

Appeal Decision

Site visit made on 23 September 2016

by Gary Deane BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 20 October 2016

Appeal Ref: APP/Q4625/W/16/3154607

Land to the west of Temple Lane, Temple Balsall, Solihull B93 0AL

- 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 P Cureton against the decision of Solihull Metropolitan Borough Council.
 - The application Ref PL/2015/52827/PPFL, dated 6 November 2015, was refused by notice dated 29 April 2016.
 - The development proposed is the change of use from agriculture to a green burial cemetery including access, car park, landscaping and associated works.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use from agriculture to a green burial cemetery including access, car park, landscaping and associated works at land to the west of Temple Lane, Temple Balsall, Solihull B93 0AL in accordance with the terms of the application Ref PL/2015/52827/PPFL, dated 6 November 2015, subject to the conditions set out in the schedule to this decision.

Main issues

2. The site lies within the Green Belt. The main issues are whether the proposal is inappropriate development in the Green Belt; the effect of the proposal on the openness of the Green Belt and the purposes for including land within it; and, if it is 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 the development.

Reasons

3. The proposal is primarily to materially change the use of a field at Temple Balsall to a natural burial cemetery with a car park, landscaping and access from Temple Lane. Off-site highway works are also proposed to Temple Lane and Kenilworth Road close their junction to improve visibility for highway users.

Whether inappropriate development in the Green Belt

4. Paragraph 87 of the National Planning Policy Framework (the Framework) states that inappropriate development in the Green Belt should not be approved except in very special circumstances. Paragraphs 89 and 90 of the
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Framework set out the forms of development that are not inappropriate in the Green Belt, none of which include a material change of use. Policy P17 of the Solihull Local Plan (LP) echoes national policy and sets out several additional provisions that would apply to development within the Green Belt. None of these provisions relate to the appeal scheme. Therefore, the proposal is inappropriate development, which is, by definition, harmful to the Green Belt. Accordingly, the proposal is contrary to the Framework and LP Policy P17.

5. It may be that elements of the appeal scheme such as the provision of the car park, access track and the off-site carriageway widening could qualify as engineering operations under paragraph 90 of the Framework. However, planning permission is sought for a change of use to a green burial cemetery and so I have assessed the proposal on that basis.

Openness of the Green Belt and the purposes for including land within it

6. The Framework states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. It also reaffirms that the essential characteristics of Green Belts are their openness and permanence. Openness in a Green Belt context is normally taken to mean the absence of built or visible development. It is epitomised by a lack of buildings.
7. Within the site there would be no physical marking of the graves, no new means of enclosure or buildings. The only visible features would be at ground level with a short access track and car park tucked into the northeast corner of the site, both of which would have no discernable effect on openness. Vehicles coming to, moving within and going from the site, would have some effect on openness, as would people moving around within the site. However, with up to only ten burials each year, and funerals lasting for about one hour, such activity would tend to be occasional, transitory and limited, which would be barely noticeable in the context of the wider rural area. Similarly, the proposed widening of the carriageways of Temple Lane and Kenilworth Road would be modest in extent and would have no material effect on openness. Overall, the effect of the proposal on the openness of the Green Belt would be slight.
8. The five purposes of the Green Belt are set out in paragraph 80 of the Framework and one of them is to assist in safeguarding the countryside from encroachment. With the new use in place, the site would continue to appear as a largely open field partly enclosed by vegetation. The new access track would be short and for the most part visually contained within the site, as would the mown grass pathways. A grass crete surface to the parking area would give it a natural green appearance. As a result, none of these features would appear urban in character or out of place in this rural setting. A relatively small number of visitors would normally be expected at any one funeral although more could be present if others are visiting the graves of the deceased at the same time. Even so, I am not persuaded that the overall level of activity would be so great as to interrupt the sense of peace and tranquility of the site and the area that surrounds it. Consequently, there would be no encroachment into the countryside as a result of the new use or its associated works or activity. None of the other purposes of Green Belts would be transgressed.

9. Therefore, the proposal would not materially conflict with LP Policy P17 and the Framework with regard to the openness of the Green Belt and the purposes of including land within it.

Other considerations

10. To briefly reiterate, inappropriate development should not be approved except in very special circumstances. The Framework makes clear that 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.
11. As the practice of natural burial is not currently available within the Borough, the proposal would introduce a new form of burial thus diversifying the arrangements that are currently available. Both the Council and Parish Council have indicated that a natural burial could take place within its existing cemeteries, if requested. However, there is no firm indication before me that the essential elements of the practice of natural burial could be met in this way. Burials within standard plots set generally in well-tended grounds would have a degree of formality that would be at odds with the ethos of natural burial, which is to blend seamlessly into the natural landscape. I attach a heavy weight to this consideration in support of the appeal.
12. By widening the carriageways of Temple Lane and Kenilworth Road, the proposal would improve forward visibility for road users, especially those turning right into Temple Lane. The evidence before me indicates that these works are not required to mitigate the effects of the proposal. Nevertheless, I saw that visibility on oncoming road users is restricted for those turning right into Temple Lane by the sharp bend in Kenilworth Road. Having driven through this junction several times from each direction, I share the opinion of the Council's Highway Engineer that the works would nevertheless significantly improve highway safety for all, which is to be welcomed. These off-site highway works could be covered by a suitable condition if planning permission were to be granted. I attach significant weight to this consideration.
13. Additional indigenous tree planting and landscaping within the site would enhance biodiversity and lead to some ecological benefits. The Framework states that pursuing sustainable development involves seeking positive improvements in the quality of the natural environment, including moving to net gains for nature. The appellant's Biodiversity Impact Assessment concludes that there would be a net gain in the value of habitats on site as a result of the proposal. I attach considerable weight to this consideration.
14. As an alternative to cremation and by avoiding the need to transport materials such as stone, the proposal would contribute to the environmental dimension of sustainable development by using natural resources prudently and minimising waste and pollution. Visitors to the site may also use local services and facilities thus supporting the local economy. I attach some weight to each of these considerations.
15. The appellant states that the proposal would provide the opportunity for enhanced footpath links by providing a connection between a nearby nature reserve and a public right of way. However, it is unclear from the plans exactly

how such a link would be made or the mechanism by which it would be secured. Consequently, I attach negligible weight to this consideration.

Other matters

16. The effect of the proposal on the character, appearance and landscape qualities of the local area would be very limited given the visual containment of the land by boundary vegetation, the low key, informal and open nature of the new use and the modest level of works associated with it. While the new car park would occupy a slightly elevated position in relation to the remainder of the site due to the sloping ground, it would be small with a part grass surface and thus would not appear prominent. The appearance of the site as a largely open field bounded by woodland, pasture and Temple Lane with another cemetery just beyond would remain fundamentally unchanged. Consequently, the proposal would be in keeping with the rural character and appearance of the local area. For the same reasons, there would be no discernable effect on the setting, character and appearance of the adjacent Temple Balsall Conservation Area, which would be preserved. Consequently, the proposal would not conflict with the Framework, which aims to safeguard the rural area and heritage assets.
17. The site falls within an area of low flood risk. The appellant's technical drainage assessment confirms that surface water discharge resulting from the proposal would be negligible, with no increased flood risk. The Council's Drainage Engineers, Severn Trent Water and the Environment Agency all raise no objection subject to the imposition of a condition requiring the provision a system to satisfactorily manage surface water run off and to monitor ground water. I have no reason to reach a different conclusion.
18. Notwithstanding the description of development given in the application forms, the site is not currently used for any obvious agricultural purpose. The Council states that the land is not classified as the best and most versatile according to Natural England's Regional Agricultural Land Classification Map. On that basis, the proposal would not result in the loss of versatile agricultural land. There is no persuasive evidence that the on-site parking provision is inadequate or that drivers would necessarily park along Temple Lane or would do so in a way that would obstruct or cause an inconvenience or safety hazard to others. The Council's Highways Officer raises no objection to the proposal and on the evidence before me I share that opinion. The proposal would be some distance from the nearest residential property and so there would be no discernable effect on the living conditions of residents in the area.
19. The Council states at the appeal stage that the development, if permitted, would set an undesirable precedent because it could lead to a demand for new built form on the site. However, the site is modest in size with an overall capacity of up to 300 burial plots and so I share the general opinion set out in the Officer's report that a request for new buildings on the site associated with the new use seems unlikely. In any event, each case should be assessed on its own merits, as I have done in this instance.
20. Furthermore, under paragraph 89 of the Framework, new buildings would be regarded as inappropriate unless the openness of the Green Belt is preserved and they do not conflict with the purposes of including land within it. Similar tests would apply under paragraph 90 of the Framework to any engineering

operations. There is, therefore, policy support to resist such proposals if the Council considers that harm would result.

21. The absence of harm with regard to each of these other matters is not a positive or a negative factor that necessarily weighs for or against the appeal. These considerations are neutral in weight.

Balancing exercise

22. Overall, the harm caused by the inappropriateness of the proposal, its effect on openness and the conflict with LP Policy P17 and the Framework carry substantial weight. Taken together, the other considerations carry a very heavy weight. The other matters are neutral in weight.
23. Therefore, on balance, there are considerations sufficient to clearly outweigh the harm to the Green Belt. Looking at the case as a whole, I consider that very special circumstances exist, which justify the development.

Conditions

24. I have considered the conditions suggested by the main parties in the light of relevant advice contained within the Planning Practice Guidance. In addition to the standard time limit condition, it is necessary to impose a condition that requires the development to be carried out in accordance with the approved plans for certainty. To ensure the satisfactory appearance of the development, conditions are imposed requiring details of surface materials and landscaping and to require that no headstones, memorials or other structures be introduced onto the site. For the same reason, and to protect wildlife such as foraging bats, a condition is necessary to ensure that no external lighting is used on the site without the Council's prior approval.
25. In the interests of safeguarding and promoting wildlife and biodiversity, conditions are imposed to require plans to cover the management and maintenance of landscape and ecology. To ensure that the site is properly drained, a condition is necessary to require details of a system for surface water disposal and groundwater monitoring. In the interests of highway safety, conditions are imposed to require details of the off-site highway works and to require that both these and the car park and access track be in place before the use commences.
26. The appellant has suggested that conditions be imposed to ensure that burials are carried out in accordance with an agreed management plan and that there are no more than 10 interments each calendar year. As my findings reflect the particular type of burial practice proposed and the activity associated with it, I agree that such conditions are necessary in this case.
27. Given the historic buildings and use of land nearby at Temple Balsall there is potential for archaeology in terms of the evolution of the local area. The new use would include the digging of graves across part of the site and so it would be prudent to impose a condition to secure implementation of an agreed programme of archaeological work. This requirement would ensure that the significance of any remains, if found, is not harmed by the proposal.

28. Where appropriate, I have amended the suggested conditions for clarity and to more closely reflect national guidance. The purpose of a condition that restricts the use of the land to a natural burial ground would largely duplicate the combined effects of other conditions, notably 2, 6, 13 and 14, which restrict the use and the type and scale of burial practice to be carried out.

Conclusion

29. For the reasons set out above, I conclude that the appeal should be allowed.

Gary Deane

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Refs 3657.99, 199 and 12142-03 Revision C.
- 3) No development shall take place until details of hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include, where appropriate, proposed finished levels or contours; any means of enclosure; car parking layouts; and other vehicle and pedestrian access and circulation areas. Soft landscape works shall include planting plans; written specifications; schedules of plants, noting species, plant sizes and proposed numbers and densities; trees, hedges and shrubs to be retained; and an implementation programme.
- 4) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in accordance with the agreed implementation programme. Any trees, shrubs, hedges or plants which within a period of 5-years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
- 5) No development shall take place until details of the surface materials of the vehicular access and car park hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 6) No headstones, memorials or other structures shall be erected on the site.
- 7) No external lighting shall be erected, placed or operated on the site unless in accordance with details that have previously been submitted to and approved in writing by the local planning authority. The external lighting shall be installed and operated in accordance with the approved details.
- 8) No development shall take place until an Ecological Management Plan to protect badgers, amphibians, breeding birds and otter during the construction phase has been submitted to and approved in writing by the local planning authority. The Ecological Management Plan shall be implemented in accordance with the approved details.

- 9) No development shall take place until an Operational Plan covering the landscape and ecological maintenance and management of the site has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved Operational Plan.
- 10) No development shall take place until a scheme for the drainage of surface water from the site, based on sustainable drainage principles, and monitoring of ground water has been submitted to and approved in writing by the local planning authority. The scheme shall include an implementation plan and details of how the system will be maintained and managed after completion. Development shall be implemented, maintained and managed in accordance with the approved details.
- 11) The use hereby permitted shall not commence until the access road and the area for vehicle parking shown on drawing number 199 have been laid out and surfaced in accordance with details that have previously been submitted to and approved in writing by the local planning authority.
- 12) No development shall take place until the detailed specification to carry out off-site highway works shown on drawing number 12142-03 Revision C has been submitted and approved in writing by the local planning authority. The works shall be carried out in accordance with the approved details and completed before the use hereby permitted is commenced.
- 13) All burials within the site shall be undertaken in accordance with a Management Plan that has previously been submitted to and approved in writing by the local planning authority.
- 14) No more than 10 interments will take place on the site in any one calendar year without the prior written approval of the local planning authority.
- 15) No development shall take place within the site until the implementation of a programme of archaeological work has been secured in accordance with a written scheme of investigation that has been submitted to and approved in writing by the local planning authority. The programme of archaeological work shall be implemented in accordance with the approved details.