



Appeal Decision

Site visit made on 13 August 2018

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th September 2018

Appeal Ref: APP/W4325/W/18/3197282

Former Garden Hey Nurseries, Garden Hey Road, Moreton CH46 5NE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr McArdle against the decision of Wirral Metropolitan Borough Council.
 - The application Ref OUT/17/00598, dated 10 May 2017, was refused by notice dated 29 January 2018.
 - The development proposed is an outline application for the demolition of existing buildings and erection of up to 19 new dwellings with associated landscaping and open space.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The application was submitted in outline with only access to be determined at this stage. A site layout plan accompanied the application. However, this is clearly labelled as indicative and the appellant confirms that details of design and layout will be the subject of reserved matters. Accordingly, whilst the indicative layout is helpful in providing an indication of the scale of the development, I have considered it on the basis that it is indicative only and does not form part of the application.

Preliminary Matter

3. Since the appeal was submitted, a revised version of the National Planning Policy Framework (the Framework) has been published and this is a material consideration which should be taken into account from the date of its publication. I have therefore determined the appeal in light of the revised Framework.

Main Issues

4. The main issues in this appeal are as follows:
 - Whether the proposal is inappropriate development in the Green Belt having regard to relevant development plan and national planning policies;
 - The effect of the development on the character and appearance of the area;

- The effect of the development on the openness of the Green Belt and the purposes of including land within the Green Belt;
- Whether the proposal would provide adequate living conditions for future occupants, with particular regard to outlook; and
- If the development would be inappropriate development, 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 it.

Reasons

Whether inappropriate development

5. The appeal site lies within the Green Belt. Paragraph 133 of the Framework states that the essential characteristics of Green Belts are their permanence and openness. Paragraph 145 of the Framework states that the construction of new buildings in the Green Belt shall be regarded as inappropriate development. However, there are exceptions to this presumption against new buildings in the Green Belt. One such exception is the partial or complete redevelopment of previously developed land, whether redundant or in continuing use, which would not have a greater impact on the openness of the Green Belt than the existing development. Annex 2 of the Framework describes previously developed land as 'land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes: land that is or was last occupied by agricultural...buildings.' A horticultural nursely falls within the definition of agriculture.
6. Although based on previous national policy, saved Policy GB2 of the Wirral Unitary Development Plan (UDP) 2000 essentially takes a similar approach to the Framework but it does not consider previously developed land within the exceptions other than 'major existing developed sites'. Accordingly, I attribute only moderate weight to this policy in respect of its degree of consistency with the Framework. In support of saved Policy GB2, saved Policy URN1 of the UDP seeks to protect the Green Belt from inappropriate development.
7. The appeal site comprises a metal clad building near to the entrance of the site, a brick outbuilding, an area of hardstanding and a large number of glasshouses. The site is currently vacant and the buildings and glasshouses are in a state of disrepair and are heavily overgrown.
8. The appellant contends that when in use the site was not in sole use for agriculture but comprised a mixed use of agriculture and non-agriculture as produce grown was on display and sold on site. Consequently, he asserts that the site is considered to be previously developed land for the purposes of the exceptions set out in paragraph 145 of the Framework.
9. In support of his case, the appellant relies on R (Lee Valley Regional Park Authority) v Broxbourne Borough Council [2015] EWHC 185 (Admin). In that case, the retail component of the site, which included the sale of plants and florist's sundries, required planning permission, which was permitted on appeal

- in 1999¹. Therefore, there was a material change of use from agriculture to a mixed agriculture and retail use.
10. In the proposal before me, there is little evidence regarding the extent of the retail element that operated from the site. I note that there was no planning permission for the sale of plants from the site. However, that is not to say planning permission was required. Providing the plants sold were grown on site then it is plausible that the retail element was ancillary to the horticultural use of the site and did not require planning permission. Whilst such sales would be lawful, their ancillary nature would not amount to a material change in the use of the land from agriculture to a mixed agriculture and retail use. Had there been a material change in use then planning permission would have been required. I note that planning permission was granted for a customer car park in 1992. Whilst the details of this scheme are not before me, I do not consider that this resulted in or reinforced any material change in the use of the land from agriculture. Consequently, based on the evidence before me, it has not been demonstrated that the retail element was more than ancillary to the agricultural use. I therefore consider the lawful use of the site to be agricultural.
 11. As such, I do not consider that the appeal site falls within the definition of previously developed land and therefore the proposal does not meet any of the exceptions to the presumption against new buildings in the Green Belt.
 12. The appellant has referred me to a number of decisions made by the Council and appeal decisions in respect of the redevelopment of garden nurseries. The site at Kelsall² was a mixed use site comprising a garden centre with primary retail and light industrial use. A certificate of lawful development was granted for this mixed use in 2011. Therefore, as there was a lawful mixed-use, the site was previously developed land.
 13. There is little evidence with regard to the planning history for the former Debbies Garden Centre³ and the Burford Lane site⁴ to ascertain whether or not the sites comprised a lawful mixed use. However, their description as garden centres rather than nurseries would suggest that there was a significant retail element, which could have been more than just ancillary to an agricultural use. There is also little evidence regarding the planning history of the former Chimes Garden Centre⁵ and the extent of any retail use, although I note that following the closure of the garden centre, the buildings were used for commercial purposes.
 14. With regard to the Marriage Hill Nurseries site⁶, the issue of whether or not the site was previously developed land was not raised and therefore the Inspector did not conclude on the matter either way.
 15. Finally, in the former Charles Hill Nursery case⁷, the Inspector found that the site comprised a 'blend or mix of horticultural and landscaping uses.' Therefore, there was a mixed use.

¹ R (Lee Valley Regional Park Authority) v Broxbourne Borough Council [2015] EWHC 185 (Admin) para 38.

² LPA Ref 17/00814/REM

³ Appeal Ref APP/J1535/W/16/3162580

⁴ Appeal Ref APP/M0655/A/14/2227516

⁵ Appeal Ref APP/J1535/W/15/3132062

⁶ Appeal Ref APP/J3720/W/15/3010653

⁷ Appeal Ref APP/R3650/A/14/2223115

16. Consequently, I find no direct comparison between the appeal proposal before me and the cases referred to me by the appellant. In any event, I have determined the appeal based on its own merits.
17. I find therefore that the proposal fails to satisfy any of the exceptions set out in paragraph 145 of the Framework or saved Policy GB2 of the UDP. Therefore it is inappropriate development, which, by its very definition, is harmful to the Green Belt and should not be approved except in very special circumstances.

Character and appearance

18. The appeal site is bounded by high hedges screening the existing buildings from views off Garden Hey Road. To the west and south are open fields. There are a small number of dwellings fronting the road either side of the site. On the opposite side of the road is the edge of the settlement of Saughall Massie.
19. The existing buildings on the site are generally low level with the glasshouses and pigeon loft being only single-storey in height. In addition, whilst I accept that the glasshouses are permanent structures, they have a lightweight construction. The low level buildings and the lightweight construction of the majority of the buildings on site create a sense of spaciousness and openness that result in the site being read in the context of the adjacent open countryside rather than the more urban built form on the opposite side of the road. Whilst there are dwellings on this side of the road, the site provides a significant visual break between them, thus retaining the spaciousness of the open countryside location.
20. The provision of up to 19 dwellings on the site would introduce a significant form of built development that would erode the spaciousness and openness of the site. I acknowledge that the dwellings could be positioned so that they are not readily visible from the road, as indicated on the indicative plan. However, they would be clearly visible from neighbouring properties and at two-storeys in height they would be visible in glimpsed views between the existing dwellings on Garden Hey Road. As a result, the development would be read as an extension of the built form of the settlement of Saughall Massie, which would be harmful to the spaciousness and openness of the open countryside.
21. The dilapidated condition of the existing buildings does not make any positive contribution to the character or appearance of the area and causes some, albeit limited, damage to the landscape. However, the site is largely screened from public views and due to the extent of vegetation on site, much of the site is screened from view from within the site, although, I acknowledge that this would unlikely be the case in winter months when much of the vegetation would die back, thus exposing the buildings. The appellant states that the proposal would be compliant with Policy LAN1 criterion (ii) of the UDP as it would be an improvement and enhancement of the damaged landscape. However, this criterion of the policy is with regard to landscapes identified as areas requiring landscape renewal. There is no evidence before me that the appeal site forms part of such a landscape. Notwithstanding this, the replacement of the existing buildings with up to 19 dwellings would result in the site taking on a more urban character, extending the existing built form of the settlement into what is currently open land.

22. Overall, the proposal would significantly harm the character and appearance of the area, contrary to Policies GB2, LAN1 and LA7 of the UDP, which, amongst other things seek to ensure that development does not damage the visual amenities of the Green Belt; protects the local and wider landscape from inappropriate visual impact; and, minimises visual intrusion.
23. I acknowledge that the proposal is in outline and that the design, siting, scale, landscaping and materials used could be considered at a later stage. However, based on the evidence before me, I am not satisfied that the above harm could be adequately mitigated through these reserved matters.

Openness and the purposes of including land within the Green Belt

24. Paragraph 133 of the Framework advises that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The appellant's case centres on the 'trade-off' between the volume and footprint of the existing buildings that are to be demolished and the proposed dwellings. However, the effect of development on openness can be solely assessed on a calculation of footprint and volume. It is a well-established principle that openness has both a spatial *and* visual dimension.
25. Based on the indicative scheme, the appellant confirms that the overall footprint and volume of the proposed dwellings would be approximately 66% and 50% respectively of the existing buildings on the site, excluding the existing hardstanding areas. Therefore, in terms of the spatial dimension, the proposal would have a significantly reduced impact on the openness of the Green Belt than the existing built form.
26. Notwithstanding this, the visual effect of the development on the openness of the Green Belt must also be considered. The majority of the buildings on the site comprise glasshouses. By their very nature, the glasshouses allow a significant amount of visual permeability that reduces the effect they have on openness. In marked contrast to the lightweight construction of the glasshouses, the solid design of the dwellings would result in them appearing to have a greater visual mass and be more visually intrusive. Moreover, the existing low level of the majority of the existing buildings further reduces their effect on the openness of the Green Belt. Were the dwellings to be two-storey in height, this would exacerbate that visual intrusiveness as they would rise above site boundaries and be more prominent from neighbouring properties. Consequently, the development would have a significantly greater impact on the visual dimension of openness.
27. Whilst it is currently well contained and comprises a significant amount of built form, the existing site is read as part of the open countryside. The proposed development would be read as an extension to the settlement of Saughall Massie. As a consequence, I consider that it would amount to the sprawl of a large built-up area, contrary to the purposes of including land within the Green Belt.
28. I find therefore that the proposal would fail to preserve the openness of the Green Belt and the purposes of including land within it. As such, it does not satisfy any of the exceptions set out in saved paragraph 145 of the Framework or saved Policy GB2 of the UDP.

Living conditions

29. The Council raise concern that the proposed 'U' shape block as shown on the indicative plan would result in overlooking between the dwellings facing each other. Furthermore, there could be unacceptable overlooking between the dwellings to the north of the site and those to the south as the interface distance would be less than the 21m guideline set out in the Council's supplementary planning document for flats and supplementary planning guidance for house extensions.
30. However, notwithstanding the indicative layout, the application was made in outline with details pertaining to design, scale and siting reserved for future consideration. Based on the overall size and shape of the site, I am satisfied that 19 dwellings could be accommodated ensuring adequate living conditions are provided for future occupants, with particular regard to overlooking. In their reason for refusal the Council also refer to inadequate outlook. However, I am similarly satisfied that adequate outlook could be provided.
31. I find therefore that the proposal could provide adequate living conditions for future occupants. As such, I find no conflict with Policy HS4 of the UDP or Policy CS42 of the Core Strategy for Wirral – Proposed Submission Draft 2012, which, amongst other things, seek to protect residential amenity. Furthermore, I find no conflict with the Framework in this respect.

Other considerations

32. I turn now to address other considerations that, potentially, might clearly outweigh harm arising from inappropriate development in the Green Belt and the erosion of openness so as to provide the very special circumstances required to justify a grant of planning permission.
33. The proposal would re-use an existing vacant site that is in such a state of disrepair that it would unlikely be brought back into use. I note that this is similar to the conclusion of the Inspector in the previous appeal on the site⁸. The dwellings would provide social benefits by way of increasing the supply of housing in the locality, including affordable housing. This benefit is further enhanced due to the significant shortfall in housing supply in the borough, which the proposal would make a moderate contribution towards. The proposal would also offer economic benefits by providing construction jobs. In addition, biodiversity enhancements could be achieved throughout the site. I attribute these matters moderate weight in favour of the proposal. Furthermore, the lengthening of the footway to the front of the site would provide a safer crossing point for pedestrians and therefore weighs moderately in favour of the proposal.
34. I note that there has been localised flooding, which is alleged to be a result of the hardstanding on the site. However, there is no substantive evidence to indicate that this is the cause of the flooding and therefore I can only attribute this matter very limited weight.
35. The appellant also advances that the proposal would not have any significant harm to the openness of the Green Belt or the purposes of including land within it. However, I have found to the contrary. The proposal would significantly harm the openness of the Green Belt and by reason of it resulting in the sprawl

⁸ Appeal Ref APP/W4325/A/1066178

of a large built-up area, it would also conflict with the purposes of including land within it. I note that the table provided in the appellant's statement of case identifies that there would be a 'minor' impact on this purpose. Therefore, this cannot be considered to weigh in favour of the proposal. Similarly, whilst the existing buildings do not make a positive contribution to the character and appearance of the area, I have found that the proposal would have a significantly greater harmful effect.

Planning balance and summary

36. I have found that the proposal would provide adequate living conditions for future occupants. However, this is a neutral effect and does not weigh in favour of the proposal.
37. The proposal has harmful implications for the Green Belt in terms of inappropriate development, the erosion of the openness of the Green Belt and the conflict with the purposes of including land within it. In accordance with national policy, such harm carries substantial weight. Furthermore, it would significantly harm the character and appearance of the area. Having regard to the benefits of the proposal advanced by the appellant, I am not satisfied that, individually or cumulatively, these amount to the very special circumstances necessary to justify the development.

Conclusion

38. For the reasons given above, having regard to all matters raised, the appeal is dismissed.

Alexander Walker

INSPECTOR