
Appeal Decision

Site visit made on 26 November 2019

by Patrick Hanna MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 January 2020

Appeal Ref: APP/T0355/W/19/3236049

Agars Plough, Slough Road, Eton, Windsor SL4 6HR

- 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 the Provost and Fellows of Eton College against the decision of the Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 18/03569, dated 30 November 2018, was refused by notice dated 27 February 2019.
 - The development proposed is construction of precast concrete bays to allow processing of green waste into compost.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Emerging policy in the form of the submission version of the Royal Borough of Windsor and Maidenhead Borough Local Plan (BLP) is referred to by both main parties. However, limited weight is attached to this as details of the level and significance of any unresolved objections have not been provided to me.

Main Issues

3. The main issues are:
 - (a) whether or not the proposal would be inappropriate development in the Green Belt;
 - (b) the effect of the proposal on the character and appearance of the area, with particular regard to protection of surrounding woodland;
 - (c) whether or not mitigation can be secured to protect groundwater quality; and
 - (d) if the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

Inappropriate development

4. The appeal site is a small clearing within a strip of woodland which forms the north-eastern boundary of the Agars Plough playing field, beyond which is a

public footpath and cycleway and the Jubilee River. The woodland strip is heavily populated with both self-seeded and mature trees, such that it forms a dense screening barrier. The effect of the proposal would be to enlarge the clearing towards the mutual boundary with the footpath to provide for a concrete walled composting facility.

5. The National Planning Policy Framework (the Framework) identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The Framework states that inappropriate development is harmful to the Green Belt and should not be approved except in very special circumstances, subject to a number of exceptions as set out in paragraphs 145 and 146. Paragraph 145 relates to buildings, and paragraph 146 relates to other forms of development that are not new buildings. Although the Council have concluded that the proposal is an engineering operation, Section 336 of the Town and Country Planning Act 1990 as amended defines buildings as any structure or erection. As the proposal comprises a series of containing walls, it is indeed a structure, and it consequently follows that it is therefore a building.
6. Paragraph 145 sets out categories of buildings which may be regarded as not inappropriate in the Green Belt, subject to certain conditions. Emerging policy SP5 of the BLP is consistent with the Framework in this regard. The wording of saved policy GB1 of the Royal Borough of Windsor and Maidenhead Local Plan (2003)(LP) is broadly consistent in terms of its application to the appeal proposal. New buildings within the Green Belt are inappropriate unless, amongst other things, the development is for, firstly, agriculture or forestry or, secondly, the provision of appropriate facilities for outdoor sport or recreation, as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.
7. The proposed use as a composting facility associated with playing fields does not meet the definition of either agriculture, as defined in Section 336, or forestry. I have not been made aware of the growing of produce, or breeding or keeping of livestock, or any other activities at the site that would normally constitute an agricultural operation. Whilst the site may be wooded, evidence has not been submitted regarding afforestation, harvesting of wood, or any other associated forestry activities. Instead, submissions suggest the trees are maintained as an important landscape feature. As the proposal is not for the purposes of agriculture or forestry, caselaw regarding the physical presence and appropriateness of agricultural and forestry buildings is not relevant.
8. The wording of the second exception under paragraph 145 is specific and precise. Whilst the proposed storage bays for composting may be in connection with, or related to, the College's land for outdoor sport and recreation, the proposal cannot be described as a facility for outdoor sports or recreation nor, consequently, is it an appropriate such facility.
9. The essential characteristics of Green Belts are their openness and their permanence, as set out in paragraph 133 of the Framework. Openness in terms of the Green Belt has a spatial aspect as well as a visual aspect. Despite the relatively modest height of the proposal, at some 3 metres, the spatial intrusion arising from the very presence of a permanent building in a location that is currently free from built form would have a negative effect on the openness and permanence of the Green Belt, notwithstanding that the proportion of Green Belt affected may be small. Although small outbuildings or

structures on the edge of the playing fields may form part of the spatial quality of the area, the proposal would be isolated and unrelated to any built forms. The existing use of the clearing for burning does not impact upon openness, and therefore comparisons between the existing and proposed cannot be drawn, in spatial terms.

10. Visual impact forms part of the concept of openness of the Green Belt, and the visual dimension of the Green Belt is an important part of the point of designating land as Green Belt. Given the proximity of the proposal to the footpath and cycleway, some 6 metres at its closest point, at some 37 metres long and 3 metres high, the concrete wall would be a considerable urbanising feature in this otherwise wholly rural location. Whilst additional planting is proposed, the narrowness of this strip of planting is unlikely to fully mitigate the harm to visual impact, nor would painting the concrete brown. Similarly, as seen from the Agars Plough playfield, the existing clearing is visible through gaps in the trees, and the visible presence of the proposed structure would create a contrast within the existing landscaping strip.
11. I therefore conclude that in spatial terms the proposal would have a significant adverse impact on the openness of the Green Belt, with the visual impact being considerable. Furthermore, in doing so the scheme also fails to assist in safeguarding the countryside from encroachment, one of the 5 purposes of the Green Belt, despite being within the College's own grounds. Consequently, the proposal would therefore not comply with the fundamental aim of Green Belt policy to prevent unrestricted sprawl by keeping land permanently open. The proposal is therefore inappropriate development in the Green Belt, and as such conflicts with the Framework.

Character and appearance of woodland

12. The proposal involves the removal of trees, as well as development directly beneath the crown of several trees. One of the largest, most important and most prominent trees, Oak T0067, would be most affected by the proposal, even though it is in fair condition with good useful lifespan. Works on the root protection area (RPA) would include concrete base, 3 metre high walls, access road and access gates. The root displacement area is shown diagrammatically, with accompanying text stating that this is only marginal, being greater than 5%. From my estimate it would be in the region of 35-40%. Submitted evidence indicates that between 30-50% root severance can be tolerated, where there is overriding justification. However, I am not persuaded, firstly, that there is such justification in this instance or, secondly, that such severance would be tolerated as close to the centre of the RPA as shown.
13. Although neither the individual tree nor the woodland are subject to specific protection, both make a significant contribution to the character and appearance of the woodland and the wider area. Whilst the actual area of woodland affected represents a relatively small section of the overall woodland, as a whole, the woodland is currently seen as a continuous uninterrupted strip along the riverside. The proposal would result in the clearing becoming substantially larger than existing, which would result in very narrow landscaping strips either side of the clearing. This creates the potential for the character and appearance of the wider woodland strip to be adversely affected as a result of a key central section of the woodland being diminished.

14. Mitigation measures are suggested in the form of replacement planting, redistributed RPA, and a number of alternative construction techniques. However, given my conclusion on the likely impact near the centre of the root protection area, I am similarly not persuaded that a redistributed area around the periphery would be adequate compensation, notwithstanding that there is already a degree of ground compaction. Both parties agree that the woodland would benefit from woodland management including thinning and replacement planting. However, were the existing dense screening thinned, my observations from my site visit are that the proposed concrete walls would become a more prominent feature within the woodland, notwithstanding proposed replanting.
15. Whilst a number of proposed construction techniques have been suggested by the appellant, these mitigations have not been shown on the submitted drawings. As such, it is unclear what the visual effect of these mitigations would be in terms of levels of the slab and the access, as well as the impact of cantilevering on the remaining structure, including any foundations required to accommodate the 3 metre high walls. In the absence of such details, limited weight can be given to the proposed mitigations.
16. I therefore conclude that the proposed development would have a significant adverse effect on the character and appearance of the area, with particular regard to protection of surrounding woodland. As such, the proposal is contrary to saved policies N6 and DG1 of the LP, and emerging policy NR2 of the BLP which has limited weight. Together these policies require that harm is not caused to the character of the surrounding area and, wherever practicable, to allow for retention of existing trees.

Flood risk

17. The dispute turns on the provision of mitigation measures to protect groundwater quality in the event of tank rupture, tank overtopping, and surface water leakage during flood events. The Environment Agency (EA) recommend tank rupture be addressed through a condition requiring further information on leakage management. On that basis, the Council no longer dispute this point. The EA are also satisfied that tank overtopping can be appropriately monitored. Following submission of LIDAR mapping, both the EA and the Council have subsequently accepted that raised bank levels make any leakage to the river less likely.
18. Whilst the EA conclude that together these measures are sufficient to protect groundwater quality, the Council maintain concerns over potential impact of overtopping, and potential adverse effect of surface water leakage on an area of historic landfill, either a back-filled natural feature or an infilled gravel extraction pit, below the appeal site. The Council require that site investigations be carried out and further information provided prior to determination to demonstrate impact on the Zone 1 source protection zone. Whilst a precautionary approach is perfectly reasonable, in coming to a decision on this Section 78 appeal, I give greater weight to the views of the EA as the body responsible for managing groundwater resources.
19. I therefore conclude that adequate mitigation can be secured to protect groundwater quality. Accordingly, the proposal accords with paragraph 165 of the Framework, as well as paragraphs 170 and 178, which together require development to incorporate sustainable drainage measures and prevent pollution, amongst other matters.

Other considerations

20. The appellant maintains a large number of sports playing fields, gardens and areas of planting and trees. Green waste is exported from the estate, and compost imported, resulting in unnecessary vehicle movements. Although it is not clear to me where the waste is taken to, I give the need for the development considerable weight in support of the proposal.
21. Whilst lack of alternative sites has been put forward as a very special circumstance justifying the development, the evidence submitted is an assessment of potential sites for a previously considered sports facility. Whilst this is of some interest in terms of site availability, it is not helpful in understanding alternatives for the very different type of development currently proposed. As such, only limited weight can be attached to this matter.
22. The environmental benefits of the proposal would contribute towards both local and national environmental objectives, particularly with regard to reuse of existing resources, reduction in vehicle movements, and reducing overall carbon footprint, amongst others. Therefore I attach significant weight in support of the appeal in this regard.

Other matters

23. That additional information provided to the Council was not assessed is not a matter within my jurisdiction. The effective custodianship by the appellant in maintaining the quality and attractiveness of the Green Belt under its ownership does not in itself justify departing from policy.

Conclusion

24. As outlined above, I find no harm would be caused to groundwater quality, subject to mitigation. However, the Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. In addition, there are adverse impacts on openness, the Green Belt purpose of safeguarding the countryside from encroachment, and character and appearance of the area, with particular regard to protection of the surrounding woodland. Substantial weight should be given to the harm to the Green Belt. Very special circumstances will not exist unless the harm to the Green Belt and any other harm are clearly outweighed by other considerations.
25. I give limited, considerable and significant weight to the other considerations. However, even when taken together, these do not outweigh the harm that the proposed development would cause. The substantial weight to be given to Green Belt harm is not clearly outweighed by the other considerations sufficient to demonstrate very special circumstances. Therefore, for the reasons given and having had regard to all other matters raised, the appeal is dismissed and planning permission is refused.

Patrick Hanna

INSPECTOR