
Appeal Decisions

Site visit made on 2 October 2019

by K Stephens BSc (Hons), MTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 December 2019

Appeal Ref: APP/M2270/W/19/3232999

Four Winds Farm, Penshurst Road, Bidborough, Royal Tunbridge Wells, Kent TN3 0LL

- 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 N J and S C Perry against the decision of Tunbridge Wells Borough Council.
 - The application Ref 18/03434/FUL, dated 15 October 2018, was refused by notice dated 15 January 2019.
 - The development proposed is a pet cemetery.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I have dealt with another appeal (Ref: APP/M2270/W/19/3234437) at Four Winds Farm for a café and farm shop. Whilst both appeal sites are within the same farm, they are separated from each other, the proposed developments are of a different nature and the reasons for refusal differ. Therefore, the other appeal is the subject of a separate decision.
3. Since the application was refused, the 2018 version of the National Planning Policy Framework (the 'Framework') was updated in February 2019. The changes made are minor and do not have a significant bearing on the matters pertaining to this appeal. References to the Framework within this decision relate to the latest version published in 2019.

Main Issues

4. As the site lies within Green Belt, the main issues with this case are:
 - Whether the proposal would be inappropriate development within the Metropolitan Green Belt for the purposes of the Framework having regard to the nature of the development and its effect upon openness,
 - The effect of the proposal on the character and appearance of the rural area and High Weald Area of Outstanding Natural Beauty (AONB),
 - The effect of the proposal on ancient woodland,
 - Whether sufficient information has been provided regarding the effect of the proposed development on protected species, and

- If the proposed development constitutes inappropriate development in the Green Belt, would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the proposal.

Reasons

Green Belt issues

5. The appeal site lies within a sheep and cereal farm enterprise, adjacent to the B2176 Penshurst Road, west of Bidborough. As it is situated beyond the built up limits of the settlement and surrounded by fields, the site is clearly in open countryside. The farm house is close to the road with several modern farm buildings to the south of it. The access track from the road leads past the farmhouse and to the west side of various farm buildings and fields. The track proceeds downhill to the appeal field, which was in use for sheep grazing at the time of my visit, and which is surrounded by a belt of ancient woodland. The site sits within a patchwork of fields and hedges with pockets of woodland, in an undulating landscape in a tranquil rural setting, within the High Weald AONB, which is a national designated landscape.
6. The proposal is for the change of use of a grassland pasture field from agriculture to a pet cemetery for the burial of pets or their ashes. Access would be via the existing farm track that would be 'made good'. It would lead to parking for two visitor vehicles on an area of existing hardstanding at the top of the field next to the farm track. There would be no buildings and all cremations would take place off-site. Graves would be marked by simple plaques flush with the ground, so there would not be any headstones.
7. The Framework is a material consideration in determining Green Belt proposals. Paragraph 133 identifies that the fundamental aim of national Green Belt policy is to prevent urban sprawl by keeping land permanently open and that the essential characteristics of Green Belts are their openness and their permanence. At paragraph 143 the Framework states that inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 144 directs that any harm to the Green Belt should be given substantial weight.
8. Under paragraph 146 of the Framework, a material change in the use of land to, amongst other things, cemeteries is one of the forms of development that are not inappropriate in the Green Belt, provided they preserve its openness and do not conflict with the purposes of including land within it.
9. Core Policy 2 of the Tunbridge Wells Borough Core Strategy 2010 (the 'Core Strategy') states that proposals in the Green Belt will be considered in line with the Framework. Saved Policy MGB1 of the Tunbridge Wells Local Plan 2006 (the 'Local Plan') predates the Framework, but still adopts much the same wording and sentiment as the Framework in stating exceptions and the need to maintain openness. I am satisfied that the Green Belt policies in the development plan are broadly consistent with the Framework.
10. The proposal would introduce a number of permanent features to the appeal site, namely use of a hardstanding area for visitor parking for 2 cars and plaques in the ground to mark graves. No information has been provided as to how the existing track would be 'made good'. However, I acknowledge that the

farm track could be upgraded as part of works reasonably necessary for the purposes of agriculture.

11. The openness of the Green Belt would be reduced by the non-agricultural vehicles of visitors and associated comings and goings along the track. This would be compounded by the parking of cars, even if not all the time, in a field divorced from nearby built development. This would be an encroachment into the countryside. Openness would be further reduced by the presence of grave plaques in the ground, however many there would be or how they were arranged. The appeal site would no longer be an open undeveloped agricultural field.
12. I acknowledge there would be no buildings on the appeal site and a condition could be imposed preventing this and the erection of headstones. I also accept that views of the site may be limited from the wider area, aided by the belt of ancient woodland partly surrounding the site. But this would be reduced when the trees are not in leaf. Notwithstanding, I find the presence of vehicles driving around the fields together with car parking, visitors walking around the site and grave plaques would have a greater impact on the openness of the Green Belt than the existing agricultural field.
13. I find the visual and spatial openness of the Green Belt would be reduced. The proposal would be an encroachment into the open countryside, which conflicts with one of the five purposes of including land in the Green Belt. The proposal would therefore constitute inappropriate development, which is by definition, harmful to the Green Belt and to which substantial weight should be given. It would also be contrary to Core Strategy Core Policy 2 and saved Local Plan Policy MGB1.

Character and appearance of the rural area and AONB

14. My site visit observations, which are already described above, are broadly in accordance with the submitted extracts from the Council's Landscape Character Assessment¹ (LCA) of the National Character Area 122 'High Weald' and Local Character Area 5 'Speldhurst Wooded Farmland'. The LCA describes the key characteristics of this landscape type as a complex network of valleys and ghyls, with open ridges and lush deep ravine woodlands. Fields are of varying sizes from large-scale open pasture and arable to small irregular fields within valleys.
15. According to the AONB Management Plan², the AONB is an historic countryside that is one of the best surviving medieval landscapes in Northern Europe. It is characterised by rolling hills, irregular fields, gill streams and extensive woodlands, most of which are ancient. Hence, the sloping fields and ancient woods of the farm and appeal site are a characteristic feature of the AONB and the national and local character areas. In accordance with paragraph 172 of the Framework I attach great weight to conserving and enhancing the landscape and scenic beauty of such a nationally designated area, as they have the highest status of protection in relation to those issues.
16. The site's relative seclusion and tranquillity, nestled amongst ancient woodland, would be eroded by the introduction of visitors driving along a track for a substantial distance and parking in a field. Even if the number of vehicles is

¹ Tunbridge Wells Borough Landscape Character Assessment

² The High Weald Area of Outstanding Natural Beauty Management Plan 2014-2019

limited by being 'appointment only', their presence and the parking of them in a field would introduce a non-agricultural and incongruous feature into the heart of the countryside. This would have a detrimental effect on the character and appearance of this protected rural landscape.

17. Even though the grave plaques would be flush with the ground, their solid nature, their placement in the ground and their increase in number over time would introduce an alien hardstanding feature into the agricultural landscape. The field would also be rough mown occasionally, but I find it unrealistic to expect visitors to wander through unmown or unmanaged grass to find grave plaques. As such, the rough mown grass and any maintenance of the cemetery would still introduce a managed element that would be at odds with the rural and agricultural landscape. The combination of the various elements of the proposal, together with likely additional visitor-related paraphernalia, would result in an incongruous encroachment and intrusion into the prevailing ancient pastoral farming landscape.
18. I therefore find the proposal would harm the character and appearance of the rural area. Furthermore, it would not conserve or enhance the landscape and scenic beauty of the AONB, to which great weight is attached. Accordingly, the development would conflict with saved Local Plan Policies LBD1, EN1 and EN25 and Core Strategy Core Policies 4 and 14. These policies collectively seek to ensure that development would not harm the landscape of the area, and seek to conserve the local character and distinctiveness of the Borough and the High Weald AONB. However, Core Policy 5 relates to 'sustainable development and construction' to avoid causes of climate change and is not directly relevant.

Ancient woodland

19. The field is surrounded by ancient woodland on three sides, which is part of Brock's Wood which continues further south. The Council refers to little having changed from the 1st edition Ordnance Survey mapping.
20. The appellant commissioned and submitted an Ecological Survey³ that also includes a brief assessment of the ancient woodland. It concludes the woodland would not be directly impacted as it is not within the appeal site. However, the Council's Landscape and Biodiversity Officer states, in the Council's Statement, that the submitted Ecological Survey has not overcome the Council's third reason for refusal.
21. Paragraph 175c) of the Framework states that development resulting in the loss or deterioration of irreplaceable habitats, such as ancient woodlands, should be refused unless there are wholly exceptional reasons and a suitable compensation strategy exists. The Planning Practice Guidance (the 'Guidance'), Natural England and the Forestry Commission's standing advice advise local planning authorities to consider both the direct and indirect impacts on ancient woodland, which includes increased disturbance to wildlife from additional traffic and visitors, and changes to the landscape character of the area. The Ecological Survey is somewhat limited in its assessment of these factors. Whilst there may be environmental requirements in relation to any consents required from the Department for Environment Food and Rural Affairs (DEFRA), this is a separate process from securing planning permission.

³ Martin Newcombe Wildlife Management Consultancy dated 9 July 2019.

22. The appellant has submitted plan 3173 01 Rev B, which shows a dotted line around the proposed cemetery field annotated as "proposed stock fence set 15.0 metres inside boundary" to provide a buffer zone to the woodland and ensure graves are not dug within this zone. However, I find that there is little evidence to demonstrate that direct and indirect impacts have been fully assessed, such as the effect buried animals and cremated remains (of an unknown quantity) would have on the soils and hydrology and hence the trees. Also, the proposed car parking area, although existing hardstanding, would be within the buffer zone, which would be inappropriate.
23. Mitigation measures are proposed such as protecting the trees from grazing that would allow the ground around the trees to regenerate. However, the appellant could do this anyway without the proposed cemetery.
24. Therefore, I am not persuaded that the direct and indirect impacts on the ancient woodland have been fully assessed to demonstrate that the proposal would not result in the loss or deterioration of this irreplaceable habitat. Accordingly, the proposal would conflict with Local Plan Policy EN13 and Core Strategy Core Policy 4. These collectively seek to protect the rural landscapes and ancient woodland from development that would damage or destroy them.

Protected species

25. The Ecological Survey describes itself as a short scoping survey to give a sample of the ecological value and to show if additional survey work is required. It concluded that no protected or notable species were present and that no further surveys are required at the present time.
26. Paragraph 170d) of the Framework states that development should minimise impacts on biodiversity and provide net gains. The Council's Landscape and Biodiversity Officer considers that the Ecological Survey is of some help, but provides insufficient information about the full extent of the existing biodiversity of the site, and any mitigation required or net biodiversity gains that could be achieved. For example, the botanical survey undertaken for the grassland was not undertaken at the optimum time of the year and a new survey is required.
27. The Ecological Survey suggests mitigation measures such as installing bat and bird boxes and leaving log piles for invertebrates. However, these could easily be implemented as good land management practice without the need for the proposal.
28. The Ecological Survey lacks sufficient detail to overcome the Council's fourth reason for refusal and I am not persuaded by the appellant's submission to be able to draw a different conclusion. I therefore find there is insufficient information to be satisfied that protected species would not be adversely affected by the appeal proposal. Accordingly, the development would conflict with Local Plan Policy EN1 and Core Strategy Core Policy 4, which seek, amongst other things to protect the natural environment and to avoid adverse effects on features of nature conservation.

Other Considerations

29. The appellant advises the farm is currently a profitable sheep farm, albeit dependant on subsidies, but that he is looking ahead to farm diversification for when subsidies are likely to be withdrawn in 2020. Also, the appellant refers to

possible new government environmental land management contracts that may encourage public access to farmland. Paragraphs 83 and 84 of the Framework advise that decisions should enable the diversification of agricultural and other land-based rural businesses to support a prosperous rural economy and that some rural business may be located beyond existing settlements. However, there is no viability evidence to show how effective the pet cemetery would be to the farm's viability when agricultural land would be taken out of production and potentially sterilised, and when the farm is currently profitable.

30. Visitor numbers would be limited by an appointment basis. The appellant considers that people would be unlikely to make repeat visits to graves. I find it unlikely this would be the case if people have paid for a burial plaque and are required to pay a ground rent. Whilst visits would be by appointment and there would only be two car parking spaces, it would be difficult to arrange as some people may want to spend longer at the grave than others. It would also be difficult to condition and enforce that there only be two cars parked at any one time and hence to limit the number of visitors at any one time.
31. The appellant says that a pet cemetery requires a rural location, that there is a demand for a pet cemetery in the area and refers to research undertaken to determine how they are operated. However, no substantial evidence has been submitted about other pet cemeteries in other rural locations, or evidence of the research to verify the appellant's claim that a pet cemetery is needed. Nor have I been persuaded that pet cemeteries must be located in a rural location. The pet cemetery would have limited public benefits as only those visiting a pet grave would have access to the site.
32. The ancient woodland belt around the site would help reduce the visual impact of the cemetery for part of the year and this would serve to reduce the harm to openness. But this would not outweigh the harm to the character and appearance of the rural area and AONB. Furthermore, there is insufficient information to be certain there would be no adverse impact on protected species and the surrounding ancient woodland.

Other Matters

33. A number of third parties raise a series of other concerns about the proposal. But in view of the reasons for refusal and my conclusions on the main issues there is no need for me to address these in the current decision.

Planning Balance

34. The development constitutes inappropriate development in the Green Belt in the terms set out in the Framework and would lead to a loss of openness to the Green Belt. It would be an encroachment into the open countryside, which conflicts with one of the five purposes of including land in the Green Belt listed in paragraph 134 of the Framework. This harm is a serious planning objection, to which substantial weight must be given.
35. Great weight is given to the harm that would be caused to the landscape and scenic beauty of the AONB, in addition to the harm to the character and appearance of the rural area.
36. On the other side of the balance, the proposal would help the local rural economy and the appellant's desire for future farm diversification. But I give these limited weight as the situation regarding subsidies and possible future

public access to land is not confirmed and the farm is already profitable. Furthermore, no viability evidence has been submitted to demonstrate a need in light of the farm already being profitable. Moderate weight is given to the upgrade of the existing track.

37. There is insufficient assessment of the indirect and direct harm to be satisfied there would be no loss or deterioration of irreplaceable habitats. I give this great weight. I give limited weight to the mitigation measures for biodiversity and the ancient woodland, as these are not so unique and they can be undertaken without the need for the proposal. Furthermore, there would be very limited public benefit, especially in the absence of any substantive evidence of need.
38. The advanced considerations in support of the appeal, whether taken individually or cumulatively, do not clearly outweigh the harm I have identified and the substantial weight to be given to Green Belt harm. Consequently, the very special circumstances necessary to justify the development do not exist.

Conclusion

39. For all the above reasons and having regard to all matters raised, I conclude that the proposed development would not accord with the development plan and there are no other considerations which outweigh this finding. Accordingly, the appeal should be dismissed

K. Stephens
INSPECTOR