
Appeal Decision

Site visit made on 2 May, 2017

by Nicola Davies, BA DipTP MRTPI

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

Decision date: 7th June, 2017

Appeal Ref: APP/C3620/W/16/3163635

Black Hut Lake, Henfold Lane, Newdigate, Surrey, RH5 5AF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr A Phillips against the decision of Mole Valley District Council.
 - The application Ref MO/2016/0477/CC, dated 19 March 2016, was refused by notice dated 7 October 2016.
 - The application sought planning permission for the erection of a single storey timber fishery lodge at side of fishing lake without complying with a condition attached to planning permission Ref MO/2013/0493/PLA, dated 9 August 2013.
 - The condition in dispute is No 4 which states that: The fishery lodge hereby permitted shall only be used during daylight hours.
 - The reason given for the condition is: To match the hours of use of the fishing lake to ensure that the activity remains low key and quiet in this Green Belt location and in the interest of the amenities of the neighbouring properties in accordance with Mole Valley Local Plan policies ENV22 and REC11 and Mole Valley Core Strategy policy CS14.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a single storey timber fishery lodge at side of fishing lake at Henfold Lane, Newdigate, Surrey, RH5 5AF in accordance with the application Ref MO/2016/0477/CC dated 19 March, 2016 without compliance with condition number 4 previously imposed on planning permission Ref MO/2013/0493/PLA dated 9 August, 2013 and subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The site address provided on the planning application form is different to that provided on the appellant's appeal form and the Council's decision notice. For consistency, I have used the address on the appeal form and Council's decision notice. From the details submitted, I am satisfied that this address is more precise and accurately provides the location of the appeal site.
 3. I observed that building works to create a building base had taken place. It is not clear whether this related to the fishing lodge which has been granted planning permission. I shall therefore consider the appeal as a standalone development which has not already commenced.
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4. The Council's statement refers me to a 2004 planning permission (Council ref: MO/2004/0289) that granted the removal of a restrictive condition and allowed the use of the fishing lake for persons other than the owners of The Black Hut. The Council indicates that the permission also restricted the use of the lake to no more than ten anglers in any one day, as well as its use to daylight hours only. Corresponding to this, the reason pertaining to condition 4, the subject of this appeal, indicates that the hours of use of the fishing lodge are to match the hours of use of the fishing lake.
5. The variation sought to Condition 4 seeks firstly to allow for the use of the lodge for overnight stays, and secondly, fishing outside of daylight hours. However, with regard to this second matter, this variation proposal cannot change a previous condition imposed upon a different planning permission that prevents fishing at the lake outside of daylight hours. Consequently I cannot consider that part of the proposed variation through this appeal. My deliberations therefore must focus upon the use of the lodge for overnight stays.

Background and Main Issues

6. Planning permission has been granted by the Council to erect a single storey timber fishery lodge at the side of the fishing lake. The appellant seeks permission to allow the use of the lodge for overnight stays. The Council is concerned that the use would create an intensification in the use of the site and would have a detrimental impact upon the Green Belt, the surrounding countryside and the living conditions of neighbouring occupants. As such, the Council consider the proposal would be inappropriate development in the Green Belt without very special circumstances being provided that would outweigh the harm.
7. The main issues are: -
 - (a) whether the proposal would be inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the Framework) and development plan policy; and
 - (b) the effect of the development upon the living conditions of occupiers of nearby properties with particular regard to noise and light pollution.

Reasons

8. There would be no change to the maximum number (10) of anglers at the lake at any one time. The proposed lodge would be a small building and, as such, would limit the number of individuals using the lodge and that of overnight stays.
9. Whilst the lodge would be used for longer periods of time I consider the intensification of the use of the site would be so marginal that it would be insignificant. Therefore there would be no fundamental change to the character of the use that is currently being carried out on site. I do not consider that the nighttime use of the lodge would lead to an intensification of activities beyond that currently allowed at the appeal site. The proposed extended use of the fishing lodge would not amount to a change of use of the land and would not materially affect the Green Belt. The proposal would not therefore be inappropriate development in the Green Belt or conflict with the purposes of including land within it.

10. The Council acknowledges that fishing is a quiet activity. The appeal site is some distance from the nearest residential dwelling and properties at Henfold Lane. Whilst the use of the lodge for longer periods of time and beyond daylight hours would likely result in some vehicle movements in the vicinity of the appeal site and along local country lanes at quieter times of night, these would not be many. Furthermore, although some light may emit from the lodge during darkness, the extensive tree vegetation around the lake would allow little more than glimpsed views of light from wider viewpoints even during winter months. For the same reason people movements in the vicinity of the appeal site at night with torches would not be readily noticeable to adjoining occupiers. I do not consider that unacceptable harm would ensue to the living conditions of occupiers of nearby properties from people staying overnight at the lodge.
11. In addition, I will ensure that overnight stays at the lodge would be for purposes ancillary to the use of the lake for fishing by re-imposing the condition that addresses that. Whilst I acknowledge there are other angling facilities in the area and that the benefits of allowing overnight stays at this fishing lake would be limited to the existing anglers that use the lake and not the wider community in the area, this does not alter my findings in respect of this appeal.
12. I conclude that preventing overnight stays at the lodge is not reasonable or necessary in the interests of the Green Belt or the living conditions of adjoining occupiers. Policies ENV22 and REC11 of the Mole Valley Local Plan 2000 (the Local Plan) seek recreational development not to detract from the Green Belt and the rural character of the countryside, not to have an adverse impact on residential amenity and to resist uses that are not incidental to outdoor recreational activities. For the reasons given above I do not consider that these would be compromised and I conclude that the proposal is not in conflict with the Framework that seeks to protect the Green Belt and would not be in conflict with the development plan.
13. I note that Policies ENV22 and REC11 of the Local Plan pre-date the Framework by some years. Notwithstanding this, none of the five purposes of the Green Belt as set out at paragraph 80 of the Framework would be interfered with by allowing overnight stays at the lodge. Furthermore, I consider these policies to be consistent with the Framework, particularly in respect to securing a good standard of amenity for existing occupiers and taking account of the different roles and characters of different areas and I therefore give them significant weight.
14. I acknowledge that agreeing overnight stays at the lodge is not what the Council would have wanted but in allowing this appeal it does not automatically follow that overnight fishing at the lake has been permitted. Overnight stays at the lodge would, however, enable fishing to start at dawn and continue up to dusk.

Other Matters

15. In reaching my decision, I have also considered the concerns raised in respect of vehicle movements. I note that the Council did not raise highway safety as an issue and I do not consider highway safety would be compromised. In addition, I have also considered the concerns raised in respect of wildlife at the appeal site. Again the Council did not raise ecology as an issue and have

previously imposed a condition to safeguard ecological interests at the site. I do not consider that ecology would be compromised if the proposal were again subject to such a condition.

Conditions

16. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
17. Section 73 of the Town and Country Planning Act 1990 indicates that planning permission must not be granted under this section to extend the time within which development must be started therefore the timeframe for implementation of the development runs from the date of the original permission.
18. I have considered the planning conditions previously imposed by the Council in light of paragraph 206 of the National Planning Policy Framework and the advice in the Planning Practice Guidance. A condition relating to materials is appropriate in the interests of the character and appearance of the area, as is a condition relating to hard surfacing along with the sustainable drainage of this area. To safeguard ecological interests at the site a condition relating to mitigation and enhancement measures is appropriate. A condition relating to parking provision is necessary to prevent inconvenience to road users and to ensure highway safety. To protect the character and appearance of the area and the living conditions of adjoining occupiers a condition preventing floodlighting and external lighting is necessary. To safeguard the living conditions of adjoining occupiers and ecological interests at the site limiting the occupation of the lodge to purposes ancillary to the use of the lake for fishing is necessary. To protect openness of the Green Belt and biodiversity interests a condition restricting caravans at the appeal site is appropriate. 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.

Conclusion

19. For the reasons set out above I conclude that the development would not be inappropriate development in the Green Belt and would not lead to unacceptable harm to the living conditions of occupiers of adjoining properties. Therefore I find that Condition 4 is not reasonable or necessary in order to protect the interests of the Green Belt, and the appeal should be allowed. I will grant a new planning permission subject to the modification of the disputed condition, together with the imposition of those conditions considered above.

Nicola Davies

INSPECTOR

SCHEDULE

CONDITONS

- 1) The development hereby permitted shall begin no later than 9 August 2016.
- 2) No development shall take place until details and samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approving in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 3) No development shall take place until details of the hardsurfacing to be used within the site have been submitted to and approved in writing by the local planning authority. The details shall indicate either porous materials or the provision of a direct run-off from the hard surface to a permeable or porous area. All hardsurfacing shall be carried out in accordance with the approved details, completed prior to the first use or occupation of the development hereby permitted and thereafter shall be retained as such for the lifetime of the development.
- 4) The fishery lodge hereby permitted shall be available for use during daylight hours and for overnight stays.
- 5) The recommended Mitigation and Enhancement Measures detailed in section 4.20 and 4.21 of the Phase 1 Habitat Survey Report by Sally Clifton dated March 2013 shall be carried out in full.
- 6) The vehicle parking area and spaces shown on the approved plans shall be made available for parking prior to the first use or occupation of the development hereby permitted and thereafter shall be kept available for parking provision for the lifetime of the development.
- 7) No floodlighting or other forms of external lighting shall be installed on the site.
- 8) The development hereby permitted shall not be occupied at any time other than for purposes ancillary to the use of the lake for fishing and no other use.
- 9) Within one month of the first use or occupation of the building hereby permitted the existing caravan on the application site shall be removed from the site and no further caravans shall be stationed on the site.
- 10) The development hereby permitted shall be carried out in accordance with plan number 512/014/01D.