
Appeal Decision

Site visit made on 3 September 2019

by Stuart Willis BA Hons MSc PGCE MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 September 2019

Appeal Ref: APP/M3645/W/19/3230889

Woolborough Hatch, Woolborough Lane, Outwood RH1 5QR

- 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 R Zaben against the decision of Tandridge District Council.
 - The application Ref TA/2018/2042, dated 5 October 2018, was refused by notice dated 28 December 2018.
 - The development proposed is construction of landscaped sound barrier to reduce traffic noise from the M23; creation of temporary access off Woolborough Lane.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. As part of the appeal, the appellant has submitted an Ecological Mitigation Strategy (4689-LLB-RP-EC-0002-S4-P02). This provides additional information on the impacts on and mitigation measures for species and habitats at the site. This information was not provided during the application. I cannot be satisfied that interested parties who might wish to comment on these details have had sufficient and fair opportunity to do so. I have therefore considered the appeal on the basis of those details on which the Council made its decision, in order to avoid prejudice to the interested parties.

Main Issues

3. The main issues of the appeal are:
 - Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (Framework) and any relevant development plan policies;
 - The effect on the character and appearance of the area;
 - The effect of the proposal on biodiversity; and
 - If the development is 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 necessary to justify the development.

Reasons

Whether Inappropriate Development

4. The appeal site is situated in the Green Belt. The Framework outlines that the construction of new buildings, other than in connection with a small number of exceptions, should be regarded as inappropriate in the Green Belt. Inappropriate development according to the Framework is harmful to the Green Belt and should not be approved except in very special circumstances. One of the exceptions are engineering operations. This is provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.
5. Policy DP10 of the Tandridge Local Plan, Part 2: Detailed Policies 2014-2019 (LP) states that within the Green Belt, planning permission for any inappropriate development which is, by definition, harmful to the Green Belt, will normally be refused. Inappropriate development is only to be permitted where very special circumstances exist, to the extent that other considerations clearly outweigh any potential harm to the Green Belt by reason of inappropriateness and any other harm.
6. Policy DP13 of the LP lists the exceptions to inappropriate development. While engineering operations are not specifically mentioned, it refers to the other forms of development listed in paragraph 90 of the National Planning Policy Framework 2012. The contents of which has been generally taken forward in paragraph 146 of the current Framework. Policy CW6 of the Surrey Minerals and Waste Development Framework: Surrey Waste Plan 2008 (SWP) has a presumption against waste related development in the Green Belt except in very special circumstances.
7. The Framework indicates that openness is an essential characteristic of the Green Belt. Openness in terms of the Green Belt has a spatial aspect as well as a visual aspect.
8. Using the appellant's figures the proposal would involve the construction of an earth bund requiring the importation of 20,000 cubic metres of material. Moreover, while the height of it would reduce to the north and south it would raise the levels of the land by 4.5m at its highest point. The introduction of the earth bank would inevitably reduce the openness of the Green Belt in spatial terms.
9. The bund would be lower than the eastern boundary tree line and there is mature vegetation along the boundaries of the wider field. Details of potential landscaping are provided. While I acknowledge that landscaping conditions can be appropriate in certain instances, any planting would take some time to mature and effectively screen the proposal. There would be glimpsed views of the development, in particular in the short to mid-term from the road adjacent to the site through and between the existing landscape features. Therefore, the proposal would have greater visual impacts, when compared to the existing state of the appeal site.
10. In both spatial and visual terms, the proposal would have a greater impact on the openness of the Green Belt than the existing situation. While the harm would be moderate, this would be contrary to the Framework where it states an essential characteristic of Green Belts are their openness.

11. Therefore, when judged against national and local policy the proposal would be inappropriate development in the Green Belt which, according to the Framework is harmful by definition. It would conflict with Policies DP10 and DP13 of the LP, Policy CW6 of the SWP and the Framework.

Character and Appearance

12. The surrounding area is characterised by fields with pockets of woodland and mature vegetation with scattered built form. The M23 cutting has slopes either side of it. The bund would continue at a similar gradient to the motorway embankment and would be planted with native trees and shrubs to soften its appearance.
13. However, engineered soil embankments are not characteristic of the underlying landscape character. The predominant landscape character away from the M23 cutting is one of flat or gently sloping fields. The development would introduce a landscape feature at odds with this. The site would be largely visually contained, more so once the proposed landscaping matured. Notwithstanding this, that a development can be screened is not a reason to allow development that is inherently unacceptable.
14. Therefore, the proposal would be unacceptably harmful to the character and appearance of the area. It would be contrary to Policy DP7 of the LP and CSP18 of the Tandridge District Core Strategy (CS). It would also fail to accord with Policy WD8 of the SWP. These, in part, seek to ensure developments incorporate finished levels that are compatible with the surrounding area, have regard to the topography of the site, and respects and contributes to the distinctive character and appearance of the area.

Biodiversity

15. The Habitats Directive requires that member states establish a system of strict protection for European Protected Species (EPS), setting out the offences that may be committed. Derogations from this strict protection are only allowed in certain limited circumstances. When determining whether or not to grant a licence, Natural England must be satisfied that the following three tests have been met:
 - (a) Preserving public health or public safety or other imperative reasons of overriding public interest;
 - (b) There is no satisfactory alternative; and
 - (c) The action will not be detrimental to maintaining the population of the species concerned at a favourable conservation status in its natural range.
16. In the absence of an application for an EPS Licence, I am required by Regulation 9(3) of the Conservation of Habitats and Species Regulations 2010 to have regard to the requirements of the Habitats Directive in the determination of this appeal and consider whether there would be a reasonable prospect of a licence being granted by applying the three tests.
17. In so far as the first test is concerned, the public interest generated by the proposal can be of a social, environmental or economic interest. The proposal would lead to benefits by improving the living conditions of the occupiers of the dwelling and would provide additional landscape features. Nonetheless, having

regard to development plan policies, the proposal would be contrary to environmental policies designed to protect the character and appearance of the area and the Green Belt. As such, there are outstanding environmental concerns and the proposed development would not be in the public interest. Therefore, it would fail the first test.

18. The previously refused scheme represents an alternative to this one that the Council did not consider acceptable. I note reference to potential concerns over fencing in relation to impacts on the Green Belt. However, in the absence of any clear evidence in relation to alternatives to the proposal, I am unable to find that there are no alternative solutions that would result in the protection of great crested newts (GCN) being achieved. The proposed development would thus fail the second test.
19. With regards to the third test, the appellant has undertaken an ecological assessment. The presence of GCN at the pond was identified at the site in the appellant's submission. Additional information including a phasing and construction plan was also provided.
20. The Surrey Wildlife Trust indicated that the information before them during the application did not provide an appropriate level of detail on impact avoidance, mitigation, compensation or enhancement measures. I would concur with the Council in relation to the third test that the proposed development has failed to demonstrate that the development could be implemented in such a way as to ensure no harm would occur to the protected species.
21. The Surrey Wildlife Trust refer to the need for the licence prior to the commencement of works affecting the protected species and for details relating to reptiles. However, they and the Council indicated that proposals for appropriate mitigation measures in relation to GCN should be provided prior to determination. It is the responsibility of the developer to include proposals for appropriate mitigation measures. Circular 06/2005 advises that any necessary measures to protect species should be in place through conditions and/or planning obligations, before permission is granted. Therefore, imposing conditions requiring additional information is not appropriate.
22. The appeal proposal fails to meet the derogation tests and would have an adverse effect on ecology. It would therefore conflict with Policies CSP17 of the CS and DP19 of the LP. These, in part, require developments to protect biodiversity and provide for its maintenance, enhancement and restoration. Moreover, proposal should incorporate measures to avoid the harmful impacts arising, sufficiently mitigate their effects, or, as a last resort, compensate for them.

Other Considerations

23. I acknowledge that the development intends to improve the living conditions of the occupiers of Woolborough Hatch and enhance the outdoor amenity environment. Furthermore, national policy seeks to provide a high standard of amenity for all occupiers and other measures have already been put in place such as improvements to glazing.
24. At my site visit there was traffic noise audible in the field, garden and to a lesser extent within the property itself when doors were open. I noted that at the time of my visit there were roadworks and a reduced speed limit imposed

- on the M23 that would have affected the flow of traffic and noise associated with it.
25. It has been suggested that the proposal represents the minimum necessary to achieve viable noise reduction to the garden amenity issue and make the scheme a worthwhile endeavour. The appellant removed a fence and reduced the height of the bund from a previous application. Nonetheless, no detailed information has been put before me of alternative schemes or designs and the comparable benefits they would provide.
26. The Council have not disputed that the bund would reduce noise currently experienced at the property, the garden and the field, from the M23. It would also serve to reduce any issues relating to reflective flashes from passing vehicles which may be more of an issue at certain times of the year. I have no reason to reach a different finding. Therefore, I give the benefits to the living conditions of the occupiers of the property moderate weight.
27. I have found harm arising to the character and appearance of the area and to biodiversity. As such, while these are put forward as benefits arising from the scheme, including due to additional planting, I have not found this to be the case in regard to those issues overall.
28. There are no refusal reasons regarding matters such as impacts on highway safety, flooding or the living conditions of the occupiers of other properties. A lack of identified harm is a neutral factor that does not diminish the harm identified from other issues.
29. I have given weight to the benefits of the development in my decision that in some respects aligns with local and national policy. In this case the harm I have identified would outweigh the benefits as a whole.

Conclusion

30. The proposal would be inappropriate development in the Green Belt and the Framework establishes that substantial weight should be given to any harm to the Green Belt. It would also lead to a moderate loss of openness to the Green Belt as well as harm to the character and appearance of the area and to biodiversity. The other considerations in this case do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist. Furthermore, the proposal would be contrary to Policies DP7, DP10, DP13 and DP19 of the LP, Policies CSP17 and CSP18 of the CS, Policies CW6 and WD8 of the SWP and the Framework.
31. Therefore, for the reasons given I conclude that the appeal is dismissed.

Stuart Willis

INSPECTOR