

Appeal Decision

Site visit made on 27 June, 2017

by S. J. Buckingham, BA (Hons) DipTP MSc MRTPI FSA

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

Decision date: 18th July, 2017

Appeal Ref: APP/B5480/W/17/3170325

Fishing Lake, Bramble Lane, Upminster, RM14 2XL

- 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 Ian Gibson against the decision of the Council of the London Borough of Havering.
 - The application Ref: P1855.16 dated 30 November, 2016 was refused by notice dated 6 February, 2017.
 - The application sought planning permission for landscape improvement works to existing fishing lake without complying with a condition attached to planning permission Ref: P0585.15 dated 9 July, 2015.
 - The condition in dispute is No 4 which states that: *The development hereby permitted shall not be carried out otherwise than in complete accordance with the approved plans.*
 - The reasons given for the condition is: *The Local Planning Authority considers it essential that the whole of the development is carried out and that no departure whatsoever is made from the details approved, since the development would not necessarily be acceptable if partly carried out or carried out differently in any degree from the details submitted. Also, in order that the development accords with Development Control Policies Development Plan Documents Policy DC61.*
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Decision

1. The appeal is allowed and planning permission is granted for landscape improvement works to existing fishing lake at Fishing Lake, Bramble Lane, Upminster, RM14 2XL in accordance with the application Ref: P1855.16 made on 30 November, 2016 without complying with condition No 4 set out in planning permission Ref: P0585.15 granted on 9 July, 2015 by the Council of the London Borough of Havering, but otherwise subject to the conditions set out in the schedule to this decision.

Application for costs

2. An application for costs was made by Mr Ian Gibson against the Council of the London Borough of Havering. This application is the subject of a separate Decision.

Main Issues

3. The site falls within the Metropolitan Green Belt, and while the appeal relates to an appeal against a condition applied to a previous grant of permission, the
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arguments in the case are mainly framed in terms of the effect of the proposal on the Green Belt. Accordingly the main issues are:

- a) whether the development would constitute inappropriate development in the Green Belt;
- b) its effect on the openness of the Green Belt and the purposes of including land in it; and
- c) if the development would be inappropriate, 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 needed to justify it.

Reasons

Whether the development would constitute inappropriate development

4. Paragraph 90 of the National Planning Policy Framework (the Framework) sets out the categories of development which may be regarded as not inappropriate development in the Green Belt, provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it. One of the exceptions listed is engineering operations.
5. Policy DC45 of the Council's Core Strategy and Development Control Policies Development Plan Document 2008 (the LDF) expresses a general presumption against inappropriate development which is harmful to the Green Belt except in very special circumstances. It is however based on the guidance set out in Planning Policy Guidance Note 2, Green Belts, which has been superseded by the Framework. I therefore attach greater weight to the provisions of the Framework.
6. The appeal site contains a small fishing lake in an open setting, and created through the backfill of a site previously used for sand and gravel extraction. It is well stocked with naturalised and planted vegetation and trees. The appeal proposal is to complete additional infilling on the eastern bank of the lake to create a pathway 150mm above the average water level and around 2000mm in width, intended to facilitate maintenance and clearing on that side of the lake.
7. As the works to achieve this would be primarily engineering, I conclude that this is development which is capable of being considered not-inappropriate, contingent on its effect on the openness of the Green Belt and the purposes of including land within it. I go on to consider this below.

Effect on openness and the purposes of including land in the Green Belt

8. Although the absence of development would generally give rise to openness, as suggested by the Council, the courts are clear that openness may also exist in the presence of development. The lake itself is a product of development in the form of engineering works, and it appears to me that an alteration to its margins which includes development, in this case replacing a strip of open water with a strip of open land, does not automatically involve a loss of openness. The purpose of this would be to support the functioning of the fishing lake. Outdoor recreation facilities are a use in the Green Belt supported both by the Framework and policy DC45 of the LDF. I consider therefore that in spatial and functional terms, there would be no material effect on the openness of the Green Belt arising from the appeal proposal.

9. The extended strip would start beyond an existing area of reeds, sit at low level, and would retain most of the mature planting along the adjoining eastern boundary of the site. Beyond a small reduction in the lake on that side, I conclude that it would have little visual impact, and would not therefore create any significant visual intrusion into the openness of the Green Belt.
10. For these reasons therefore I conclude that the appeal proposal would preserve the openness of the Green Belt and would not conflict with the purposes of including land within it, and particularly the fundamental aim of preventing urban sprawl by keeping land permanently open.

Other Considerations

11. As I have concluded that the appeal proposal is not inappropriate development in the Green Belt, it is not necessary to consider whether very special circumstances apply.
12. Any noise and disturbance to neighbouring occupiers arising from the construction of the pathway would be for a limited time and capable of being managed by conditions. The appellant has made it clear that no additional material would be imported, that there would therefore be no additional vehicle movements arising in that respect, and that a small machine would be used, and given the constraints of the site, I can see no reason to doubt this. Unacceptable levels of dust or pollution would also therefore be unlikely.
13. The appellant has indicated that the extended bank would be used for maintenance only. Although it has suggested that this maintenance could be done by boat, the appellant has indicated that this is not practicable or safe, and it appears to me reasonably likely that a stable area of bank would be more effective and safe in that respect. Although neighbouring occupiers are concerned that there would be use by many people, the appellant is clear that the extended bank would not be used by anglers. This, along with the retention of screening planting along the boundary between the lake and adjoining land, and the low level of the pathway, would be likely to ensure that there would be no harmful increase in overlooking of neighbouring gardens when the path was in use for maintenance, and no resulting effect on privacy of neighbouring occupiers.
14. In terms of security, I noted while on site an opening in the boundary planting at the northern end of the lake, which allows access into the adjoining land. The submitted drawing shows the existing mature hedgerow at the south end of the site retained. I conclude therefore that the ability to access neighbouring land from the lakeside would be little altered as a result of this development, and the security of neighbouring occupiers would not be compromised.
15. The appeal proposal would not therefore conflict with policy DC61 of the LDF, which states that planning permission will not be granted where it results in unacceptable overlooking or loss of privacy to existing properties, or has unreasonable adverse effects by reason of noise, vibration or fumes.
16. Neighbouring occupiers have raised a number of additional concerns, not all of which, however, are planning considerations, and which I have not therefore taken into account in reaching a decision. The issue of the ownership of land along the eastern margin of the lake is one such issue, and the grant of

planning permission cannot in any case override ownership rights. The alleged misuse of the site for storage of plant and vehicles, personal behaviour of parties and any outstanding enforcement actions that may or may not be in place, are others.

17. Disruption to fish and wildlife have not been included by the Council as a reason for refusal, and no technical information has been put before me to substantiate this concern. As the filling and dredging of the lake are both activities accepted through previous approvals, and as the reed beds to the northern margin of the lake are shown as retained in the submitted plan, I conclude that any harm to arise in this respect may be considered to be low level.

Conclusion

18. As I have not identified any harm to the Green Belt or any other harm arising from the proposal, for the reasons given above, and taking into account all other matters raised, I conclude that the appeal should be allowed.

Conditions

19. I have had regard to the conditions applied to the original grant of planning permission. As the original permission has been started, it is not necessary to impose a condition requiring commencement of development. I have repeated the condition on the original consent relating to the completion of the development, in order to ensure that the development is completed in a timely fashion.
20. Implementation of the development in accordance with the approved plans remains necessary in the interests of clarity. A condition ensuring the implementation of the planting scheme remains relevant and necessary in the interests of protecting the character and appearance of the area and I have accordingly attached it. For the same reason I have attached a condition to ensure that no heaps or soil or clay are left on site after the completion of development.
21. Restrictions on hours of use by anglers remain relevant and necessary in the interests of protecting the living conditions of neighbouring occupiers, and I have therefore applied a condition to secure this. For the same reason, I have attached a condition restricting the times of construction works and deliveries to the site.
22. A condition requiring wheel washing remains relevant and necessary in the interests of highway safety, and I have therefore attached such a condition. For the same reason, a condition is imposed limiting HGV movements.
23. Soil testing is imposed by condition in the interests of the safety of future users of the site. A condition is attached to prevent waste processing or recycling activities on site to protect the living conditions of neighbouring occupiers. Car parking spaces are limited by condition to three in the interests of amenity and highway safety, while the number of persons using the lake are limited to six at one time in the interests of the living conditions of neighbouring occupiers.

S J Buckingham

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby approved shall be completed before 8 July, 2018.
- 2) The development hereby permitted shall not be carried out otherwise than in complete accordance with the approved plans.
- 3) All planting, seeding or turfing comprised within the plan referenced 2012/01/04 Rev G shall be carried out in the first planting season following completion of the development and any trees or plants which within a period of 5 years from completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local Planning Authority.
- 4) No heaps of soil or clay shall be left on the site after the completion of the development other than those approved under this consent. Any unused spoil left at the site shall be removed within one month of the completion of the development, in accordance with the details approved as part of condition 7 of planning permission P0585.15.
- 5) Use of the lake by anglers shall only take place between the hours of 08:00 and 21:00 on any day.
- 6) No construction works or deliveries into the site shall take place other than between the hours of 08.00 to 18.00 on Monday to Friday and 08.00 to 13.00 Saturday. No construction works or deliveries shall take place on Sunday or on Bank or Public Holidays.
- 7) The development shall be undertaken in accordance with the wheel washing details approved under condition 5 of planning permission P0206.13.
- 8) No more than 170 HGV deliveries associated with the development shall take place in total. No more than 10 HGV deliveries associated with the development shall take place per day in accordance with the scheme of vehicle monitoring received on 8th September 2014. Up to date information about the total numbers of HGVs accessing the site shall be kept on record at the site at all times, and shall be made available to the local planning authority in writing within 7 days of a request being made.
- 9) The development shall be implemented in accordance with the approved scheme for soil testing as partly approved under Q0215.14. This condition will be fully discharged following the Council's approval of a validation/ verification report, which shall be submitted to the Council and approved in writing.
- 10) No waste processing or recycling activities shall take place and no waste material shall be imported to the site at any time with the exception of inert material.
- 11) The car parking spaces hereby permitted shall be limited to 3 vehicles, be provided prior to the first use of the upgraded lake and thereafter shall be kept permanently available for the parking of vehicles.
- 12) The number of persons using the fishing lake shall be limited to 6 at any one time.