
Appeal Decision

Site visit made on 20 May 2020

by John Morrison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 June 2020

Appeal Ref: APP/N3020/W/19/3243100

Ramper Covert, Mansfield Road, Arnold NG5 8PH

- 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 MEV against the decision of Gedling Borough Council.
 - The application Ref 2019/0785, dated 11 July 2019, was refused by notice dated 10 October 2019.
 - The development proposed is described as a change of use of land for 5 caravans.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The description I have used above has been taken from the planning application form. The Council's decision notice and the appeal form refer in more detail to the nature of the caravans in this particular case as well as the formation of a vehicular access. I have considered these elements as part of the appeal scheme.

Main Issues

- Whether or not the proposed development would be inappropriate development in the Green Belt;
- The effect of the proposed development on the openness of the Green Belt; and
- If the appeal scheme is inappropriate development, whether the harm by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify it.

Reasons

Inappropriate Development and Openness

3. The Framework¹ sets out, at paragraph 145, that the erection of new buildings in the Green Belt is inappropriate development which paragraph 143 explains is harmful by definition. Due to the degree of permanence of the cabins proposed as part of the appeal scheme, it is the Council's view that the proposed

¹ The National Planning Policy Framework 2019

development would involve the construction of new buildings. They refer to relevant caselaw to justify their conclusions. In this case the 'buildings' would be inappropriate development as per the Framework.

4. Paragraph 145 goes on to list a number of exceptions for the construction of new buildings. One discussed by the Council being the provision of appropriate facilities for (inter alia) outdoor sport and outdoor 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. Whilst they do not come to a definitive conclusion in their evidence as to whether the appeal scheme would constitute such facilities, the Council point to Policy LPD24 of the Local Plan² which states that planning permission will be granted for tourist related accommodation provided that, amongst other things, it accords with Green Belt policy.
5. The appellant's evidence suggests that since the cabins in the case of the appeal scheme would fall under the definition of caravans, their stationing would be a use of land. Paragraph 146 of the Framework identifies certain other forms of development that are also not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. One of these are material changes in the use of land.
6. In coming to a view on a larger development scheme on the appeal site in November 2019³ my colleague, based on the particular circumstances and evidence before her, concluded she could not say cabins would be permanent. This was based on being unsure as to how long they would be sited on the land. My colleague therefore considered the scheme as a material change of use of land and accordingly how the scheme as a whole would affect the openness of the Green Belt and the purposes of including land within it as per paragraph 146.
7. If I were to consider the cabins as buildings and not an exception thereto under the terms of Green Belt policy, then they would be inappropriate development in the Green Belt and all that entails. If I were to consider them and the appeal scheme as a whole to be facilities (in connection with the existing use of land or a change of use) for outdoor sport and outdoor recreation, I would be taken to assessing how it would affect the openness of the Green Belt and the purposes of including land within it. I would be considering the same if I were of the view the appeal scheme is a material change of use of the land. Openness has both a spatial and a visual aspect. The former can be taken to mean the absence of built form.
8. The siting of five not insignificantly scaled cabins on the appeal site, as being so on a site otherwise devoid of any other structure would inevitably reduce the openness of the Green Belt's spatial aspect. The parking of vehicles, laying of surfacing and apparatus linked to other associated activities would add to the reduction. I acknowledge that the degree of tree cover at the site would offer screening and thus the visual aspect of the Green Belt's openness would perhaps not reduce by the same degree. Reduce though it still would by virtue of the overall size of the site itself and how it would be experienced by a not insignificant number of users at any one time.

² Greater Nottingham (Broxtowe Borough, Gedling Borough, Nottingham City) Aligned Core Strategies Part 1 Local Plan 2014

³ Planning Inspectorate reference APP/N3020/W/19/3234649

9. This reduction in the two aspects of the Green Belt's openness would lead me to conclude that the appeal scheme would be inappropriate development in the Green Belt. One of the essential characteristics of the Green Belt is its openness. The harm a reduction therein would cause would also therefore be contrary to the purposes of including land within the Green Belt. I afford this harm substantial weight as per paragraph 144 of the Framework.

Any Other Harm

10. The Council's reasons for the refusal of planning permission also refer to the impact of the proposed development on highway safety and protected trees. I shall take each matter in turn, both of which concern the proposed access.
11. The proposed access is an existing gated one and links at roughly right angles to the southbound carriageway of the A60. This is a main single carriageway road carrying vehicles at 50mph. The stretch of road that the access connects to is long, open and straight. Given the speed of the road and the straightness of the stretch, overtaking would be more likely.
12. Entering the appeal site would, in the case of vehicles approaching from the south, involve a right turn across a live traffic lane. Those approaching from the north would be slowing down from relatively high speed. Not only would these have the potential to be hazards in themselves in the context I have described, equally so would a stationary vehicle waiting to turn in the northbound lane. Whilst I accept there could be a degree of control over movements where patrons may be checking in or out at designated times, a site operator could not reasonably be expected to prevent vehicles coming and going at other times. There are five cabins proposed and whilst this would be a significant reduction over the previously considered scheme, movements associated therewith would still be substantial and frequent when compared to the existing situation.
13. I note the appellant's evidence pertaining to speed surveys and traffic flow data which conclude that the proposed use would have a limited overall effect. I am also mindful that there are cost implications for any improvements. However, given the local road conditions I have described, even a very small increase in the use of the junction, turns across live lanes specifically, could give rise to the potential for increased instances of vehicular conflict. These could involve rear end shunting or collisions. Seldom does the planning process, or decisions made therein, have the potential to affect peoples' lives. This would be one such situation in my view.
14. Visibility at the junction for emerging vehicles does not seem to be a problem. The road is straight, unobstructed and frontage vegetation appears to be sufficiently well set back at the point of egress. With the above factors in mind however, and even with a contextually small number of cabins, I feel that further improvements to the access, particularly within the highway, would be needed. These would likely include some form of dedicated turn lane and appropriate lighting and signage as adequate warnings thereof on what is a stretch of otherwise unencumbered road. Alterations to the access were submitted with the appeal scheme but highway alterations were not.
15. The appellant has suggested that highway improvement works for the access that were agreed as part of the larger scheme I have referred to earlier could be used for the current one. This would be subject to an appropriate

agreement under the relevant legislation between the appellant and the highways authority. In this case Nottinghamshire County Council. I have seen a plan for the design of the improvement works which seems to be capable of overcoming my concerns but there is no agreement before me to ensure they would be secured. In the event an agreement was before me I would be satisfied that a condition could require the works to be carried out at an appropriate time prior to development or use commencing.

16. In the absence of an agreement I am taken to Planning Practice Guidance which explains that a positively worded condition which requires an applicant to enter into a planning obligation under section 106 of the Town and Country Planning Act 1990 or an agreement under other powers (emphasis added), is unlikely to pass the test of enforceability. A negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases. Ensuring that any planning obligation or other agreement is entered into prior to granting planning permission is the best way to deliver sufficient certainty for all parties about what is being agreed. It encourages the parties to finalise the planning obligation or other agreement in a timely manner and is important in the interests of maintaining transparency. However, in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate, where there is clear evidence that the delivery of the development would otherwise be at serious risk.
17. In the case of the appeal scheme, I remain to be convinced that the situation constitutes exceptional circumstances. Nor is there substantive evidence to suggest the delivery of the development would otherwise be at serious risk if I were to not impose such a condition. With this in mind, I am not satisfied that the appeal scheme would be acceptable in terms of highway safety. It would give rise to the hazards I have described above. As a consequence, it would conflict with Policy LPD61 of the Local Plan which states that, amongst other things, planning permission will be granted for development proposals which do not have a detrimental effect on highway safety.
18. The Council have concerns that there is insufficient information pertaining to the effect of the proposed development, particularly the access, on protected trees. At the time of my determination of the appeal there are group protection orders in place affecting trees in and around the appeal site. The wider area has a distinct verdant feel, where dense areas of trees in particular characterise the landscape. The appellant contends that the current scheme would not involve any tree felling. Having visited the site and seen the proposed plans I can see that this would be possible. There are however a number of tree root systems that would be traversed by the proposed access.
19. I understand the Council's position on the lack of information in this regard but equally I am sufficiently satisfied based on what I have seen in the appellant's evidence that an appropriate solution could be found to ensure that protected trees would not be adversely affected. These measures could be secured by a suitably worded planning condition and specifically relate to an appropriate build method for the route of the access.
20. Whilst not referred to in the Council's reasons for refusal, their evidence expresses substantive concerns over the effect of wider elements of the appeal

scheme. Given the proposals in the wider regard would be pre fabricated buildings, it does not strike me as impossible to ensure that their mounting is either non ground invasive or avoids root areas. Areas of hard surfacing are also possible in such a manner as to ensure trees are not adversely affected.

21. Taking this and the above into account, the appeal scheme would not adversely affect protected trees such that it would avoid conflict with Policy LPD19 of the Local Plan. This policy seeks to ensure, amongst other things, that development does not have a significant adverse impact on the character of the landscape.

Other Considerations

22. The appellant has set the likely income and expenditure from users of the proposed development. Whilst I am mindful of the Council's debunking of some of this evidence, it seems sufficiently clear that there would be an economic benefit arising out of the appeal scheme not only for the business itself but also others in the local area on which patrons would rely. It would create and sustain employment and improve access to the wider countryside for recreational purposes. I would attach some weight to these benefits, but it would be limited somewhat by the overall scale of the proposals in the grand scheme. In addition, there isn't a sufficiently compelling case before me for the proposals necessarily having to be in the Green Belt.
23. The appellant shows evidence of demand for the type of accommodation the appeal scheme would offer. Other similar developments locally appear to be well used and the borough does not appear to have a similar offer. Nottinghamshire County as a whole appears on the strength of the appellant's evidence to be running at capacity for this type of accommodation. There is therefore some apparent latent need for the appeal scheme. However, the matters of need and demand would attract only limited weight in this particular case. Specifically, since some of the evidence points to the County of Nottinghamshire as a whole and there is no sufficiently detailed evidence to suggest that such a need could not be met elsewhere on the same or similar terms to the appeal site.
24. The proposed cabins would be finished in materials suitable for their setting and there would be no adverse effect on the living conditions of neighbours. These would however be expected for the proposed development to be acceptable and would in any event be a lack of harm which, by definition, would be neutral in any balance, incapable of weighing against harm.

Conclusions

25. The proposed development would be harmful to the Green Belt and contrary to the purposes of including land within it by virtue of being inappropriate and reducing openness. As I have said, this harm should be ascribed substantial weight. The appeal scheme would also be detrimental to highway safety. For the reasons I have given, I attach substantial to this. In the case of all these harms, there would be conflict with the development plan. The relevant policies of which I have cited.
26. There would not be an adverse effect on protected trees. As I have explained any effects could be suitably mitigated through the use of conditions. This would also however be a lack of harm, accordingly neutral in any balance.

27. There are other considerations that have been advanced in favour of the appeal scheme but for the reasons I have given these would attract only limited weight and when placed alongside the harms that I have found and the weight attached to them, they would not be sufficient to justify the proposed development. Accordingly, very special circumstances do not exist. The appeal is therefore dismissed.

John Morrison

INSPECTOR