



Appeal Decision

Site visit made on 30 January 2024

by Elaine Moulton BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 February 2024

Appeal Ref: APP/A0665/W/23/3316753

Chapel Lane, Ledsham, Cheshire CH1 6EZ

- 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 Mrs Alison Griffiths against the decision of Cheshire West and Chester Council.
 - The application Ref 22/00872/FUL, dated 23 February 2022, was refused by notice dated 13 October 2022.
 - The development proposed is the change of use of land from agricultural to become a dog park (change of use only) (Re-submission of 19/03727/FUL).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development given above is taken from the Council's Decision Notice rather than the planning application form, as this provides a more accurate description of the proposal.
3. Whilst the appellant has referred to two storage containers that are located on the site, the proposal before me does not include them and is for the change of use of land only. The change of use of the site has already taken place. Accordingly, I have determined the appeal on that basis.
4. The Government published a revised National Planning Policy Framework (the Framework) on 20 December 2023. As the changes do not materially affect the main issues in this case, the parties have not been invited to make further comment. Where reference is made in this decision to paragraph numbers, they are taken from the latest version of the Framework.

Main Issues

5. The main issues are:
 - Whether the development is inappropriate in the Green Belt having regard to the Framework and any relevant development plan policies;
 - highway safety with particular regard to the adequacy of visibility from the access and parking provision;
 - the effect of the proposed development on European protected species and habitats, with specific regard to Great Crested Newts; and

- Whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development.

Reasons

Inappropriate development

6. The appeal site is located within the Green Belt. The Framework establishes that development in the Green Belt is inappropriate other than for specified exceptions that are set out in paragraphs 154 and 155. Policy STRAT9 of the Local Plan (Part One) Strategic Policies (LP1) indicates that within the Green Belt, restrictions will apply to development in line with the Framework.
7. As the appeal does not relate to the construction of new buildings the exceptions listed in paragraph 154 of the Framework are not relevant. However, paragraph 155 of the Framework indicates that certain other forms of development are not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. Paragraph 155(e) identifies material changes in use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds) as one exception. It is reasonable to consider that a dog park relates to outdoor recreation. Consequently, my conclusions as to the effect on openness will determine whether the proposal falls within this exception.
8. The existing hard surfaced area and its use for parking, as well as the equipment associated with the dog park, impinge upon, and harm, both the spatial and visual openness of the appeal site in comparison to the previous agricultural use. Furthermore, such features constitute an encroachment into the countryside and, so, the use also conflicts with one of the five purposes of the Green Belt set out in the Framework.
9. For the above reasons, the development is inappropriate in the Green Belt which is, by definition, harmful. It therefore conflicts with LP1 Policy STRAT9 as well as the Framework.

Highway safety

10. The access is from Chapel Lane, which is a quiet rural road that is reasonably straight at this point, with a speed limit of 60 mph. Chapel Lane is flanked on either side of the access by narrow grass verges and hedges.
11. Given that the access point is directly onto the carriageway with high hedges either side, visibility on exit is impeded. Any driver exiting from the access, therefore, has limited forewarning of any other vehicles or bicycles travelling along Chapel Lane. Whilst traffic is infrequent as it is a quiet rural road, vehicles could be travelling at high speed. Consequently, should a vehicle emerge from the access there would not be time to stop and avoid collision. The appellant indicates that vehicles are directed off the site. However, this requires an individual to step onto the highway which would put them at risk of being hit by a moving vehicle and is not, thus, an appropriate way to resolve the issues of visibility. Accordingly, whilst I acknowledge that there have not been any incidents associated with the use of the access, it remains that the impediment to visibility for vehicles exiting the site could lead to conflict with users of Chapel Lane to the detriment of highway safety.

12. There is nothing before me that suggests that appropriate visibility splays could not be achieved at the access point, however it is apparent that this would involve the removal of part of the hedgerow. The hedgerows along Chapel Lane contribute positively to the rural character of the area. However, as the hedgerow could be replanted to the rear of the visibility splay, the effect of the loss of hedgerow on the character and appearance of the area would be minimal. Nonetheless, for reasons that are set out below, the removal of the hedgerow could affect the habitat of protected species and it would therefore not be appropriate to secure the visibility splays through the imposition of a planning condition.
13. The appellant initially indicated that 10 vehicle parking spaces are provided on site. This led to the highway officer raising concerns that the existing area is not adequate for the safe parking and manoeuvring of that number of vehicles. However, the appellant has now indicated that as the dog park is not as busy as anticipated, parking for five cars is required.
14. There is no compelling evidence before me that would lead me to conclude that the provision of parking spaces for more than five cars is required or that the parking area is not sufficient for that number of vehicles. Consequently, whilst I have found that highway safety arises due to inadequate visibility at the access, I am satisfied that adequate parking and manoeuvring space is provided on site.
15. I therefore conclude that the proposal harms highway safety due to inadequate visibility from the access. Hence it is contrary to LP1 Policy STRAT10 and Local Plan (Part Two) Land Allocations and Detailed Policies (LP2) Policy T5, which require traffic to be accommodated safely and that safe provision for access to and from a site is provided. I also find conflict with the Framework in so far as it seeks to minimise the scope for conflicts between pedestrians, cyclists, and vehicles.

Protected species and habitats

16. The information before me suggests that the pond within the site may provide a suitable breeding habitat for Great Crested Newts (GCN), which the Council indicate are known to be present in the wider area. Furthermore, the hedgerow adjoining the highway along the site frontage provides a suitable terrestrial habitat for GCN.
17. GCN are designated and protected under the Conservation of Habitats and Species Regulations 2017. Current advice states that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by development, is established before planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. However, no information has been provided relating to the ecological impacts of the development and, consequently, it has not been demonstrated that GCN have not been, and would not be, affected by the appeal development.
18. To conclude, it has not been demonstrated that the development does not adversely affect GCN, a European protected species, and their habitat. This is contrary to LP1 Policy ENV4 and LP2 Policy DM44 which seek to safeguard and enhance biodiversity.

Other Considerations

19. The appeal development provides benefits through the provision of a safe and secure area for dogs and their owners to socialise and exercise. Such benefits attract limited positive weight given the relatively small scale of the proposal.

Green belt balance

20. The Framework, at paragraph 153, states that substantial weight should be given to any harm to the Green Belt and very special circumstances will not exist unless that harm, and any other harm, are clearly outweighed by other considerations. I have concluded that the appeal scheme would be inappropriate development and is, by definition, harmful to the Green Belt. I have also found harm to the openness of the Green Belt, harm to highway safety, and that it has not been demonstrated that the development does not adversely affect a European protected species and its habitat.
21. The other considerations I have identified are of limited weight in favour of the proposal. Consequently, these considerations, along with all other matters identified in the evidence, do not clearly outweigh the substantial weight to be given to the identified harm to the Green Belt, either individually or collectively, so as to amount to the very special circumstances necessary to justify the development.

Other Matters

22. The appellant indicates that by requesting that the containers on the site were replaced by a building, the Council were suggesting that it would permit the dog park. The Council, nonetheless, refused that application despite the costly commissioning of plans for such a building. However, such concerns regarding the Council's conduct during the processing of a planning application falls outside the remit of this decision.
23. I acknowledge that there have been no complaints about the dog park, however, this is a neutral factor that does not outweigh the harm that I have found.
24. The appellant has referred to a planning permission for another dog park on the same lane. However, I do not have full details of that case. I therefore cannot be certain that it raises similar matters to those that are applicable to, and is directly comparable with, the proposal before me. Whilst consistency of decision making is important, such a decision does not alter my findings based upon the evidence before me.

Conclusion

25. The proposed development conflicts with the development plan and there are no material considerations, either individually or in combination, that outweighs the identified harm and associated development plan conflict. I therefore conclude that the appeal should be dismissed.

Elaine Moulton

INSPECTOR