



Appeal Decision

Hearing (Virtual) held on 5 and 6 April 2022

Site visit made on 6 April 2022

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 May 2022

Appeal Ref: APP/R0660/W/21/3275804

Hawthorn Cottage, Harvey Road, Congleton CW12 2PS

- 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 David Poyner (DAVICO Properties UK Ltd) against the decision of Cheshire East Council.
 - The application Ref 20/2470C, dated 16 June 2020, was refused by notice dated 25 November 2020.
 - The development proposed is outline planning permission for 35no. residential dwellings (including all dwellings 100% affordable housing), vehicle access from Gordale Close, open space, landscaping and associated infrastructure. Hawthorn Cottage to be retained.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have used the address stated on the decision notice in the banner header above, in the interests of consistency and to avoid unnecessary confusion. I have also taken the description of development from the decision notice, as this reflects amendments that were made to the proposal during the period that the planning application was under consideration, and therefore it represents the most accurate description of what is proposed.
3. The application is submitted in outline form with approval being sought in relation to the matter of access. The matters of appearance, layout, scale and landscaping are reserved for later consideration. Therefore, I have approached my determination of the appeal on that basis.
4. The emerging Cheshire East Local Plan Site Allocations and Development Policies Document (eLP) has undergone examination and a period of public consultation on proposed main modifications to it is currently taking place. Given that these emerging policies remain under consultation at the present time and as a result could be the subject of further changes, I afford limited weight to them in my determination of this appeal.

Main Issues

5. The main issues are:

- (i) Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;
- (ii) The effect on the openness and the purposes of the Green Belt;
- (iii) The effect on trees, woodland and ecological interests;
- (iv) The effect on the character and appearance of the Macclesfield Canal Conservation Area (CA);
- (v) If the proposal is inappropriate development 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

Whether inappropriate development

- 6. Paragraph 149 of the Framework states that the construction of new buildings is inappropriate in the Green Belt but it sets out a number of exceptions. At the hearing the appellant advised that they wished only to pursue their position that the proposed development would meet the exception set out in part 149g), which relates to limited infilling or the partial or complete redevelopment of previously developed land. Paragraph 149g) of the Framework post-dates both Policy PG 3 of the Cheshire East Local Plan Strategy 2017 (CELPS) and Saved Policy PS7 of the Congleton Local Plan 2005 (CLP) and its wording is more expansive than that of either development plan policy. In light of the conflict between these policies and the more recent national policy, I will determine this issue with regard to the Framework.
- 7. There are buildings on the appeal site which have been the subject of prior notification applications to change their use. It is evident that there are a number of areas of dispute between the main parties associated with this planning history, but these are not matters which fall for my consideration. However, even if a position is taken that is most favourable to the appellant, the footprint of the buildings in question and their curtilages that have been identified on the plans provided represent only a very small part of the appeal site area. Even with the inclusion of Hawthorn Cottage, which would not actually be the subject of any works, the vast majority of the appeal site is not previously developed land. That part of the appeal site would form an ecology buffer zone does not affect whether it is currently previously developed land or not.
- 8. Consequently, the proposed development cannot be considered to be either the limited infilling or the partial or complete redevelopment of previously developed land, by virtue of the fact that most of the appeal site is not previously developed land. It would therefore not fall within the exception set out in paragraph 149g) of the Framework, nor within any other exceptions within paragraph 149 as a whole, and it would as a result be inappropriate development in the Green Belt as defined by the Framework. It would also be

inappropriate development as set out in Policy PG 3 of the CELPS and would fail to accord with Saved Policy PS7 of the CLP, albeit for the reasons given above these policies carry a reduced weight in my determination of this main issue.

Openness and purposes of the Green Belt

9. A fundamental aim of Green Belt policy, as set out by the Framework, is to prevent urban sprawl by keeping land permanently open. Openness is, in effect, the absence of development and it has both a spatial and visual aspect to it. The Framework further sets out at paragraph 138 that the Green Belt serves five purposes.
10. With the exception of Hawthorn Cottage and the aforementioned buildings that are of a relatively small footprint and limited height, the appeal site is devoid of any other built development. It sits in a position immediately adjacent to the edge of Congleton, where the urban built form transitions to a rural form. The introduction of 35 dwellings and associated infrastructure onto the site in such a context would significantly erode the openness of the Green Belt, both in a spatial and visual sense, even considering that parts of the site would be likely to remain undeveloped as a buffer zone.
11. Whilst the appellant refers to the size of the site relative to the size of the Green Belt as a whole and to the presence of the canal as a feature which they consider severs it from the wider Green Belt, it is nonetheless part of this designated area. Neither of these therefore represent mitigating factors in considering the impact that would arise on the Green Belt. In fact, the presence of the appeal site immediately adjacent to the edge of the settlement means that it would run contrary to the purposes of the Green Belt, in particular those which seek to check the unrestricted sprawl of large built-up areas and assist in safeguarding the countryside from encroachment.
12. For these reasons and on consideration of the quantum of the development that is proposed, I conclude that there would be substantial harm to Green Belt openness as a result of the proposed development. The proposal would also conflict with the purposes of the Green Belt, which too would result in substantial harm. In both respects therefore, the proposal would be contrary to the specific guidance within the Framework.

Trees, woodland and ecological interests

13. The submission seeks the approval of the reserved matters of access, but it is bereft of any substantive details as to what form this access would take, or even from which specific part of the head of Gordale Close it would be taken. The only pictorial indication provided is that shown on the indicative plans, and that access would undeniably result in the loss of trees subject to a tree preservation order, including an Oak tree that is of high amenity value and graded as a category A tree. However, at the hearing it was stated that the access would instead be taken via a recently established access point located further away from the trees in question. There are however no firm details of this access in terms of what technical specification it could, and would need, to meet and it is instead suggested by the appellant that these details be secured by way of a planning condition.
14. The Arboricultural Report dates from 2013 and its age means that it must be considered to be of reduced usefulness in assessing the impact on the trees on

the site, as there is great potential that changes could have occurred to the form of the trees and their health in the intervening period of almost 9 years. The appellant's Arboricultural Consultant advised at the hearing that they have undertaken a more recent assessment in summer 2021 and their findings were discussed verbally, including that trees T1 and T2 may be suffering from Ash dieback. However, there has been no written submission during the planning process for the consideration of the Council's own specialist or for comment by interested parties. Whilst the view was offered that provisions could be put in place to safeguard the trees, this is far from certain based on the lack of evidence that is available on this matter.

15. In particular, it has not been demonstrated that an access provision suitable to serve 35 dwellings could be achieved in the location of the access point that has already been formed. There are no details, for example, as to how and where the required width of the access and any necessary services and utilities would be accommodated, or of any ground level changes that might be required. These are all factors which would be of great importance in establishing whether or not there would be harm to the protected trees as a result of the proposed development. Ultimately, whilst it may be possible to find an engineering solution, no comfort has been provided to suggest this would actually be the case.
16. This leaves the unsatisfactory proposition being put forward of the approval of the matter of access without it being known where that access would actually be located and what form it would need to take. Consequently, there remains a likelihood that harm would occur to the protected trees as the result of any access approved from Gordale Close and the submission that has been made fails to discount this. I can, therefore, only proceed on the basis that the proposed development may lead to harm to trees that are subject to a tree preservation order.
17. There is ancient woodland adjacent to the appeal site and non-ancient woodland that falls partly within the site and partly outside of it. With respect to the ancient woodland, Natural England's Standing Advice recommends that at least a 15 metre buffer be provided between the proposed development and the woodland, whereas the Woodland Trust advises that a buffer distance of at least 30 metres should be maintained. The Council's Ecologist considers that the depth of the buffer required should be based upon an assessment of the potential impacts of the proposed development upon the ancient woodland. This should include consideration of the site's hydrology and topography, the likely layout of the development and the need for and likely location of drainage features.
18. The question which arises is whether the depth of the buffer is a matter that would need to be established before outline planning permission was granted, or whether it could be subject to a planning condition imposed to inform the reserved matters submission of layout. In this respect, there is scope within the land area available on the appeal site to provide a buffer, even if this would need to be of the full 30 metre depth specified by the Woodland Trust, or greater still. However, if access was taken from the part of Gordale Close from which the access has recently been created there would be an incursion into the buffer zone shown on the indicative plan. There may also be knock-on implications in terms of the number of dwellings that could actually be provided if a larger buffer was needed, and a resultant impact on the level of affordable

housing delivery. In these circumstances, the use of a planning condition with respect to the buffer zone would not be appropriate.

19. The non-ancient woodland was not subject of the 2013 Tree Survey but is shown in the Preliminary Ecological Appraisal that was submitted with the planning application. In the absence of a detailed assessment of this area it is uncertain as to what the exact impact would be from the proposal, although again there would be some degree of effect upon it associated with the site access from Gordale Close, if this is taken from its recently installed position.
20. The site has been designated as a Local Wildlife Site (LWS) but this is subject to dispute by the appellant on two principle grounds; firstly that it does not meet the threshold for designation in terms of the presence of relevant species and secondly that the landowner was not involved in the designation process. With respect to the first matter, this relies on an interpretation of the criteria set out in the Local Wildlife Site Selection Criteria for the Cheshire Region 2014 (SSC) and the interchangeability between the two strands set out in H12, which refers to undetermined species rich grassland. However, the LWS designation was subject to selection by Cheshire East Local Wildlife Site Partnership, which provides validation for the interpretation put forward by both of the Council's Ecology Officers.
21. It is conceded by the Council that the landowner was not notified during the designation process, in the manner set out in the SSC. Whilst this does not affect the findings that the LWS qualification was met, it has prevented the owner from making representations throughout the process. There would have been benefit in this, not least because a LWS does not have statutory legal protection and because, as the appellant alluded to at the hearing, there are uses such as agriculture to which the site could be put, and which could also compromise the LWS. That said and aside from speculation about other uses, the proposal would certainly result in the loss of much of the LWS. This would have a significantly adverse impact on it, although it could be mitigated to some degree by the possible retention of parts of the LWS and because the proposal would deliver an overall biodiversity net gain.
22. The Bat Emergence Survey found it highly likely that one bat occasionally makes use of one of the buildings on the site as a casual feeding roost or perch. This would, in the opinion of the Council's Ecologist, necessitate the making of an application for a European Protected Species license under the Habitat Regulations. During the appeal process and at the hearing the appellant questioned whether the feature identified would even represent a protected, and therefore licensable, feature. However, the submissions they have provided only offer the view that it is possible that a license application would be considered unnecessary by Natural England. There is therefore uncertainty as to what the appellant would need to do to meet their legal obligations, and the test relating to overriding public interest is in particular intertwined with other considerations arising in this appeal.
23. There is further disagreement between the main parties as to whether the matter of biodiversity net gain would need to be addressed before outline planning permission could be granted or whether it could be subject to a planning condition. Policy SE 3 of the CELPS requires all development to positively contribute to the enhancement of biodiversity and the Framework also seeks to deliver net gain, although neither quantify this requirement.

Whilst the Council refers to the requirements of Policy ENV 2 of the eLP and a specific biodiversity net gain calculation, this policy and its requirements are not presently adopted. At the current time, the condition proposed by the appellant with respect to the delivery of a project wide biodiversity net gain of 10% would suffice to meet the objectives of local and national planning policy.

24. In conclusion on this main issue, the submission fails to demonstrate that there would not be harm to protected trees and ancient and non-ancient woodland as a result of the proposal. There would also be the loss of the majority of a LWS and there is uncertainty as to whether a license would be required with respect to bats. The relevant development plan policies are SE 3 and SE 5 of the CELPS and Saved Policies NR3 and NR4 of the CLP, which seek to protect biodiversity interests, including LWS, protected species and trees, hedgerows and woodlands. Each policy seeks to prevent harm or loss, unless the benefits of the proposed development outweigh the impact or there are overriding reasons for allowing it and no suitable alternatives. I shall return to this in the planning balance.

Character and appearance of the CA

25. The appeal site is located adjacent to the CA and whilst it does not fall within the boundary of this designated area, it falls within its setting. The Macclesfield Canal Conservation Area Appraisal and Management Proposals 2009 (CAAMP) sets out that the significance of the CA is in its architectural, historic and scenic interest, including in terms of its links to revolutionising industrial transport. It is a CA which covers a great distance, passing through a range of different areas, including both urban and rural locations. Twelve areas of special interest are set out in the CAAMP, most relevant being that which refers to the changing setting of the canal as it progresses from urban to rural fringe.
26. Despite its proximity to the edge of Congleton, the CA has a rural character as it passes the appeal site, with undeveloped fields found on both sides of the canal. The nearest dwellings to it, on the other side of bridge 66, have only a minimal impact on the CA as they have been constructed at lower ground levels and are well screened by mature boundary hedges. Due to the positioning of the bend in the canal, development on the appeal site has great potential to be visually apparent from within the CA, in particular in views walking along the towpath from bridge 65 towards the bend. The severity of this impact would depend on the height of the proposed dwellings above the canal towpath and boundary hedge.
27. There is limited information before me to demonstrate what the relationship would be in this respect. It is certainly the case that current ground levels of parts of the appeal site immediately adjacent to the CA are notably higher than the canal towpath, more so than appears to be suggested on the indicative boundary section. Construction at that ground level would render the existing hedge as obsolete in providing any meaningful form of screening function and the dwellings themselves would be likely to be visually dominating due to their elevation above the canal. Therefore, in the absence of anything to suggest otherwise, a number of the proposed dwellings might only be able to be accommodated in a manner that would set them much higher than both the level of the canal and the boundary hedge. In such a scenario, there would be notable harm caused to the character and appearance of the CA by the

introduction of a visually dominant urban form into views that are presently framed in a rural context.

28. It has been suggested that as the CA covers a large distance and encompasses areas of many different characters, that the impact on the CA as a whole would be limited. However, to consider the proposal on such a macro level would not overcome or address the fact that very specific and identifiable harm could be caused to the designated heritage asset. Based on the limited information before me there is a probability of some harm occurring, depending on what finished floor levels of the proposed dwellings could feasibly be achieved. Given that there is as a result an uncertain impact upon a designated heritage asset and it is not clear how severe any impact might be, it would not be appropriate to address this matter by way of a planning condition.
29. Canal bridges 65 and 66 are both listed structures. Whilst the impact on these bridges did not form part of the reason for refusal, the matter was raised at the hearing and, in any event, I have a statutory duty in this regard. However, bridge 65 is positioned some distance from the appeal site and bridge 66 is aligned so that its setting would not be readily harmed by the proposed development. There would, therefore, not be harm to the setting of these listed structures as a result of the proposed development.
30. If harm was to result to the CA, there would be a conflict with the aims of Policies SD 1, SD 2, SE 1, and SE 7 of the CELPS, where they collectively seek to protect and enhance the historic environment, including designated heritage assets. This too is a matter which falls within the planning balance. Reference is also made in the reason for refusal to the Cheshire East Borough Design Guide 2017, which likewise seeks to consider the potential impact on heritage assets and their settings. If harm was to be caused to the CA, the policy set out in paragraphs 201 or 202 of the Framework would further need to be considered.

Other Considerations

31. The development plan has delivered the numbers of affordable housing units that is required of it. Whilst the appellant has questioned the age of the evidence base that informed the plan and the methodology used to calculate the requirement, nonetheless this is the figure on which the plan was independently examined, was found to be sound and was subsequently adopted. It forms the basis of a plan led system and has so far delivered its requirements over its period.
32. Reference is made to the housing register as an indicator of demand for affordable housing, with 873 households specifying Congleton as their preferred choice of location. However, when considering those who fall within priority bands A, B and C, these being households who have an acknowledged need for housing in Congleton, the figure is placed at 174 households, albeit this does not include those in need of intermediate housing whose number is unspecified. Attention is further drawn to the fact that the Framework refers to need, not requirement, and to matters relating to affordability in the district. It is offered forward by the appellant that the time period condition for commencement of the proposed development could be shortened to speed up delivery.

33. The proposal would provide 35 of those 174 units identified specifically by the housing register. It would also make a contribution to the mix of housing tenures available in the Congleton area and it would contribute to wider affordable housing provision in the district. However, whilst I acknowledge the matters relating to an increase in the number of households on the housing register district-wide and to affordability, the figure of households with a need to be accommodated in Congleton that it has been possible to identify is not excessively high nor does it represent a significant need. In the context of the Council having a good record of affordable housing delivery against development plan requirements, it is not a figure of overriding concern.
34. Furthermore, the Council's five-year housing land supply position means that affordable housing delivery is likely to continue, and reference was made at the hearing to the delivery of affordable housing in Congleton through housing schemes that are being built out in the area or are expected to come forward. In addition, when considered on a district-wide basis, the 35 dwellings that would be provided by the appeal proposal would make only a very limited contribution to overall affordable housing delivery. Taking all of these factors together, I afford moderate weight to the benefits that would arise from the provision of affordable housing.
35. Copies of a number of previous appeal decisions have been provided, which seek to demonstrate the weight that has been given by other Inspectors to affordable housing. However, the exact circumstances of each individual case are not the same and there are differences evident between each other case and what is before me. This variously includes the housing land supply position, previous affordable housing delivery including a persistent under-delivery, and the size of the development. None are within the Cheshire East district. Therefore, whilst I have given consideration to these decisions in my determination, they are not directly comparable to the circumstances in the appeal case. Consequently, they do not alter my conclusion on the weight to be given to the provision of affordable housing in this instance.
36. Policy SC 6 of the CELPS could potentially allow for a number of separate affordable housing sites to come forward in the Green Belt, under paragraph 149f) of the Framework. However, this policy limits the number of dwellings to no more than 10, which is substantially less than what is proposed by the appeal development. Furthermore, the information before me fails to demonstrate that all of the criteria of Policy SC 6 would be met, in particular that which relates to whether developments of such sizes could be accommodated on land within the confines of a settlement. Therefore, whilst it is suggested that there could be seen to be a preference in delivering one larger affordable housing site as opposed to a number of smaller ones, there is an absence of support for that approach in development plan policy. Accordingly, this does not carry weight in favour of the proposed development.
37. Safeguarding of ecological interests which remained on the appeal site, together with a biodiversity net gain of 10% could be secured through a planning condition. However, on consideration of the uncertain impact on protected trees, woodlands and bats, the loss of most of a LWS and because a biodiversity net gain is to at least some degree needed to ensure compliance with planning policy, these considerations carry only limited weight in favour of the proposal.

38. The proposed development would result in offsite spending at local services and facilities and some economic benefit associated with the use of public transport. Although positioned on the edge of the settlement, the appeal site would have reasonable access to services, facilities, employment opportunities and sustainable transport. Given the relatively small scale of the proposal, these collective economic and social benefits together carry moderate weight.
39. The most recent Strategic Housing Land Availability Assessment (SHLAA) dates from 2013. The SHLAA classes the appeal site as requiring policy change to be deliverable, although it does not specify precisely what this change would need to be. With regard to the Green Belt designation, this remains unchanged since 2013 and is not proposed to be altered on adoption of the eLP. It has also been advised by the Council that the appeal site is not proposed to be brought forward as an allocated site in the eLP.
40. Whilst there have been changes to the Framework with respect to affordable housing policy in the Green Belt since the 2013 SHLAA, this merely necessitates a consideration of the more recent policy against any proposal that comes forward. It does not altogether remove what may have been the primary barrier as to why the appeal site was not considered by the SHLAA to be deliverable in 2013, namely it being in the Green Belt.
41. Furthermore, the SHLAA would have only been likely to have assessed the merits of the site at a broad level. Its inclusion in the SHLAA does not therefore mean that the site should be considered acceptable for housing in all other respects, or that the presence of it within the SHLAA should negate a detailed consideration of its merits during the planning application process. For these reasons, the SHLAA does not offer weight in support of the proposal.
42. Entering into a Local Labour Agreement is not a development plan policy requirement and given the scale of the proposal, the number of dwellings to be constructed and the relatively short time period that construction would take place, there would only be a limited benefit arising in this respect.

Planning Obligation

43. A unilateral undertaking has been provided which makes provision for affordable housing, education, towpath improvements, open space, indoor sport and healthcare. Of these, only affordable housing would be a benefit of the proposed development, with the others being required to mitigate against the effects or needs of the development.

Planning Balance & Conclusion

44. The proposal would be inappropriate development in the Green Belt as defined by the Framework. It would also result in substantial harm both to Green Belt openness and to the purposes of the Green Belt. There would be the loss of much of a LWS and this would represent further harm, albeit one which could be mitigated against to some extent both on and off-site. The evidence before me fails to adequately demonstrate that there would not be harm from the loss of protected trees, harm to ancient and non-ancient woodland or harm to the character and appearance of the adjacent CA. There may also be a requirement to obtain a protected species license with respect to bats.
45. The provision of affordable housing carries moderate weight in support of the proposal and would be a benefit of the scheme. There would also be benefits

relating to ecological safeguarding in perpetuity and biodiversity net gain, economic spend, the proximity to services, facilities and employment and from the use of local labour. These benefits carry moderate or limited weight.

46. The Framework at Paragraphs 147 and 148 establishes that substantial weight should be given to any harm to the Green Belt and that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
47. Having regard to the reasons I have set out, I find that the other considerations in this case, taken both individually and collectively, do not clearly outweigh the harm to the Green Belt I have identified. Consequently, the very special circumstances necessary to justify the development do not exist.
48. For the reasons given above, I conclude that the proposed development conflicts with the objectives of the Framework where it seeks to protect the Green Belt. The proposal would also fail to accord with Policy PG 3 of the CELPS and Saved Policy PS7 of the CLP, where they too refer to the Green Belt. Therefore, the appeal should be dismissed.

Graham Wraight

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Thea Osmund-Smith - Counsel, No 5 Chambers

Joe Nugent - Planning Executive, Brownshore Management

David Poyner - Director, Davico Properties UK Ltd

James Rhys-Scott - Director, Davico Properties UK Ltd

David Heath - Landowner

James Stacey - Senior Director, Tetlow King Planning

Nick Masters - Associate Director of Ecology, Crestwood Environmental Ltd

James England - Arboricultural Consultant, GIS Solutions

FOR THE LOCAL PLANNING AUTHORITY:

Nina Pindham - Counsel, No 5 Chambers

Richard Taylor - Principal Planning Officer (Development Management)

Allan Clarke - Principal Planning Officer (Strategic Planning)

Christopher Hutton - Senior Housing Officer

James Thomas - Principal Planning & Highways Solicitor

Tim Body - Nature Conservation Officer

Katherine Bailey - Conservation Officer

Chris Hudson - Principal Forestry and Arboricultural Officer

INTERESTED PARTIES:

Emma Taylor – Local resident

Mike Tingle – Local resident

Amanda Kirk (on behalf of Mr & Mrs Cooke) – Local resident

Mr and Mrs G & E Mayers – Local residents

DOCUMENTS

Crestwood Response to Statement of Case, dated 22 March 2022

Tetlow King Affordable Housing Update Statement March 2022

PLANS

Extract from the Cheshire East Local Plan Strategy Proposals Map showing the Green Belt

Illustrative Plan 12/0294/103 Revision A – updated to add 'not to scale' and 'For Illustrative Purposes Only'.

Ecological Buffer Zone Indicative Plan 900 Revision A – updated to confirm drawing scale.

Richborough Estates