



Appeal Decision

Site visit made on 23 May 2017

by R C Kirby BA(Hons) DipTP MRTPI

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

Decision date: 2nd August 2017

Appeal Ref: APP/P1805/W/17/3168297

Land adjacent to New Inns Road, Rubery, Bromsgrove

- 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 H2Land against the decision of Bromsgrove District Council.
 - The application Ref 16/0581, undated, was refused by notice dated 7 September 2016.
 - The development proposed is described as change of use. Maintenance/Chapel building approved under 12/0448, to allow cremations to take place including reduction in scale of the building and hardstanding areas.
-

Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by H2Land against Bromsgrove District Council. This application is the subject of a separate Decision.

Procedural Matters

3. The site address above has been taken from the planning application form. However, it was clear from my site visit that the appeal site is located on New Inns Lane, not New Inns Road. During the course of the appeal the Council adopted the Bromsgrove District Plan 2011-2030 (BDP). The policies contained within the BDP have replaced those contained within the Bromsgrove District Local Plan. I have considered the appeal proposal accordingly.
4. Although relating to an earlier planning application on the site, the appellant has requested that I consider the supporting Planning Statement by APS (APS PS) dated June 2016 in my assessment of the appeal proposal. This earlier application related to a section 73 planning application to change the design of the approved chapel/maintenance building on the site and the site's internal layout. It is submitted that the design of the proposal before me is the same as that referred to in the APS PS. I have considered the APS PS accordingly.
5. Whilst reference is made within the APS PS to the development being an extension and alteration to a building, there is no building upon the site to extend or alter. Accordingly I have considered the proposal on the same basis as the Council which is as set out above in the banner heading.

6. The appellant submitted a draft statement of common ground with the appeal. The Council has indicated that it was not party to this statement. Accordingly, I have not taken it into consideration as part of my assessment of the scheme.

Main Issues

7. The appeal site is located within the West Midlands Green Belt. BDP Policy BDP4 establishes under BDP4.4, that the development of new buildings in the Green Belt is inappropriate, except in a number of circumstances. Change of use of land and buildings is not included within this policy. Furthermore, paragraph 89 of the National Planning Policy Framework (the Framework) provides that the construction of new buildings is inappropriate in the Green Belt. None of the exceptions listed in that paragraph, or in paragraph 90 apply to the proposal. Therefore, as agreed by the parties¹, the proposal would be inappropriate development in the Green Belt.
8. Although not forming part of the Council's reason for refusal, representations have been submitted about the effect of the scheme on biodiversity and protected species in the area. I have a statutory duty² to consider such matters.
9. As a consequence, the main issues are:
- the effect of the proposal on the openness and purposes of the Green Belt;
 - the effect upon the character and appearance of the surrounding area;
 - the effect on local biodiversity, and
 - whether the harm to the Green Belt by reason of inappropriate development, 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

10. Planning permission³ was granted by the Council for the change of use of the site from pasture land to a cemetery development including a chapel and maintenance building. Although the chapel and maintenance building has not been constructed or the site laid out, there is no dispute between the main parties that this is an extant planning permission.
11. The appeal site comprises 3 fields which extend to around 8 hectares. It is accessed off New Inns Lane. The appeal proposal seeks planning permission to change the use of the site so that cremations could occur as well as burials. This would involve revisions to the previously approved design of the building and alterations to the internal layout of the site. The new building would be sited towards the centre of the site and would comprise a chapel and maintenance building. It would be single storey in appearance with a green roof and a conical shaped chimney over part of the maintenance building. Car parking spaces, including for those with disabilities would be provided upon the site which would be accessed and exited by an internal one way system which

¹ Appellant's Statement of Case January 2017

² Legislation including the Wildlife and Countryside Act 1981 and the Conservation of Habitats and Species Regulations 2010

³ Ref 12/0448

would operate. The proposal also includes a woodland burial area, burial plots and memorial ponds. Landscaping is proposed throughout the site, including a wildflower planted area adjoining the public footpath and residential properties to the south east of the site.

Openness and Purpose

12. The Council has made reference to BDP Policy BDP13 within its statement of case. BDP13.1 states that the Council will seek to maintain a balanced portfolio of sites by promoting certain types of development, including, in rural areas, sustainable economic development through proportionate extensions to existing business or the conversion of rural buildings taking into account the potential impact on the openness and the purposes of including the land in Green Belt.
13. The Framework advises that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. Openness is the absence of buildings or development. Hence openness is epitomised by the lack of buildings rather than those that are unobtrusive or screened in some way. As such, there is a clear distinction between openness and visual impact which I shall consider separately.
14. The appeal proposal would introduce new buildings and areas of hardsurfacing upon these open, undeveloped fields, including access roads, car parking areas and path ways. Such development would have an impact on openness, in that openness would be reduced. Although not permanent, further harm would be caused to openness as a result of vehicles associated with the use of the site being parked.
15. Green Belt serves five purposes as set in paragraph 80 of the Framework, including to assist in safeguarding the countryside from encroachment. The proposal would encroach into the open countryside which surrounds residential development in the area. Accordingly the proposal would conflict with the purposes of including land within the Green Belt. Representations have been made by local residents that the proposal would result in the merging of neighbouring towns. The Green Belt in this area is extensive as recognised in the BDP. I do not find that the development of this site as proposed would result in the merging of nearby towns.
16. In light of the foregoing, the proposal would result in a loss of openness to the Green Belt. It would also result in conflict with the purposes of including land within the Green Belt. This brings the scheme into conflict with the openness and purpose objectives of BDP13.1 as set out under BDP Policy 13 and the protection of the Green Belt objectives of the Framework.

Character and Appearance

17. BDP Policy BDP1 relates to sustainable development principles. Included within this is BDP1.4 which states that in considering all proposals for development in Bromsgrove District regard will be had to a number of matters including the impact on visual amenity and the natural environment.
18. BDP Policy BDP21 sets out the Council's aims in respect of the natural environment. Amongst other matters, BDP21.1 seeks to protect and enhance the distinctive landscape character of Bromsgrove. In this regard this policy

makes reference to the Worcestershire Landscape Character Assessment and the Worcestershire Landscape Character Assessment Supplementary Guidance. I have not been provided with extracts from these documents, nor directed to relevant sections the Council wish me to consider.

19. Notwithstanding this, it is clear that the appeal site forms part of the attractive countryside surrounding the built up areas of Rubery and neighbouring settlements. To the north of the site is the Waseley Hills Country Park where there are a range of walks, visitor centre and play areas. It is clear from the representations made that local residents and visitors to the area value the country park for its recreational value and scenic beauty.
20. The Council has not raised concern about the design of the building, other than the proposed chimney. Interested parties have however expressed concern about the building and particularly its visual impact from the country park. I have therefore assessed the building as a whole.
21. The building is of a modest size and height. The chimney flue would be conical in shape and would project above the green roof on the maintenance part of the building. It would be constructed of materials to reflect those used in the main building. The building would be sited towards the centre of the site close to mature trees, including a small copse. It would be lower in height than this landscaping and as such it is unlikely that neither the building nor its chimney would be prominent in the wider landscape. Even in the winter when the trees were not in leaf, the building would be unlikely to be prominent from nearby high ground, including at the country park, because the views would be filtered and at a distance. Moreover, because of its size and the amount of surrounding land that would remain free from buildings it would not have a dominant or overbearing visual impact.
22. In view of this, and as the effect of the proposed development would be localised, the overall implications for the appearance of the area would be minimal. New landscaping within the site and around the building is proposed which would, over time, further soften the appearance of the building.
23. The Council consider that the use of the site for cremations would result in an industrial process being operated from the site. It has however failed to provide me with any cogent evidence to support this and as such I am only able to attach limited weight to this matter in my assessment of the proposal. Whilst there are likely to be emissions from the chimney when bodies are being cremated, this in itself does not amount to an industrial process, nor does the holding of funeral services for those who are attending a cremation ceremony.
24. The appeal site is accessed off New Inns Lane, a busy road from which a number of residential roads lead off. The proposal would allow cremations to take place upon the site as well as burials. I have not been provided with details to substantiate the Council's concerns that the dual use of the building would result in a significant change to the 'comings and goings' to and from the site and the resultant effect upon the character of the area.
25. The appellant has however indicated that the proposal would cater for up to 1,200 cremation services per year. On top of this would be burial services at the site. The average number of cars per cremation service has been calculated to be 15. Whilst this figure is not significant, it is likely that more than one cremation service would take place upon the site each day. When

compared to the agricultural use of the site, the number of vehicle movements and people visiting the site would be likely to be significantly more than those associated with the site's current use. In this regard vehicle noise and general activity would have a harmful effect upon the character of the area.

26. Although I have found that the new building would not be unduly prominent in the wider landscape, taken with the activities associated with the building's use, it would change the character and appearance of these undeveloped fields to a developed, managed landscape. The proposal would not preserve or enhance the landscape character of the area as a result, which would be in conflict with the aims of BDP Policies BDP1 and BDP21.

Effect on Local Biodiversity

27. Representations have been made that the proposal would have an adverse effect upon biodiversity in the area. I note that the Council did not raise this issue as a concern when it refused the planning application, and that it has suggested a number of planning conditions it would wish to see imposed relating to this matter in the event that the appeal was allowed. Such conditions include one which makes reference to an Extended Phase 1 Habitat Survey (HS) dated 18 November 2011 which was submitted in respect of the cemetery application on the site, and an Ecology Method Statement (EMS) dated 19 August 2016, submitted with the application to which this appeal relates.
28. At the time that the HS was undertaken the site was largely found to be horse-grazed improved grassland with a small area of rough and scrub. The ecological value of the grazed areas was considered to be low, however it was recognised that the areas of rough and scrub could support a diversity of wildlife, including reptiles and Hazel dormice, although no specific species were identified at the time of the survey. The recommendations contained within the HS therefore suggested that further survey work was undertaken prior to trees over a certain girth and hedgerow being removed from the site; and that any significant development of the site should be confined to areas of existing improved grassland. These recommendations were also included in the EMS.
29. It is clear, from reading the HS that its purpose was to provide a preliminary view of the ecological potential of the site, with further surveys undertaken to establish whether or not protected species were present on or near to the appeal site. Whilst a survey was submitted relating to the construction of the access to the site⁴ as part of the cemetery permission, no further surveys appear to have been undertaken or submitted in respect of the remainder of the site.
30. I saw during my site visit that the appeal site consisted of unmanaged grass areas, enclosed by mature and semi-mature trees and hedgerows. The condition of the open areas upon the site did not reflect its condition when it was surveyed as part of the HS. The new building, car parking areas and roadway, amongst other development, would be located on such areas. The current condition of the appeal site leads me to conclude that there is a reasonable likelihood of protected species being present on the appeal site,

⁴ Pre-works Ecology Checks Prior to Creation of New Access, 5 August 2015 (Clarke Webb Ecology Limited)

including reptiles, dormice, bats and birds as mentioned in the HS, which may be adversely affected by the proposal.

31. The Planning Practice Guidance (PPG) indicates that an ecological survey will be necessary in advance of a planning application if the type and location of development are such that the impact on biodiversity may be significant and existing information is lacking or inadequate⁵. This is a sizeable, undeveloped site and it is necessary to establish the biodiversity value of it. Whilst I acknowledge that there is some information relating to ecology before me, it is not up-to-date and it appears to be of a general nature, with no species specific surveys or assessments, which in turn would inform any mitigation strategy, were protected species identified on or near to the appeal site. Circular 06/2005: Biodiversity and Geological Conservation, sets out that a survey should be carried out before planning permission is granted and that surveys should only be required by condition in exceptional circumstances.
32. I note the comments from the appellant who considers that the survey information previously submitted was acceptable to the Council, the extant nature of that planning permission and that conditions could be used in this case, as suggested by the Council. Whilst the Council found it acceptable to require further survey work to be undertaken by planning condition, no 'exceptional circumstances' have been suggested in this case for me to take a similar approach. In any event, given the length of time that has elapsed since the HS, and the change in nature of the appeal site, I cannot be satisfied that circumstances have not changed in the intervening period. There is therefore uncertainty as to whether, and indeed which, protected species are or may be present on the site, and if appropriate mitigation measures would be possible. Given this degree of uncertainty, the use of conditions would not be reasonable in this case.
33. In light of the foregoing, I conclude that the absence of up-to-date survey information means that it is not possible to be certain that the proposal would not result in significant harm to biodiversity. This would conflict with the aims of paragraph 118 of the Framework. For similar reasons the proposal would also fail to achieve one of the core planning principles set out in the Framework, in which planning should contribute to conserving and enhancing the natural environment.

Other Considerations

34. As referred to earlier in my Decision, the appeal site has an extant planning permission for a cemetery development, which includes a chapel and maintenance building and areas of hardstanding upon the site. Whilst the buildings and areas of hardstanding have not been constructed, the Council has confirmed that the relevant conditions attached to this planning permission have been discharged. As such, development could continue on the site without the need for further applications to be made to the Council for planning permission, in line with this permission. This matter is a material consideration in my assessment of the appeal scheme to which I attach significant weight. It is therefore necessary to compare the impacts of the appeal proposal against the approved scheme. This is considered below.

⁵ Paragraph: 016 Reference ID: 8-016-20140612

35. There is no dispute between the main parties that the proposed building (with the exception of the chimney) would be 350 millimetres lower than the permitted building. It would have the same footprint and would be sited in a similar position (but not identical) upon the site to the approved scheme. Although the chimney would result in the overall height of the building being taller than the approved building, the reduction in height elsewhere results in an overall reduction in volume of 10%. The internal layout of the site would see revisions to the car parking areas and a reduction in the amount of hardsurfaced areas upon the site. The appellant has calculated that such revisions would result in a 20% reduction in hardsurfacing compared with the permitted scheme. This is also not disputed.
36. In view of these matters, the proposal would be likely to have a lesser impact on the openness of the Green Belt than the permitted use of the site as a cemetery. It would also have a reduced impact on the character and appearance of the area as a result. The encroachment of the proposal into the countryside is however likely to be similar, given that the appeal site is the same as that previously permitted.
37. In terms of the activities upon the site, it is likely that by offering both cremation and burial services that the number of services would be likely to be greater than if only one type of service was offered. However, be that as it may, there is no restriction on the number of burial services that could take place upon the site on any given day, within the times permitted by planning conditions. Similar conditions could be attached to the grant of planning permission in this case.
38. Although the appellant estimates that there would be likely to be more cremations than burials, I am not convinced on the basis of the evidence before me that this would result in a level of 'comings and goings' over and above those that could legitimately take place upon the site. It is likely that the vehicle movements and associated activity connected with a cremation service would be similar to a burial service. In light of the foregoing I find that the 'coming and goings' to the site would not be materially different to the use that the Council has previously found to be acceptable on the site. The proposal would be likely to have a similar effect to the approved scheme in terms of its impact on the character and appearance of the area in this regard.
39. The appellant submits that there is a need for crematorium facilities in this area as there are no facilities within a 15 minute drive time to serve the south/southwest Birmingham and northeast part of Worcestershire. My attention has been drawn to an appeal decision⁶ in Kent where the Inspector gave considerable weight to the need for a crematorium. Whilst noting this decision, and that the Council did not raise the issue of need as a concern, the appellant's evidence on need relies on a drive time to a crematorium facility, as opposed to providing details of whether or not nearby facilities are operating at capacity (which interested parties submit they are not), that there is a need for alternative facilities, and documentary evidence to substantiate the assertion that there are no alternative sites for such a facility. This matter therefore carries very limited weight in my overall assessment.
40. Whilst I acknowledge that development could continue upon the site, in accordance with the terms of the planning permission ref 12/0448, and

⁶ Ref APP/G2245/W/14/2217055

conditions attached thereto, I would be failing in my statutory duty if I were to allow the appeal proposal without being certain that protected species or their habitats would not be adversely affected by the scheme.

Conclusion

41. The proposal is inappropriate development in the Green Belt which is by definition harmful, and to which I attach substantial weight. In addition, the proposal would reduce the openness of the Green Belt, result in conflict with the purposes of including land within it, and adversely affect the character and appearance of the area. Furthermore, on the basis of the evidence before me, I cannot be satisfied that harm to biodiversity would not arise as a result of the scheme. Whilst the impact on openness, purpose and character and appearance would be unlikely to be greater than the extant permission upon the site, I have insufficient information before me to establish whether or not the proposal would protect and enhance biodiversity upon the site. The considerations put forward in favour of the proposal fail to clearly outweigh this concern. Consequently, very special circumstances do not exist.
42. For the above reasons, and having regard to all other matters raised, the appeal is dismissed.

R C Kirby

INSPECTOR