



Appeal Decision

Site visit made on 27 June 2017

by G P Jones BSc(Hons) MA MRTPI

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

Decision date: 5 July 2017

Appeal Ref: APP/P1805/W/17/3169828

Old Burcot Lane, Burcot B60 1PH

- 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 A Brittain against the decision of Bromsgrove District Council.
 - The application Ref 16/0547, dated 1 June 2016, was refused by notice dated 11 November 2016.
 - The development proposed is described as Engineering operations to create fish farming lakes.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. There has been some disagreement between the parties as to whether or not the proposal constitutes a waste operation. However, Bromsgrove District Council (BDC) considered the application as engineering operations, and so I shall proceed on that basis.
3. BDC's decision notice referenced policies from both the Bromsgrove District Local Plan and the emerging Bromsgrove District Plan. The Bromsgrove District Plan 2011–2030 (BDP) was adopted in January 2017, and the policies from the Bromsgrove District Local Plan are superseded.

Main Issues

4. The site falls within the Green Belt and accordingly the main issues are:
 - The effect of the proposal on highway safety;
 - Whether the proposal would be inappropriate development within the Green Belt for the purposes of the National Planning Policy Framework (the Framework) and development plan policy;
 - The effect of the proposal on the openness of the Green Belt and the character and appearance of the area; 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.
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Reasons

Highway safety

5. The appeal site lies in a countryside location and is reached via a long access track that leads directly off Old Burcot Lane, close to the junction with the A38. Old Burcot Lane is narrow with vegetated banks on either side and the stretch of this road heading west towards the access and the A38 runs slightly downhill after a bend.
6. The access at the junction with Old Burcot Lane would allow two cars to pass within the bellmouth although it would not be wide enough to allow two heavy goods vehicles (HGVs) to pass each other with ease. There is a reservation area that is located some 15 metres from the junction, on the other side of a gate, and this would be wide enough to allow two HGVs to pass each other. The first part of the access track is quite wide and is surfaced with road planings. However, the final stretch of the access track that leads towards the appeal site is much narrower and is not hard surfaced; consisting instead of parallel narrow tracks down to the underlying soil, with areas of grass in between.
7. The appellant states that the proposal would entail the importation of some 59,532 cubic metres of inert material, which would equate to 100,000 tonnes. Worcestershire County Council (WCC), in its role as Highways Authority, has recommended that temporary lights and a banksman be employed during construction operations to ensure highway safety at the junction of the access track and Old Burcot Lane. However, the proposal was not accompanied by a Construction Environmental Management Plan (CEMP) and neither the sources of this material nor the timescales for importation have been specified. Consequently, Bromsgrove District Council (BDC) considers that it would not be realistic to enact the measures that WCC has recommended, as the importation of material would be both sporadic and protracted.
8. The proposal would give rise to the importation of a substantial quantity of material that would necessitate numerous HGV movements. I have not been presented with any cogent evidence that such material would be readily available in a limited space of time, and the sources of this material have not been specified in any detail. Therefore I agree with the view of BDC that the importation of material would be sporadic and likely to take place over a long period of time, and as such it would be difficult to achieve the control measures that WCC has recommended.
9. In addition, WCC recommended the imposition of a planning condition to require that visibility splays shall be provided from a point 0.6m above ground level at the centre of the access track to the application site and 2.4 metres back from the near side edge of the adjoining carriageway for a distance of 82 metres in each direction along the nearside edge of the adjoining carriageway. This was a revised recommendation.
10. The stretch of Old Burcot Lane adjacent to the east of the junction with the proposed access is bounded by a bank of some 1.2m in height which, at the time of my site visit had stinging nettles on it to give a combined height of some 2m. Even if this vegetation were to be cut back the bank would still prohibit visibility, although I accept that a HGV driver would sit in a more elevated position than a car driver and may be able to see over the top of this

bank. Be that as it may, at my site visit I observed that the nature of the roadside bank combined with the alignment of the road means that the visibility splay to the east, as detailed in WCC's aforementioned planning condition, could not be achieved.

11. Overall I consider that the proposal would give rise to a substantial number of HGV movements utilising a constricted access off a narrow road with poor visibility in one direction, and traffic management operations would be unrealistic due to the sporadic nature of the operations. BDP Policy BDP1 states that in considering all proposals for development regard will be had to the ability of the local road network to accommodate additional traffic. Overall I consider that the residual cumulative impacts of the development on highway safety are severe and the proposal would be contrary to the guidance in paragraph 32 of the National Planning Policy Framework (the Framework) and Policy BDP1 of the BDP, and I give significant weight to the conflict that I have identified.

Whether the proposal is inappropriate development in the Green Belt

12. Paragraph 90 of the Framework states that certain other forms of development are not inappropriate in the Green Belt, and the list of development forms includes engineering operations. However, this is provided that they preserve the openness of the Green Belt and do not conflict with the purposes of including land in Green Belt. Therefore in order to conclude as to whether or not the proposal is inappropriate development it is necessary to examine its effects in terms of these provisos.

The effect of the proposal on the openness of the Green Belt and the character and appearance of the area

13. The appeal site comprises an area of scrubland with some semi-mature trees that reads in the landscape as a flat valley bottom, with the land rising up on either side. The site has a pleasant appearance as an area of uncultivated scrubland located within a wider agricultural setting. Public rights of way run parallel to the appeal site to the north and south, and thus there are public views of the site.
14. Paragraph 79 of the Framework advises that openness is an essential characteristic of Green Belts. In the context of paragraph 90 of the Framework, the term openness relates to freedom from development and not necessarily only to an absence of buildings. As such it encompasses other works including the construction of roadways and the building up of land. Paragraph 8.23 of the supporting text of Policy BDP4 of the BDP expressly references paragraph 90 of the Framework. However, the specific wording of Policy BDP4 refers to housing and the development of new buildings, and therefore does not apply in regard to the proposal that is before me. Furthermore, paragraph 80 of the Framework lists the five purposes that Green Belt serves, one of which is to assist in safeguarding the countryside from encroachment.
15. There is some dispute between the parties as to whether part of the access track has recently been widened and upgraded with road planings or whether this was the result of maintenance, including the removal of mud and debris and surface repairs. Whatever method has been used to alter the first part of the access track, as taken from the junction with Old Burcot Lane, it is evident

that its character and appearance differs markedly from that of the remaining unmade track. It is highly probable that further work to the access track, in terms of both widening and hard surfacing, would be required in order to facilitate the substantial number of HGV movements that the proposal would entail. In turn this would cause a degree of harm to the rural character and appearance of the area.

16. A previous scheme proposed that a significant length of hedge and embankment would be removed at the junction of the access track and Old Burcot Lane. This was considered in a previous appeal decision¹ for this site that BDC has made reference to, albeit for a different scheme. I acknowledge BDC's concerns that if such embankment removal was proposed then that would have formed an additional reason for refusal. However, as that does not form part of the proposal that is before me, I do not attach any weight to this matter in this instance. Similarly, as fencing is not part of the proposal that is before me I do not attach any significant weight to BDC's concerns in this regard.
17. By importing a substantial amount of material to create a series of bunded lakes in a formal design and arrangement, the works would increase land levels and produce a significant change to the existing landform. As already discussed, part of the existing access track would require upgrading and this would have an urbanising effect on the locality. Due to the nature and extent of the works proposed it is my view that the proposal would cause some harm to the character and appearance of the area, would not preserve the openness of the Green Belt and would be contrary to a Green Belt purpose in regard to preventing encroachment into the countryside.
18. As I have found that that the proposal would not preserve openness and would be contrary to one of the five Green Belt purposes it would not comply with paragraph 90 of the Framework. Therefore it would be inappropriate development in the Green Belt. As such I conclude that the proposal would not accord with the Framework or with BDP Policy BDP1 which references taking into account specific policies in the Framework, including Green Belts, that indicate that development should be restricted, and also that regard will be had to the impact of a proposal on visual amenity.

Other considerations

19. The proposal would create a fish farm that would help to boost the local economy by generating employment opportunities and would provide a source of fish for public consumption, even though I note that carp is more usually farmed for fishing rather than culinary purposes. In addition the material would be used for engineering operations rather than disposal to landfill. There would also be the potential for some ecological enhancements, albeit these would be in mitigation for the loss of biodiversity that the proposal would entail.

Other Matters

20. I note that the appellant's Updated Preliminary Ecological Appraisal, dated March 2016, recommends no further specialist survey work unless a delay of more than 12 months is anticipated before development. As more than 12

¹ Appeal reference APP/P1805/A/11/2160221

months has now elapsed since the date of this Appraisal then it would be the case that such survey work would be required. However, as I am dismissing this appeal for other reasons, my decision does not turn on this matter and therefore I have not considered it in detail.

Conclusion

21. Paragraph 88 of the Framework guides that substantial weight be given to any harm to the Green Belt, and that 'very special circumstances' will not exist unless the potential harm by reason of inappropriateness and any other harm is clearly outweighed by other considerations. I have concluded that the proposal would represent inappropriate development in the Green Belt as it would not preserve openness and would conflict with the purpose of preventing encroachment into the countryside.
22. In accordance with paragraph 14 of the Framework I have considered this proposal in the context of the presumption in favour of sustainable development. In terms of its benefits, the proposal would provide a site for disposing of a substantial quantity of inert material and would provide limited economic benefits from the construction operations and ongoing operation of the fish farm, and would provide a source of fish for consumption and some ecological improvements by way of mitigation.
23. However, it is my view that these benefits would not clearly outweigh the harm that I have identified to the openness of the Green Belt, the character and appearance of the countryside and the effect on highway safety. I give substantial weight to the harm to the Green Belt and to highway safety that I have identified and moderate weight to the harm to the character and appearance of the area. I therefore conclude that very special circumstances necessary to justify inappropriate development in the Green Belt would not exist.
24. For these reasons I conclude that the proposal does not accord with the guidance in the Framework and the development plan, when taken as a whole, and therefore the appeal should be dismissed.

GP Jones

INSPECTOR