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## Appeal Decision

Site visit made on 16 April 2024

**by S. Ashworth BA (Hons) BPI MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 1 May 2024**

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**Appeal Ref: APP/A0665/W/23/3330414**

**Cheshire Oaks Fisheries, Strawberry Way West, Backford CH1 6PN**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
  - The appeal is made by Mr Michael Simpson against the decision of Cheshire West & Chester Council.
  - The application Ref 22/01150/OUT, dated 24 March 2022, was approved on 8 September 2023 and planning permission was granted subject to conditions.
  - The development permitted is two portal framed buildings comprising café, offices, toilets/changing and storage facilities, together with ancillary structures, site works and landscaping.
  - The condition in dispute is No 9 which states that: The use of the floorspace within the buildings hereby approved as a café or as office facilities shall be exercised solely for the benefit of Cheshire Oaks Fisheries anglers and staff only and shall at no time serve the general public. For the avoidance of doubt, no building shall form a separate use.
  - The reason given for the condition is: In the interests of protecting the function and character of the site.
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### Decision

1. The appeal is allowed and the planning permission Ref 22/01150/OUT, dated 24 March 2022 for the erection of two portal framed buildings comprising café, offices, toilets/changing and storage facilities, together with ancillary structures, site works and landscaping granted on 8 September 2023 by Cheshire West & Chester Council, is varied by deleting condition No 9 and replacing it with the following condition:
2. The use of the floorspace hereby approved as a café or as office facilities shall be exercised solely for the benefit of anglers and spectators using Cheshire Oaks Fisheries at the time, and staff working at the premises, and shall at no time serve the general public. For the avoidance of doubt, no building shall form a separate planning unit.

### Background and Main Issues

3. A commercial fishery, with associated toilets, reception and store has existed at the site for a number of years having been granted planning permission in 2010<sup>1</sup>. I noted at my site visit that the development is not yet complete, and the fishery is not operating to its maximum capacity.

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<sup>1</sup> Planning Application No: 10/12984/FUL

4. Outline planning permission was granted for two portal framed buildings comprising a café, offices, toilets/changing and storage facilities together with ancillary structures, site works and landscaping, in 2023, as set out above. The permission was subject to various conditions including condition 9 which limits the use of the floorspace within the approved buildings to Cheshire Oaks Fisheries anglers and staff and prevents the buildings from becoming a separate use.
5. The appellant seeks to remove condition 9 in order for the café to be used by passing trade in order to support the viability of the business. The site lies within the countryside outside any settlement boundary and is within the Green Belt.
6. The main issue in this case is therefore whether the condition is reasonable, necessary and enforceable having regard to national and local policy relating to development in the Green Belt and outside local settlements.

### **Reasons**

7. The National Planning Policy Framework sets out that the construction of new buildings should be regarded as inappropriate in the Green Belt. An exception to that is the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport and outdoor recreation, amongst other things, as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it. These exceptions are also referred to in the justification for Policy STRAT9 of the Cheshire West and Chester Local Plan which aims to protect the character of the countryside.
8. There is no reason to doubt that the appellant intends that the café and offices are used in connection with the fishery and the Council, in granting planning permission subject to conditions, considered that the proposal was an appropriate facility to serve what is a recreational and sporting activity and therefore met the Green Belt test. I have no reason to consider otherwise. However, there is nothing in the description of development which describes the proposed use as being ancillary to the fishery or which otherwise ties the proposed use to the existing.
9. The café and office would occupy a relatively limited area of the overall development. However, at this stage the plans are indicative only and there would be nothing to prevent, for example, the café becoming larger than that shown, up to a limit set out in condition 5. Nor can I be certain that the café would be located to the rear of the proposed storage building and thereby less visible to members of the public, although I acknowledge that even if it were sited adjacent to the shop it would not have a significant presence from the road.
10. Notwithstanding this, whether a use can be considered incidental to the primary use of the site is not solely dependent on its size, rather the question is whether the use would be functionally related to the primary use of the planning unit. The removal of the condition would allow the cafe to be used by members of the public not associated with the fishery. Accordingly, without the condition, there would be no certainty that the café and office would remain an incidental use to the fishery, and thereby an appropriate facility for sport, in perpetuity.

11. I acknowledge that during the week, and in poor weather conditions, the fishery, including the café, is likely to be less intensively used than at other times. However, there is no specific evidence before me about the financial viability of the café or the business as a whole, or to what extent the use of the café by visiting members of the public is required to make it viable.
12. My attention has been drawn to other countryside businesses, including other fisheries, which have café facilities. I do not have the details before me to determine whether the circumstances or context of those developments are the same as the case before me. In any event, most of those developments were granted planning permission prior to the introduction of the Framework in 2012 and may not therefore have been determined in the same policy context. Furthermore, the recently approved café building at Burton Mere is subject to a condition which restricts it to an ancillary use.
13. I note the appellant's contention that business needs to remain competitive with similar facilities in the region. However, there is no dispute that the development would provide appropriate facilities for users of the facility, including disabled participants, and there is no convincing evidence before me to demonstrate that the condition itself would render the business uncompetitive.
14. I understand that the shop on site is not subject to any planning restrictions although I am not aware that the retail use required and/or received planning permission itself. Moreover, its presence does not justify the proposal before me which can only be determined in accordance with current planning policy.
15. Taking into account all of the above, without any other mechanism to ensure that the proposed use remained incidental to the fishery, the removal of the condition would result in the development being considered inappropriate development in Green Belt terms. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. No other considerations have been put forward that indicate that very special circumstances exist.
16. On that basis the condition is necessary. I have also considered it against the other tests for conditions set out in the Framework and the Planning Practice Guidance. I acknowledge that it is not clear whether the 'angler' specified in the condition would need to be actively using the site and this element of the condition would not be precise and it would thereby be difficult to enforce. It also seems to me that the condition is narrowly worded and that spectators should reasonably expect to use the café and toilet facilities.
17. I have therefore altered the wording of the condition to include the patrons of the business referred to by the appellant. As a result, the appeal is allowed but only in respect of the wording of the condition, as set out in the formal decision.

*S. Ashworth*

INSPECTOR