



Appeal Decision

Site visit made on 20 February 2024

by C Coyne BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th June 2024

Appeal Ref: APP/X1355/W/23/3330487

Former Olivers Garden Centre, Holmhill Lane, Chester Moor, Chester-le-Street DH2 3RQ

- 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 David Anderson (Joseph Parr) against the decision of Durham County Council.
 - The application Ref DM/22/00969/FPA, dated 30 March 2022, was refused by notice dated 31 March 2023.
 - The development proposed is construction of a new building to be used as a customer display area, the re-siting of a storage shed approved under application DM/19/03858/FPA, and the siting of 2.4 metre and 3-metre-high storage palettes and 3 rows of material storage racks.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Concerns have been raised by interested parties in relation to the validity of the appeal citing two main reasons. The arguments relate to the fact that in their view, the original applicant and named appellant are two separate legal entities meaning that the owner of the appeal site is a different legal entity to the appellant.
3. However, from the forms and documentation before me, it is reasonably clear that the original application and appeal were lodged by Joseph Parr Limited, and that Mr David Anderson was acting on their behalf in this regard. It is also reasonably clear that Mr Anderson was a director of the company (or a subsidiary thereof) at the time the original application was submitted. It may well also be the case that Mr Anderson is no longer a director of the company. However, even so, the appellant has provided evidence that Mr Anderson was still the instructing client at the time the appeal was submitted.
4. It is also reasonably clear to me that the company Joseph Parr (Middlesbrough) Limited is a subsidiary of Joseph Parr Limited and the JP Group Limited. Consequently, I am satisfied that the signing of the original land ownership declaration by the applicant was done in good faith and not to be intentionally misleading.
5. I note that the appellant's statement of case was created on 30 September 2023 at 21:41:41 and that the interested parties state the deadline for the submission of the appeal was 30 September 2023 meaning that it was not submitted on time. However, as set out in correspondence from the Planning Inspectorate the reasonable 6-month deadline for the submission of the appeal was 2 October 2023

due to the deadline being calculated as 6 calendar months, there being only 30 days in September and that the 30 September was a Saturday.

6. Furthermore, it was explained that in these circumstances an appeal is normally accepted on the next working day, which in this case was 2 October 2023. Consequently, I consider it reasonable that the appeal was accepted on the 2 October 2023. Therefore, I find that the appeal was submitted by the appellant within the required timeframe. As a result, based on the evidence before me I am satisfied that the appeal was duly made and that it is therefore valid.
7. The appellant has requested that the lapsed permission DM/19/03858/FPA be reinstated. However, this is something which is beyond the scope of this s78 appeal.
8. On 19 December 2023 a revised version of the National Planning Policy Framework (the Framework) was published. Apart from changes to paragraph numbering and one change relating to plan-making, no major changes have been made to the Framework in relation to national Green Belt policy. As a result, and given the nature of the refusal reasons, the main issues and the Development Plan policies upon which the refusal reasons are based, on this occasion I consider that the publication of the revised Framework does not directly alter the assessment of this appeal. The relevant updated paragraph numbers have been used in my reasoning below.

Main Issues

9. The main issues are:
 - whether the proposal would represent inappropriate development in the Green Belt having regard to the National Planning Policy Framework and any relevant Development Plan policies;
 - the effect of the proposed development on the purposes of including land within the Green Belt;
 - the effect of the proposed development on the rural character of the area and its landscape;
 - whether the proposal would meet the relevant development plan tests for new development in the countryside; and
 - if the proposed development is inappropriate, 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 proposal.

Reasons

Whether inappropriate development

10. The National Planning Policy Framework (the Framework) at paragraph 152 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Policy 20 of the adopted County Durham Plan (CDP) only allows development in the Green Belt where it is in accordance with national policy. Consequently, I consider policy 20 to be consistent with the Framework and I afford it full weight.
11. The construction of new buildings is regarded as inappropriate in the Green Belt save for several specified exceptions under paragraph 154 of the Framework. One such exception is limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would either: 1) not have a greater impact on the openness of the Green Belt than the existing development or; 2) not cause

substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority. The proposal would not provide any affordable housing and therefore the second limb of paragraph 154 g) is not applicable in this case.

12. It is not a matter of dispute that the appeal site comprises previously developed land (PDL). It is also not disputed that a fallback position exists for the change of use from garden centre to builders' merchants, including the erection of a covered open storage unit, external material storage and ancillary car parking which has been granted a Certificate of Lawfulness (Ref. DM/21/01635/CPO). From the evidence before me I see no reason to disagree with the main parties on these points.
13. Based on the evidence in terms of buildings the approved development on the site consists of a covered open storage unit to be used for dry material storage as indicated on the submitted plan drawing no. C101. According to submitted plan drawing no. C102, this storage unit would be relocated and reorientated with a new customer display area building being erected beside it. This new building was not part of the scheme approved under application ref. DM/21/01635/CPO.
14. Therefore, in simple spatial terms the appeal scheme would be materially larger than what has already been approved thereby having a spatial impact on the openness of the Green Belt. Furthermore, given the size of the new customer display area building I consider that this spatial impact would be substantial.
15. I note that the previous garden centre building has been demolished. However, overall, I consider that the proposal would have a greater footprint than the building that was demolished.
16. In any event, given that the appeal site has been cleared of built development, it is for all intents and purposes an open site in the Green Belt. As such, the proposal would introduce built development to land where there is currently none, thereby having a spatial impact on its openness, the extent of which has been described above. The proposal would therefore fail to preserve the openness of the Green Belt in spatial terms.
17. According to the Council the appeal site is located within the open countryside and is next to an Area of High Landscape Value (AHLV). The appellant argues that the site is not wholly within the open countryside. Paragraph 5.74 of the CDP states that for the purposes of Policy 10, land which is not within an existing built-up area as defined in the glossary will be regarded as 'countryside'. The glossary to the CDP defines a built-up area as '*land contained within the main body of existing built development of a settlement or is within a settlement boundary defined in a Neighbourhood Plan.*' It also states that areas falling outside this definition will be regarded as countryside.
18. According to the submitted plans and other evidence the appeal site is bounded by Holmhill Lane, the east coast main railway line and the A167 main road. The evidence and what I observed on my visit shows that beyond the A167 is predominately open land bounded by mature trees, that beyond Holmhill Lane is a portion of open grassed land or a paddock bounded by trees, and that beyond the railway line is again predominately open land. Furthermore, while I note that there are some dwellings nearby, the closest one belongs to Chester Moor Farm that is separated from the appeal site by an open gap of land. As a result, I find that the appeal site and the land around it to be predominately open and rural in character.

19. Similarly, I consider the appeal site to be neither contiguous with nor part of Chester Moor. Moreover, Chester Moor is not a settlement as identified by the CDP. In any event, even if it were, for the above reasons, I consider that the appeal site would not be part of it. For these reasons I therefore also find that the appeal site is located wholly within the open countryside.
20. In terms of the proposal's visual impact, it would introduce built development onto land that is largely visually open. As a result, and given its location, design, size, bulk, massing, and scale, I consider that the proposal would have a significant adverse visual impact on this openness.
21. I note that the submitted Visual Openness Plan shows that only part of the proposal would be visible from the junction of Holmhill Lane and the A167 and that the existing and proposed landscaping would mean that the site would be visually contained to some degree. However, this is not the same as the proposal not being visible at all.
22. Consequently, given the relatively open nature of both the appeal site and the land beyond it, there is a clear link between their respective senses of 'openness' which when assessed as a whole would be harmed by the introduction of the proposal as it would have discernible adverse spatial and visual impacts in this regard.
23. As a result, I consider that overall, the proposal would erode the spatial and visual openness of the Green Belt and therefore would clearly conflict with the fundamental aim of national Green Belt policy. For similar reasons, the proposal would therefore also represent a clear encroachment into the countryside.
24. Consequently, the proposal would not preserve the openness of the Green Belt either spatially or visually in conflict with paragraph 142 of the Framework. Similarly, it would also fail to safeguard the countryside from encroachment. In accordance with paragraph 153 of the Framework I afford the identified harm to the openness of the Green Belt substantial weight.
25. Accordingly, I find that the proposal would fall outside the exception set out in paragraph 154 g) of the Framework. I therefore conclude that the proposal would be inappropriate development in the Green Belt in conflict with the aims of the Framework. As a result, it would also conflict with policy 20 of the CDP.

Rural Character and Landscape

26. As set out in paragraph 142 of the Framework, the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. As set out above I consider the appeal site and the land around it to be predominately open and rural in character. Policy 39 of the CDP states that new development proposals will only be permitted where they would not cause unacceptable harm to the character, quality, or distinctiveness of the landscape, or to important features or views.
27. As highlighted above, the proposal would introduce built development onto a predominately open and rural landscape thereby harming the openness of the Green Belt. For similar reasons I consider that the proposal would have an unacceptable adverse impact on the rural character of the area. Therefore, while I note the appellant's point that the appeal site is not within the AHLV, given its proximity to it, I consider that any development on it would have an unacceptable adverse visual impact on the AHLV, nonetheless. Consequently, I conclude that the proposal would materially harm the rural character of the area and its landscape thereby failing to meet the relevant requirements of policy 39 of the CDP.

New development in the countryside

28. As set out above, I consider the site to be wholly within the open countryside. Consequently, the provisions of policy 10 of the CDP are applicable. Policy 10 of the CDP only allows development in the open countryside if this is permitted by other plan policies or if it meets one of the exceptions identified by policy 10. One of these exceptions is for economic development with criterion b) setting out that it would be for development necessary to support the expansion of an existing business where it can be clearly demonstrated that it is, or has the prospect of being, financially sound and that it will remain so.
29. The appellant argues that there is in effect planning approval for the builders' merchants use of the appeal site. However, even if that is the case, I have no substantive evidence before me to demonstrate that the proposed use would be financially sound or that it would remain so. Consequently, I find that the proposal would fail to meet the exception set out by criterion b) of policy 10 of the CDP. I therefore conclude that the proposal would conflict with policy 10 of the CDP in this regard.

Other considerations

30. In support of the proposal the appellant has stated that it would have a socio-economic benefit by providing around 19 new jobs and enabling financial investment in the local area. However, no substantive evidence such as a business case or viability assessment has been submitted to support this. As a result, I afford this consideration limited weight.
31. The appellant has also advanced a fallback position relating to the full implementation of the extant certificate of lawfulness (Ref. DM/21/01635/CPO). This would comprise the change of use from a garden centre to a builders' merchants, the erection of a covered open storage unit and the provision of: external material storage; car parking; fencing; and entrance gates. However, while this option could be pursued, for the reasons set out above I am not convinced that this would be more harmful than if the appeal scheme itself were permitted in conflict with the CDP. Accordingly, I afford this consideration limited weight.
32. The appellant has also stated that the previous use as garden centre could be permitted via para 154 d) thereby allowing for the provision of a building replacing the former garden centre. However, even if this was the case, for similar reasons I am not convinced that this would be more harmful than if the appeal scheme itself were permitted in conflict with the CDP. As a result, I afford this consideration limited weight.
33. The appellant has also stated that the site is exceptional as four criteria were applied to its selection in that it had to be: in an out of town location with good access; a site that would enable them to change public perception of builders' merchants by promoting 'green policies'; be large enough to allow the implementation of 'ecological and environmental procedures'; and a previously developed site with a similar or existing use with established traffic patterns. It has therefore been put forward by the appellant that this site selection process makes the appeal site 'unique' and so provides associated environmental benefits. However, given the nature of the proposal and the appeal site, I have no substantive or compelling evidence before me to suggest that it could not be located at a more suitable site elsewhere that is not in the Green Belt which also meets these four site selection criteria. I therefore find that the site is not unique and afford this consideration limited weight.

34. It has also been stated that the submitted 'Habitat Creation and Management Plan' document outlines proposed habitat creation and enhancements for the site including planting trees and enhancing grassland. However, the submitted Biodiversity Net Gain Assessment indicates that the proposal would result in a net loss of biodiversity units (around 4.44 units) in the habitats category with a modest gain achievable in the linear category (about 0.21 units). The report concludes that *'To deliver net gain in relation to the proposed development it is anticipated that off-site compensation will be required. To achieve net gain and to satisfy the trading rules of the metric, proposals will need to deliver an additional 4.44 units in the habitats category.'* Consequently, I afford this consideration limited weight.
35. The appellant has also posited that the proposal would comprise sustainable development due to a combination of factors such as outstanding design criteria and enhanced landscaping plans including biodiversity improvement. However, I am not convinced that the proposal represents outstanding design and in terms of biodiversity improvement, as highlighted above the proposal would not achieve biodiversity net gain. As a result, I afford this consideration limited weight.
36. The appellant has also put forward the fact that the hours of operation of the proposal would be significantly less than the garden centre use meaning that it would have less of an impact on the openness of the Green Belt. However, I have no substantive evidence to support this. In any event, even if this was the case given the fact that for example the car park would not be constantly occupied means that any potential reduced spatial or visual impact on the openness of the Green Belt would likely be limited. I therefore afford this consideration limited weight.

Other Matters

37. Concerns have been raised by interested parties in relation to highway safety. However, neither the Council nor the Local Highway Authority have raised any objection in this regard and from the evidence before me I see no reason to disagree. As a result, I afford this matter little weight.

Planning Balance and Conclusion

38. Paragraphs 152 and 154 of the Framework indicate that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 153 of the Framework also sets out that any harm to the Green Belt should be afforded substantial weight. In this context, very special circumstances will not exist unless the harm to the Green Belt and any other harm is clearly outweighed by other considerations. Consequently, other considerations weighing in favour of the development must clearly outweigh any harm.
39. I have found that the proposal would amount to inappropriate development in the Green Belt. I afford this harm substantial weight in the planning balance. I have also found that it would cause harm to the rural character of the area and its landscape. In addition, I have afforded limited weight to the other considerations put forward in favour of the proposal. Consequently, overall, I conclude that the harm by reason of inappropriateness, the harm to openness and the other harm, are not clearly outweighed by the identified other considerations so as to amount to the very special circumstances required to justify the proposal. Accordingly, I conclude that the appeal should be dismissed.

C Coyne INSPECTOR