INSPECTOR

³ Local Planning Authority ref: 19/2492M granted 15 October 2019