
Appeal Decision

Site visit made on 23 June 2020

by L Page BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th August 2020

Appeal Ref: APP/F1610/W/20/3247128

Latimer Farm, Upper Oddington, Moreton-in-Marsh GL56 0XG

- 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 Ronald Willson against the decision of Cotswold District Council.
 - The application Ref 19/02476/FUL, dated 1 July 2019, was refused by notice dated 27 August 2019.
 - The development proposed is construction of a tennis court hard surface without fencing.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council's Decision Notice and the appellant's Appeal Form confirm that the description of development was changed with the revised wording given as "change of use to residential use and construction of a hard surfaced tennis court without surround fencing". I have dealt with the appeal on this basis.
3. The parties dispute the lawful use of the site with the Council contending agricultural use between 2000 and 2018 and the appellant contending residential use as a football pitch in 2004. However, it is not for me, under a section 78 appeal, to determine whether an agricultural or a domestic use has subsisted over the period claimed by the parties. To that end, it is open to the appellant to apply for a determination under sections 191 or 192 of the Act and my determination of this appeal does not affect such an application.

Main Issue

4. The main issue is the effect of the proposal on the character and appearance of the area in relation to whether it would conserve or enhance the natural beauty of the Cotswolds Area of Outstanding Natural Beauty (AONB).

Reasons

5. I note that in recent times the grass on the site has been kept mown and moveable goals on the land can be arranged as a makeshift football pitch. Consequently, the site would appear somewhat domesticated when arranged in this format. However, without goals, and even with the grass mown, the site would have little sign of domestic activity. This is unlike the garden area of Latimer Farm to the north of the site, which has been domesticated through ornamental landscaping. Consequently, the farm yard area is distinctly domesticated and has little in common with the site which is more rural in character and appearance.

6. Latimer Farm and the buildings associated with it are located around a central farm yard area and clearly delineated by post and rail fencing. The site lies outside of this delineated area and within a distinctly separate field parcel located to the south. The field parcel is well defined by mature boundary planting for most of its perimeter and accessed from Latimer Farm via a gate.
7. Oddington Footpath 14 skirts the eastern extent of the site and continues south towards the open countryside. It is at a much lower level than the site, which is on a higher plateau. The site is well-enclosed on its eastern boundary with mature vegetation and it was not possible to obtain views of the site from the footpath during my visit.
8. However, views could still be obtained at other points from adjacent field parcels to the south when not standing directly on the footpath and consequently shares a connection with these adjacent field parcels and rural character of the surrounding countryside. This connection would only be reinforced in winter when the eastern boundary of the field would be sparse with vegetation and more visible from the footpath.
9. The site is located within the Cotswolds AONB and within Landscape Character Type 17B Pastoral Lowland Vale, as defined in the Cotswolds AONB Landscape Strategy and Guidelines 2016. It is described as having a strong rural character and sparse settlement pattern. Changes that could affect these attributes include suburbanising and domesticating the agricultural landscape through the introduction of gardens and lifestyle plots.
10. Development of the tennis court, even without enclosure fencing, would introduce a hard and artificial playing surface that would supplant a natural surface and permanently domesticate the site. Furthermore, because of the tennis court's location away from the buildings associated with Latimer Farm, it would appear more isolated in the rural landscape, amplifying the domesticating effect.
11. The permanence of the proposal would encourage more consistent and intensive domestic activity, making the site more akin to a domesticated garden area, which would cause disturbance to the tranquil rural character of the site and surrounding countryside.
12. The appellant contends that the artificial grass blends into the landscape and that limited engineering work would preserve the topography and appearance of the site. Even so, increased activity over the passage of time would more likely than not lead to the accumulation of domestic paraphernalia which in turn would harm the site's appearance over and above the presence and use of the tennis court alone.
13. Notwithstanding its lawfulness, the makeshift football pitch has moveable goals and it is reasonable to presume that they would be moved on occasion. When not in use as a makeshift football pitch it is also reasonable to presume that the grass would not be mown to the same extent and the site would take on a more natural appearance. Submitted photo evidence also suggests this has been the case in the past, illustrating grass in a more natural state. Consequently, the use of the site as a tennis court is not comparable to the use of the site as a makeshift football pitch.

14. Firstly, because it is a hard artificial surface and secondly because its permanence would generate more intense domestic activity that would harm the character and appearance of the area. Accordingly, and notwithstanding its lawfulness, the presence of the football pitch does not help justify the proposal in this case.
15. The appellant suggests that a condition limiting permitted development rights could mitigate the accumulation of domestic paraphernalia and reduce otherwise harmful domestic activity at the site. However, limiting permitted development rights would not protect against every instance of harm because not all domestic activity is controlled under permitted development rights. Accordingly, there would still be some residual domestic paraphernalia and harm resultant from the tennis court's use. Consequently, such a condition would be unlikely to fully protect the character and appearance of the site or be capable of making the proposal acceptable.
16. Reference to other application and appeal decisions that are said to have allowed tennis courts in the countryside and AONB have been submitted by the appellant. However, some of these decisions are in different local planning authorities and no particular evidence has been submitted justifying how they are precisely relevant to this appeal. For example, even though the tennis courts may have been acceptable in principle, it has not been demonstrated that the scale of the development is similar or that site contexts are comparable (by way of plans or other associated evidence). Consequently, referencing these decisions does not help justify the proposal in this case.
17. Special attention has been given to Section 85 of the Countryside and Rights of Way Act 2000 and the statutory duty to conserve or enhance the natural beauty of the AONB. It has been found that the proposal would domesticate the site, harm the rural character and appearance of the area and fail to conserve the natural beauty of the AONB. The proposal conflicts with Paragraphs 170 and 172 of the National Planning Policy Framework (the Framework) and Policies EN2, EN4 and EN5 of the Cotswold District Local Plan 2018, which among other things seek to conserve and enhance natural and historic landscapes, and the natural beauty of the AONB.

Other Matters

18. The farmhouse at Latimer Farm is a Grade II listed building. Special attention has been given to Section 66 of the Planning (Listed Building and Conservation Areas) Act 1990 and the statutory duty and desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses. The site is separated from the farmhouse and other buildings within the farm yard area. The proposal would be located within an isolated part of the wider rural landscape. Consequently, there is limited potential for the proposal to have an impact on the setting of the listed building, which would be preserved.
19. The health benefits associated with the proposal would be restricted to the residents of Latimer Farm and although positive, any benefits would be private and limited in scope. Similarly, even though the reduction in CO2 has not been quantified, benefits resultant from reducing the need to travel for recreational activities would also be limited. Consequently, these potential benefits would not outweigh the harm to the character and appearance of the area or the natural beauty of the AONB, which is a substantial public resource.

20. The appellant has contended that the Council has not engaged reciprocally to “work proactively” or in a “positive and creative way” as described by Paragraph 38 of the Framework. However, whether this is the case or not, the administration of the application by the Council is not a matter under this appeal. The proposal has been determined based on the evidence submitted and in accordance with the statutory duties, the development plan and other material considerations.

Conclusion

21. Although there are health benefits and potential CO2 reduction benefits associated with the proposal, these would be limited and do not outweigh the harm on the character and appearance of the area or the failure to conserve the natural beauty of the AONB. Consequently, and for the reasons given, the appeal is dismissed.

Liam Page

INSPECTOR