

Appeal Decision

Site visit made on 10 January 2017

by Nicola Davies BA DipTP MRTPI

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

Decision date: 20th January 2017

Appeal Ref: APP/H2265/W/16/3158497

Land Parcel 2 Lillieburn, Leybourne, West Malling, Kent

- 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 Mrs Sian Duncan of Leybourne Parish Council against the decision of Tonbridge & Malling Borough Council.
 - The application Ref TM/16/00413/FL, dated 9 March 2016, was refused by notice dated 8 July 2016.
 - The development proposed is described as the "building of a wet pore surface, surrounding low fence and installation of gym equipment".
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Decision

1. The appeal is allowed and planning permission is granted for the building of a wet pore surface, surrounding low fence and installation of gym equipment at Land Parcel 2 Lillieburn, Leybourne, West Malling, Kent in accordance with the terms of the application, Ref TM/16/00413/FL, dated 9 March 2016, subject to the conditions set out in the Schedule to this decision.

Preliminary Matters

2. The site address was omitted on the planning application form. I have, therefore taken the site address from the Council's decision notice and appellant's appeal form which are consistent.

Main Issue

3. The main issue raised in respect of the appeal is the effect of the proposed development on the character and appearance of the area which is designated Amenity Green Space.

Reasons

4. The area in which the appeal site is located is a large open grassed area running alongside a stream and is traversed by a pathway. To the east of the stream is further open grassland with dwellings beyond. To the west the open grassed area is boarded by a highway, Castle Way, with dwellings set back behind front gardens running along its western side. There is a tree belt alongside the stream and some individual and groups of trees within the wider grassed area. An enclosed children's equipped play area is located adjacent the highway, Lillieburn, to the southern part of this open grassed area. Further to the south, beyond the highway, the grassed area continues until the land is enclosed forming a horse/donkey paddock.
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5. Policy OS1 of the Tonbridge and Malling Managing Development and the Environment Development Plan Document (the MDE DPD) designates this site as Castle Way Amenity Green Space. This Policy indicates that development that would result in the loss of, or reduce the recreational value of, this existing open space will not be permitted unless it is replaced by an equivalent or better site, amongst other matters. The proposed development would create an enclosed formal adult gym facility close to the existing children's play area approximately a third of the size of the existing children's play area.
6. The open grassed area has been kept natural in appearance and free from specific urbanising development and is an important landscape feature of the village. Whilst the proposal would create a new formalised recreational facility with the permanent stationing of ground surfacing, enclosed fencing and gym equipment, the overall footprint of the gym would not be significant when viewed in the context of this large open area. The limited height of equipment and surrounding enclosure would not be more visually intrusive than that of the existing children's play area or encroach substantially into the overall area of open green space. For these reasons, the proposed development would not substantially alter the character and appearance of the area. Although it would amount to a slight reduction in the designated Amenity Green Space, the gym would provide an additional recreational facility thus maintaining the recreational value of the Amenity Green Space in line with Policy OS1. As such, the recreational value of the site would not diminish.
7. Additional tree planting has been put forward by the Parish Council which would help reduce the visibility of the proposed gym in views from Castle Way. The Council has not objected to further landscaping being planted.
8. I acknowledge the local objection raised to the installation of the adult gym but overall it would not erode the natural quality of the area or introduce a significant visual intrusion in this open area or cause substantial harm to its character & appearance.
9. My attention has been drawn to concerns relating to the potential floodlighting of the gym. This type of lighting or other forms of lighting would not be appropriate within this open green space and could detract from its natural environment. I, therefore, consider a condition to prevent the installation of lighting at the adult gym would be appropriate.
10. Overall, I conclude that the proposed development would not harm the character and appearance of the area which is designated Amenity Green Space. The proposal complies with Policy CP24 of the Tonbridge and Malling Borough Core Strategy and Policies OS1 and SQ1 of the MDE DPD which seek to protect, and wherever possible, enhance existing open spaces and the distinctive setting of landscape and not result in the loss of, or reduce the recreational value of, this existing open space, amongst other matters.

Other Matters

11. In reaching my decision, I have considered concerns raised by interested parties. In respect of crime, litter, anti-social behaviour and safety, the Council's Community Safety Officer has advised that this is a low crime area and that whilst there are some pockets of anti-social behaviour it is not considered that the proposed gym in this location would add to this in any significant way. Additional landscaping could reduce passive surveillance and

make the appeal site more vulnerable to anti-social behaviour. Kent Police advise that the gym could become a target for criminal damage and anti-social behaviour. Whilst I acknowledge that the Parish Council is willing to erect a CCTV camera overlooking the gym equipment to deter damage, I have no substantive evidence before me that would indicate that such problems would take place to such an extent that would justify this level of surveillance or policing, or that additional tree planting would lead to increased anti-social behaviour.

12. It is suggested that other alternative site options are available for the adult gym, potentially at existing sports facilities or grounds. This may be the case but I must consider the proposal that is before me irrespective of the availability of other sites or local opinion relating to the potential limited use of the proposed facility or it being considered poor value for money.
13. In reaching my decision, I have also considered the concerns raised by interested parties in respect of parking and car movements in the area. I do not consider an adult gym of this size, used solely by adults or in combination with the existing children's play facility, would attract significantly more people to the area. I therefore do not consider highway safety would be compromised or that parking problems would occur.
14. Whilst I acknowledge the comment regarding the ambient tranquillity of the locality I have no substantive evidence before me that would indicate that the users of the proposed gym would significantly increase noise at this location. Similarly, I have no reason to conclude that health and safety issues would arise.
15. I acknowledge local concern regarding the Parish Council's promotion of the adult gym and concerns expressed as to their local consultation process. However, this is not a material planning consideration, nor is the Kent County Council land lease. I appreciate that the Parish Council is open to avail upon permitted development rights under the General Permitted Development Order to erect small ancillary buildings or undertake works for the purposes of any function exercised by the Parish Council. However, I have no evidence that would indicate a clear intention by the Parish Council to implement such rights. In any event I must consider the appeal scheme that is before me on its own merits.
16. For the reasons given above I have found that the proposal would be acceptable and none of these other matters alter my conclusion that the appeal should be allowed.

Conditions

17. I have considered the planning conditions suggested by the Council in light of paragraph 206 of the National Planning Policy Framework and the advice in the Planning Practice Guidance. In addition to the standard time limit conditions and in the interests of certainty it is appropriate that there is a condition requiring that the development is carried out in accordance with the approved plans.
18. A condition relating to materials and colour of the surfacing and enclosure is appropriate in the interests of the character and appearance of the area. This

condition is fundamental to the acceptability of the proposal and, therefore, is necessary to be agreed before development takes place. A condition relating to works to avoid damage to existing trees is also fundamental to the acceptability of the proposal and, therefore, is necessary to be agreed before development takes place. A condition relating to a landscaping scheme is required to ensure appropriate tree or vegetation planting takes place. As discussed above, a condition preventing the installation of floodlighting or other lighting is appropriate to protect the environment of this green area.

19. I consider a condition relating to foundations to be unnecessary as the Council has not explained how the excavation works and foundations would harm the character of the site and locality. I also consider a condition relating to the installation of a CCTV camera to be overly onerous and would place an unnecessary burden upon policing and surveillance without substantive evidence indicating this to be necessary to make the development acceptable.

Conclusions

20. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

Nicola Davies

INSPECTOR

SCHEDULE

CONDITONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the approved plans listed TQ6858/53A dated May 2016 (illustrating Site Plan) and 'Project: Outdoor Gym Revision: 4' dated 16.02.2016 (illustrating Site Layout Plan).
- 3) Prior to the commencement of the development hereby approved, details of the materials to be used in the ground surface of the gym and surrounding enclosure and their colour shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and shall thereafter be retained as such.
- 4) Prior to the commencement of the development hereby approved, details of the measures to avoid damage to the existing trees, including their root system, shall be submitted to and approved in writing by the local planning authority. All damage avoidance measures shall be carried out in accordance with the approved details.
- 5) Within 1 month of the commencement of development a scheme of landscaping and implementation programme shall be submitted to and approved in writing by the local planning authority. This scheme shall include details of pruning of existing trees affected by the development hereby approved and the planting of any new trees or vegetation. The landscaping shall be carried out in accordance with the approved details. The tree planting shall be implemented in the first planting season following the first use or the completion of the development, whichever is the sooner. Any trees or vegetation which within a period of 10 years from planting die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species to those originally planted.
- 6) No external lighting of the gym hereby permitted shall be installed.