
Appeal Decision

Site visit made on 7 February 2017

by Philip Lewis BA (Hons) MA MRTPI

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

Decision date: 28 February 2017

Appeal Ref: APP/C2741/W/16/3158459

Land adjacent to Church Lane, Wheldrake Easting 469037 Northing: 444813

- 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 Derwent Valley Glamping against the decision of City of York Council.
 - The application Ref 16/00952/FUL, dated 11 April 2016, was refused by notice dated 18 July 2016.
 - The development proposed is described as 'erection of four seasonal tents utilising existing access; the creation and maintaining of a footpath link; the incorporation of a habitat enhancement plan; and the infill of boundary hedgerows'.
-

Decision

1. The appeal is dismissed.

Procedural matters

2. The City of York Draft Development Control Local Plan 2005 (DDCLP) is, as stated, a draft un-adopted local plan. The National Planning Policy Framework (the Framework) postdates this draft plan by seven years and, according to paragraph 14, takes precedence where the development plan is absent, silent or relevant policies are out of date. Given that the DDCLP policies do not form a part of the statutory development plan, I give them minimal weight.
3. The appellant has provided a Habitat Regulations Assessment (HRA)¹ in respect of the appeal scheme. The Council did not refuse the appeal for reasons relating to impacts on protected European habitats and I have considered the comments of Natural England (NE), who are the government's statutory adviser for the natural environment in England. NE have set out in a letter dated 17 June 2016, that having reviewed the Habitats Regulations Assessment submitted, they are satisfied that the proposal, if carried out in accordance with the details submitted, is not likely to have a significant effect on the Lower Derwent Valley SPA / SAC / RAMSAR site. Consequently, I do not consider the matter to be a main issue for this appeal. However, this issue has been raised by an interested party and I will deal with this matter in the decision.

Main Issues

4. The main issues for the appeal are:

¹ Wold Ecology Ltd dated March 2016

- Whether or not the proposal would represent inappropriate development in the Green Belt for the purposes of the Framework;
- The effect of the proposal on the openness of the Green Belt;
- The effect of the proposal on the character and appearance of the countryside; and
- If the proposal 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

Whether inappropriate development

5. The Framework in paragraph 89 states that new buildings in the Green Belt should be regarded as inappropriate development, but identifies a number of exceptions to this. These include provision for outdoor recreation as long as it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it. Paragraph 90 of the Framework sets out that engineering operations are also not inappropriate development provided that they preserve the openness of the Green Belt and do not conflict with the purposes of including land in Green Belt.
6. In the appeal scheme, the sites of four tents and one car parking area are identified within individual red line boundaries. The appellant has stated that the appeal scheme is not for a change of use to a camp site, but relates to the erection of buildings; namely the semi-permanent tents, each of which the HRA states would be erected for 17 weeks between May and September each year. In addition, an area of 'grasscrete' hardstanding would be provided at the existing site access and would provide 4 car parking spaces.
7. I have considered the appellants reference to *Fordent Holdings Limited v SSCLG & Cheshire West and Chester Council*². Whilst the appeal proposal relates to discrete individual areas of land, it was lastly in agricultural use and it would be reasonable to conclude that the proposal does involve the change of use of the tent sites and hardstandings to a tourism/outdoor recreation use. Therefore, I consider that the provision of facilities for tourism/outdoor recreation as proposed inevitably constitutes a change of use of agricultural land. Since a change of use to a tourism/outdoor recreation use does not fall within one of the exceptions in paragraphs 89 and 90 of the Framework, the proposal therefore constitutes inappropriate development.
8. Additionally, if I were to agree that the proposed tents constituted buildings in that they would be in fixed locations, be erected for a defined period each year and would be connected to services, they would inevitably, due to their volume, reduce the openness of the Green Belt. Additionally, I do not consider that the provision of the tents would assist in safeguarding the countryside from encroachment which is one of the five purposes of Green Belts as set out in paragraph 80 of the Framework. Furthermore, the parking of vehicles on the hardstandings would also give rise to a reduction in

² *Fordent Holdings Limited v SSCLG & Cheshire West and Chester Council* [2013] EWHC 2844 (Admin)

openness and therefore the proposal would not fall under the engineering operations exception in paragraph 90 of the Framework.

9. Consequently, the appeal proposal constitutes inappropriate development which is by definition harmful to the Green Belt and should not be approved except in very special circumstances.

Openness

10. Preventing urban sprawl by keeping land permanently open is a fundamental aim of Green Belt policy and the essential characteristics of Green Belts are their openness and permanence. Whilst the field within which the development would take place has mature hedges and trees to the west along the road and to the north, the appeal proposal would result in development where none existed before, with the seasonal erection of the tents and provision of the car park. This would give rise to a minimal loss of openness and harm to the Green Belt to which I shall give substantial weight.

Character and appearance

11. I saw at my site visit that the appeal site is situated in an open field, which slopes generally down to the east towards the Lower Derwent Valley National Nature Reserve (NNR), over which there are open views. I observed that the vegetation in the strongly defined boundaries to the west and north, restricts views from the wider landscape from those directions. I also noted that there is a path defined along the western edge of the field which allows off road public access to the NNR.
12. Although I note the proposals to increase the landscaping of the field boundaries, the introduction of the temporary tents and associated parking area would inevitably change the character and appearance of this countryside, visible for users of the path and visitors to the NNR, including from the nearby observation platform and from the reserve. It would also give rise to some noise and disturbance through the introduction of the tourism/outdoor recreation activities into what is presently agricultural land. Consequently, the appeal proposal would represent an intrusive development in this open countryside location.
13. For these reasons, although the tents would be temporary, the development would have an adverse impact on the character and appearance of the countryside and conflicts with paragraph 17 of the Framework which includes that planning should recognise the intrinsic beauty and character of the countryside.

Other considerations

14. Whilst I have few details of the proposed business, on the balance of the evidence, I have given limited weight to the contribution that the proposal would make to the rural economy and local services and support to the aims of paragraph 28 of the Framework, due to its small scale and seasonality. I have taken into consideration that the proposal would provide additional income during seasonal months but whilst it is stated that the proposal would give rise to 2 full time and 2 part time jobs, I have very little detail before me as to how the seasonal business would sustain such a level of employment.

15. I note that the proposal includes infill hedgerow boundary planting to which I attach limited weight, given that it is primarily to screen the development. It also includes proposed ecological benefits including bird and bat habitat enhancements. I also note that the proposal includes the completion and maintenance of a footpath helping to create a continuous link between footpath 6/2/10 to the south of the site and footpath 6/1/10 to the eastern edge of Wheldrake. However I do not consider that this is a benefit which is necessary to make the development acceptable in planning terms.
16. The appellant has also referred me to a decision by Christchurch Borough Council and East Dorset District Council in respect of a development of 5 seasonal yurts at a site referred to as Sopley Farm within a Green Belt. Whilst I have limited details of that scheme before me, I do not consider that it provides an example which should inevitably be followed given the harm found in this case.
17. I note that the Green Belt 'washes over' the Council area and that outside of a settlement, any such development as is proposed in this case would be located in the Green Belt. I have also taken into account that the location of the site next to the NNR may be attractive to people visiting the reserve.

Habitat Regulations Assessment

18. The appeal site is adjacent to the Lower Derwent Valley Special Protection Area (SPA) and Special Area of Conservation (SAC), and comes under the umbrella of Natura 2000 sites and is also RAMSAR designated and a NNR. It is therefore incumbent on decision makers under the Habitat Regulations to consider whether there would be any likely significant effects on the integrity of Natura 2000 sites.
19. The submitted HRA sets out that an Appropriate Assessment is required in relation to habitat/species disturbance and recreational/visitor pressure. NE having considered the HRA and the evidence within it, has agreed with its conclusion that the proposal would not have a likely significant effect on the Natura 2000 site. I attach significant weight to the views of NE as the statutory adviser on the natural environment in England.
20. The HRA recommends measures to address the potential to cause disturbance to bird species which are qualifying species of the Lower Derwent Valley SPA, SAC and RAMSAR site during both the construction and operational phases. The HRA identifies that the periods when birds would be most vulnerable to disturbance would be during the winter months, and the spring breeding period from April to late May and advises that the use of the tents should be avoided during this period. NE is satisfied that the proposal, if carried out in accordance with the details submitted in the HRA, is not likely to have a significant effect on the Lower Derwent Valley SPA / SAC / RAMSAR site and advises that any planning permission granted should be temporary in the first instance and subject to review.
21. Given the close proximity of the proposed development to the Natura 2000 site, I have little doubt that it could give rise to disturbance to birds. However, through restricting the use of the site to certain times of the year and adopting the other measures set out in the HRA, I am persuaded that there would be no likely significant effect on the integrity of Natura 2000 site.

22. I have taken into consideration the appellants comments regarding the lack of up to date development plan policies and paragraph 14 of the Framework. However, the Framework sets out in paragraph 119 that the presumption in favour of sustainable development does not apply where development requiring appropriate assessment under the Birds or Habitats Directives is being considered, planned or determined.

Conclusions

23. The Framework indicates that inappropriate development is, by definition harmful to the Green Belt and should not be approved except in very special circumstances. In addition, there are adverse impacts on openness, the Green Belt purpose of safeguarding the countryside from encroachment and significant harm to the character and appearance of the countryside. Substantial weight should be given to the harm to the Green Belt. Very special circumstances will not exist unless the harm to the Green Belt and any other harm are clearly outweighed by other considerations.
24. I give limited weight to the contribution that the proposal would make to the rural economy and employment, to the infill hedgerow boundary planting ecological enhancements and to the Sopley Farm decision referred to me. The substantial weight to be given to the Green Belt harm is not consequently outweighed by other considerations sufficient to demonstrate very special circumstances. The appeal proposal therefore conflicts with the Framework. It also conflicts with DDCLP Policy GB1 which is concerned with the Green Belt and open countryside.
25. For the reasons given above and having considered all matters raised, the appeal should be dismissed.

Philip Lewis

INSPECTOR