

DELEGATED DECISION REPORT

HPK/2023/0532
Valid 15/01/2024

**LAND OFF EAVES KNOLL
ROAD
NEW MILLS**

**RETENTION OF USE OF LAND
AS GARDEN, WITH OFF-ROAD
PARKING AREA AND GARDEN
BUILDING WITH SOLAR
PANELS**

(FULL - MINOR)

MAIN ISSUES

- Principle of Development
- Impact on Green Belt
- Design, Character and Appearance
- Amenity
- Highway Safety

DESCRIPTION OF SITE

The application refers to a small triangular parcel of scrub land situated immediately adjacent to Eaves Knoll Road, New Mills. The site lies outside of the built-up area boundary in the open countryside, in the Green Belt, and slopes southwards towards the River Goyt and centre of New Mills, and is bordered on all sides by a low dry stone boundary wall.

At the time of a site visit, it was identified that a new vehicular access and large field gate has been introduced, which leads on to a private 4x4 track serving nearby residential properties including Hunters Lodge and Poet's Cottage, on the north-eastern boundary. In addition, the site has been the subject of substantive engineering operations (which have been halted further to an enforcement complaint and subsequent investigation) to facilitate the access and an area allocated for off-street parking.

PROPOSAL

Further to an enforcement complaint which identified a breach of planning control, the application seeks part retrospective planning permission for the use of the land as a 'garden', off road parking area, and a garden building which adorns solar panels.

During the consultation period, revised plans have been submitted which shows the removal of the building, and new information has been submitted showing the land levels of the site and sections prior to any works taking place, and levels that would remain once the works have been completed.

RELEVANT LOCAL AND NATIONAL PLANNING POLICIES

Section 38(6) of the Planning and Compulsory Act 2004 requires proposals to be determined in accordance with the Development Plan taking into consideration any material considerations relevant to the determination of the application.

The Local Development Plan for this site comprises the High Peak Local Plan (2016). Adopted Supplementary Planning Guidance documents and the National Planning Policy Framework (NPPF) are also material considerations in determining applications.

High Peak Local Plan 2016

S1 Sustainable Development Principles
S1a Presumption in Favour of Sustainable Development
EQ3 Rural Development
EQ4 Green Belt Development
EQ6 Design and Place Making
EQ10 Pollution and Unstable Land
CF6 Accessibility and Transport

National Planning Policy Framework 2023

Achieving Sustainable Development	Chapter 2
Promoting Sustainable Transport	Chapter 9
Achieving Well Designed and Beautiful Places	Chapter 12
Protecting Green Belt Land	Chapter 13
Conserving and Enhancing the Natural Environment	Chapter 15

SITE HISTORY / RELEVANT PREVIOUS APPLICATIONS

None

CONSULTATIONS

Publicity

Site Notice expiry date: 15th February 2024
Neighbour consultation period ends: 26th February 2024
Press Advert: N/A

Public Comments

2no. neutral comments have been received in connection with the application. A summary of these comments is set out as follows:

- Identifies that plans are not available to view on the web
- Landscape and visual concerns regarding parking of campervan
- Potential for further development in Green Belt
- Parking of vehicles would impede view of residents

- Distinct lack of detail

19no. representations (some from the same person) have been received objecting to the proposed development. A summary of the comments and concerns raised are set out as follows:

- Impact on Green Belt – inappropriate development no Very Special Circumstances
- Landscape and visual concerns regarding parking of campervan
- Landscape and visual concerns regarding levelling of the site
- Solar panels of this size unnecessary
- Potential impacts on residential amenity (noise and disturbance)
- Potential impact on heritage assets including Listed Buildings
- Impact on utility pipes that run underneath site – lack of surveys
- Concerns regarding intensification of the site

1no. representation in support of the application has been received, which states that there doesn't appear to be any reasons to object to this, with the site being tidier, views not being interrupted, and that the parking area would not effect Eaves Knoll Road, and not impact any residential property.

Town / Parish Comments

No comments received

Derbyshire Wildlife Trust

No objections subject to conditions

Derbyshire County Council Highways

No objections, however the private access road is a Public Right of Way so informative is recommended.

OFFICER COMMENTS

Principle of Development

The site lies outside of the built-up area boundary of any larger town or village in the open countryside and in the Green Belt. As such, the application is subject to Local Plan (LP) Policies EQ3 and EQ4, and all relevant restrictive policies relating to the Protection of the Green Belt contained under Chapter 13 of the NPPF.

With regards to the first aspect of development as set out within the description, 'garden' is not a land use, and as such, any horticultural activities (i.e. the growing of plants, fruit, vegetables etc.) does not amount to development, having regard to Section 55 of the Act 1990, and thus does not require planning permission.

However, it is clear that the introduction of a new building, and engineering operations that amount to cut and fill operations required to level the site including

the introduction of retaining walls, to facilitate off street car parking, does amount to development, and must demonstrate accordance with local and national Green Belt policy in order to be acceptable as a matter of principle, notwithstanding all other material planning considerations

Impact on Green Belt

LP Policy EQ4 relates to Green Belt development and requires all development proposals in the Green Belt to be assessed in line with national policy.

Paragraph 142 of the NPPF highlights that the Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.

Paragraph 143 of the NPPF sets out the five purposes of the Green Belt:

- a) to check the unrestricted sprawl of large built-up areas;
- b) to prevent neighbouring towns merging into one another;
- c) to assist in safeguarding the countryside from encroachment;
- d) to prevent the setting and special character of historic towns; and
- e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land

Paragraph 152 states that Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

Paragraph 153 goes on to state that local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

Paragraph 154 sets out the exceptions to where the construction of new buildings are regarded as inappropriate development.

Paragraph 155 lists other forms of development which are also not inappropriate provided they preserve its openness and do not conflict with the purposes of including land within it. These include "*engineering operations*".

The application as submitted included the provision of a new 'garden building' which as shown on the Site Plan submitted with the application would be located in the southern corner of the plot.

This element represents inappropriate development in the Green Belt. On considering advice from Officer to that effect, a revised Site Plan was submitted showing the omission of this structure.

In its revised form, the aspects of development that requires assessment having regard to the above policies is the engineering operations that are required to level

off the site and create a large off-street parking and turning area, and the subsequent use of that area for off-street parking.

Engineering operations are not inappropriate development, only where they are found to preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.

It is accepted that the proposed landscaping and levelling of the site which includes the introduction of retaining walls, and cut and fill operations where appropriate, do not conflict with any of the purposes of including land within the Green Belt. However, an assessment of the proposed engineering operations and subsequent use of that land for off-street parking is required with regards to any potential harm on openness.

Officers sought clarification from the applicant's agent with regards to the justification and the need for such works, as set out within an email dated 06/03/24 as follows:

"I question the need for 'Off road parking' and the engineering operations that have commenced showing a change in land levels. If the applicant wishes to use the site for the growing of plants, fruit, vegetables etc. then there is no reason why they can park their vehicle in the layby on Eaves Knoll Lane a short distance from the site or utilising on-street parking further down the hill on Eaves Knoll Lane. The site is located within the Green Belt, where engineering operations are not inappropriate development, provided that they preserve the openness of the Green Belt. Further details are required with regards to section drawings showing the changes in levels to fully assess the impact of the engineering operations. Whilst the proposed levelling to facilitate the parking would likely be found to preserve the Green Belt, the parking of vehicles would not, consistent with appeal decisions for development such as Car Parks."

The agent responded to the above as follows:

"My Client accepts there is the opportunity to park off site on Eaves Knoll Road, however the highway is national speed limit and dangerous when parked – they have already had a wing mirror clipped when parked on the road previously. When a vehicle is parked to the side cars need to stop to go round, as do pedestrians. There is a nearby farmers gate and PROW which of course limits some of the highway for parking."

The site is elevated from the road, and when carrying heavy items – tools, soil, and water – over that distance it is a heavy burden. My Client is also recovering from illness and wanted the garden for recuperation and rehabilitation, but has to be careful not to over exert themselves."

From the consultation comments the issue seems to lie with the parking of a campervan which, for my Client, allows the space to bring tools etc as well as providing welfare when tending the land including water provision. The campervan measures 2.300m high x 5.995m long. My Client's most favoured scenario would be that a condition be placed stating no vehicle larger than 6m in length be parked. They would be happy if a no overnight condition is placed on the permission. Failing

that, allowing the parking of a car would at least enable them to park off -road for the reasons listed above.

The attached Topographical Survey & Sections Plan was submitted with the application – there are no plans to change the levels from what they are currently as shown on the survey. Do you need anything further than this?

It should be noted that the levelling of the parking area as proposed was completed prior to their knowledge the land was greenbelt. It was marketed and sold to them as 'garden land'. They have removed over 30 bags of rubbish from the site, including an old trampoline and a wheelbarrow. The site was made ground before they arrived and any large stones unearthed when clearing have been retained – that is how the 'feature wall' has been created – but it was never intended to be as such."

It has been held in case law that the term openness possesses both a spatial and visual aspect. Spatially, the site lies within close proximity to the public highway, in an elevated location, and forms part of the transition between the fringes of New Mills and the open countryside a short distance to the north.

Visually, the site is extremely prominent given its proximity to the public highway (Eaves Knoll Lane) and Public Right of Way that runs parallel with the north-eastern boundary, and in its original form prior to unauthorised works taking place was characterised by grassland sloping naturally and steeply in a southerly direction consistent with the public highway.

The topographical changes to the site as a result of the proposed engineering works are best highlighted by 'Section 3' which shows a considerable amount of fill to create a banking with retaining wall to facilitate the newly created access and space for a level off-street parking area.

Whilst it is acknowledged that the engineering operations would have a limited impact on the spatial impact of openness, the parking of a vehicle within this site, which, potentially, could include larger vehicles such as a 4x4, is likely to result in harm to the spatial aspect of openness, much in the same way as a car park in the Green Belt would restrict openness, albeit to a lesser degree.

In addition, there is also considered to be harm to the visual aspect of openness, resulting from the proposed engineering operations and proposed off-street parking provision. The level of hard standing proposed, together with the large access gate, and heavily engineered banking, introduces a somewhat urban aspect of development to what is a simple natural rural parcel of land that forms a key part of the transition between the urban and rural areas, and disrupts the natural rhythm and contours of the site.

When considering the engineering operations and proposed use of the site for off-street parking cumulatively, it is considered that these aspects of development, whilst not conflicting with any of the purposes of including land within the Green Belt, do harm the spatial and visual aspect of openness, and thus amounts to inappropriate development in the Green Belt.

No Very Special Circumstances have been put forward by the applicant that outweighs the identified harm to the Green Belt by reason of inappropriateness, or any other harm, and as such the application is in direct conflict with Local Plan Policy EQ4 and restrictive national policies relating to the Protection of the Green Belt contained under Chapter 13 of the NPPF.

Design Character and Appearance

LP Policy S1 sets out a number of sustainability principles which all new development proposals should incorporate in order to make a positive contribution towards the sustainability of communities and to protect, and where possible enhance the environment.

LP Policy EQ3 refers to rural development proposals which lie outside of the defined built-up area boundaries and seeks to ensure that new development is strictly controlled in order to protect the landscape's intrinsic character and distinctiveness.

LP Policy EQ6 states that all development should be well designed to respect and contribute positively to the character, identity and context of High Peak's townscapes, having regard to matters of scale, height, density, layout, appearance and materials.

Paragraph 135 of the NPPF states amongst other things that decisions should ensure that developments will add to the overall quality of the area; are visually attractive as a result of good architecture; and are sympathetic to the surrounding built environment.

Whilst the proposed engineering operations and subsequent use of the engineered area are considered to harm the openness of the Green Belt, and whilst there would be a noticeable difference to the visual appearance of the site, it is judged that with regards to the impact on the character and appearance of the site and wider rural landscape, these would not amount to a degree of harm that warrants a reason for refusal, having regard to LP Policies S1, EQ3 and EQ6 and relevant paragraphs under Chapter 12 of the NPPF.

Amenity

LP Policy EQ6 requires all new development to have a satisfactory relationship with existing land and buildings and protects the amenity of the area, which includes residential amenity of neighbouring properties. Aspects of residential amenity include impacts such as a loss of sunlight, overshadowing and overbearing impacts, loss of outlook, and loss of privacy.

LP Policy EQ10 seeks to ensure that people and the environment are protected from adverse impacts relating to issues including air pollution, noise, light pollution or any other nuisance or harm to amenity, by securing appropriate mitigation by way of planning conditions and obligations.

Paragraph 135 of the NPPF states that planning should create places with a high standard of amenity for existing and future users.

Paragraph 191 of the NPPF requires decisions to ensure that new development is appropriate for its location taking into account the likely effects of pollution on health, living conditions and the natural environment, and in doing so should:

- a) mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life;
- b) identify and protect tranquil areas which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason; and
- c) limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation.

Concerns have been raised by neighbouring properties and members of the public with regards to potential impacts to public and residential amenity as a result of the proposed use and facilitating development.

The applicant contends that the proposed use of the site by the applicant would be to use the site as a garden or allotment (horticulture) that in its own right does not require planning permission. Whilst harm has been identified with regards to the use of the site for off-street parking and the engineering operations required to facilitate such parking provision, it is not considered that the use of the site for horticultural purposes and any trips associated with it would harm the amenity of either nearby residential properties or the public in general, in line with LP Policies EQ6 and EQ10 and relevant paragraphs under Chapters 12 and 15 of the NPPF.

Highway Safety

LP Policy CF6 seeks to ensure that development can be safely accessed in a sustainable manner and that all new development is located where it can be satisfactorily accommodated within the existing highway network and provides suitable off-street parking provision.

Paragraph 114 of the NPPF states that in assessing applications for development, it should be ensured that safe and suitable access to the site can be achieved for all users. Paragraph 115 goes on to state that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

The application seeks part retrospective consent for an enlarged vehicular access to the site from the adjacent Public Right of Way and 4x4 track serving nearby residential properties, and engineering operations to facilitate off-street parking provision within the site.

The proposal would likely attract one, or at most, two vehicles. Whilst this has been found to result in harm to the openness of the Green Belt, it is clear that subject to an advisory informative, the Highways Authority have no objection to the proposal with regards to highway safety.

As such, and given that the test for refusing an application on highway safety grounds is 'severe', it is considered that notwithstanding the identified harm to the Green Belt caused by the engineering operation and car parking, there is no resultant harm to highway safety, and thus the application is compliant with LP Policy CF6 and relevant paragraphs under Chapter 9 of the NPPF.

Other Matters

Objections have been received in connection with the harm to views from neighbouring properties as a result of the proposed works and associated car parking. Whilst harm to the visual aspect of openness of the Green Belt can be and is taken into account, views from properties are not a material planning consideration.

CONCLUSION / PLANNING BALANCE

LP Policy S1a reflects the presumption in favour of sustainable development contained within the National Planning Policy Framework.

Paragraph 11 of the NPPF sets out the presumption in favour of sustainable development. For decision taking, this means approving development proposals that accord with an up-to-date development plan without delay; or, where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission, unless:

- the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
- any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

The application seeks part retrospective full planning permission for various aspects of development that relate to a small triangular parcel of land that lies in a prominent elevated location above the public highway, outside of the built-up area boundary, in the open countryside, and the Green Belt.

As submitted, the aspects contained within the description of development are (i) the use of the site as a garden (ii) the provision of a garden shed (iii) engineering operations to level the site and facilitate off-street parking.

It was advised that the use of the site as a garden (i.e. for horticultural or agricultural purposes in line with Section 336 of the Act 1990) does not require planning permission and can therefore be disregarded.

Second, the applicant was also advised that the provision of any new building constitutes inappropriate development in the Green Belt, and in the absence of any Very Special Circumstances, is not acceptable. A revised Site Plan was subsequently received that shows this aspect to be omitted.

Lastly, whilst the engineering operations and provision of hard standing to facilitate off-street parking provision within the site is not considered to result in a change to the character and appearance of the site or wider street scene that warrants a reasons for refusal on design grounds, it nevertheless is judged to result in harm to both the spatial and visual aspect to openness of the Green Belt, notwithstanding the fact that it does not conflict with the purposes of including land within it.

As such, the application fails to meet any of the exceptions set out under paragraph 155 of the NPPF and thus comprises inappropriate development in the Green Belt. No Very Special Circumstances have been put forward that outweighs the substantial harm to the Green Belt by reason of inappropriateness, or any other harm (to openness) and thus the application is in direct conflict with Local Plan Policy EQ4 and relevant restrictive paragraphs contained under Chapter 13 of the NPPF.

The application thus constitutes an unsustainable form of development in the Green Belt and conflicts with Local Plan Policy S1a and paragraph 11 of the NPPF. The application is therefore recommended for refusal for the reasons outlined within this report and as stated on the decision notice.

OFFICER RECOMMENDATION : Refuse

Case Officer: James Stannard

Recommendation Date: 23rd April 2024

X 

Signed by: Ben Haywood

On behalf of High Peak Borough Council