



Appeal Decision

Site visit made on 16 September 2020

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 12 October 2020

Appeal Ref: APP/P4605/C/20/3248326

Lindridge Pool, Lindridge Road, Sutton Coldfield, Birmingham B75 7JB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Graham Cadman against an enforcement notice issued by Birmingham City Council.
 - The enforcement notice was issued on 28 January 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission, the retention of a single storey detached structure in the approximate position edged in green and hatched on the attached plan.
 - The requirements of the notice are
 1. Demolish this single storey detached structure and remove the demolished materials from the site.
 2. Remove the demolished materials from the land.
 3. Restore the land to its condition before the breach took place.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be decided.
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Decision

1. It is directed that the enforcement notice be corrected by deleting the word "retention" from the breach and replacing it with the word "erection."
2. Subject to this correction, the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matters

3. The alleged breach refers to the retention of a single storey detached structure. However, the retention of a structure is not an act of operational development as defined in Section 55 of the Act. I shall therefore correct the notice by deleting the word "retention" and replacing it with "erection". I do not consider that injustice is caused to any party as a result of this correction.
4. The alleged breach refers to the structure in the approximate position edged in green. From the images provided and my site visit observations, the location of the structure is located further to the north and west than indicated on the

enforcement notice plan. However as there are no other structures in the vicinity, I do not consider it necessary to amend the plan.

5. The word "very" is omitted from "very special circumstances" in the reasons for issuing the notice. However, there is no injustice to the appellant's case as a result of that omission as the appellant clearly understood what the policy requirements were.

Background Matters

6. The Council originally became aware of the presence of the open-sided timber structure with a pitched roof in August 2018 when a complaint was made and the appellant was advised that planning permission was required. Planning permission was subsequently refused and an appeal against the Council's decision was dismissed on the 8 November 2019.¹ (the previous decision) The appellant has appealed on ground (a) only namely that planning permission should be granted for the development and I shall therefore have regard to the previous decision in determining this appeal, where relevant.

The appeal under ground (a) and the deemed application

Main Issues

7. The site is within the Green Belt. The main issues are:
 - whether the development is inappropriate development in the Green Belt, having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;
 - whether sufficient information has been provided to allow the effects of the development on biodiversity to be fully considered; and
 - 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

8. The detached structure is at the end of an access track off Lindridge Road. The track ends at an expanse of grass and the structure sits to the rear of the grassed area with a backdrop of dense vegetation behind it. The appeal site also includes a dwelling house further to the east along the track with Lindridge Pool behind it. A private members fishing club operates from the site which includes smaller fishing ponds and Langley Pool as well as Lindridge Pool. The combination of the mature vegetation, the pools, ponds and limited built development add to the rural character around the structure.

Whether the development is inappropriate development in the Green Belt

9. Policy TP10 of the Birmingham Development Plan Adopted January 2017 (the Local Plan) states that there is a general presumption against inappropriate development within the Green Belt and such development will not be permitted unless very special circumstances exist, and that development including buildings in the Green Belt will be assessed in relation to the relevant national planning policy.

¹ APP/P4605/C/20/3234657

10. Paragraph 145 of the Framework states that the construction of new buildings is inappropriate in the Green Belt subject to listed exceptions. Paragraph 145(d) includes an exception for *the provision of appropriate facilities (in connection with the existing use of the land or change of use) for outdoor sport, 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.* The Council does not consider that the structure falls within the exception by reason of both its scale and intended use.
11. With regard to scale, the Council considers that the development which has a floor area of around 72sqm is excessive in relation to the scale of activity on the site. There is no dispute that the appeal site is used for fishing and Lindridge Pool which is close by has 9 fishing pegs. Langley Pool is just beyond the appeal site boundary at around 350 metres from the structure and has 14 fishing pegs. The Council states that even including Langley Pool, the scale of the structure is excessive given the relatively small scale and low intensity recreational use of the site.
12. The Council also questions whether a structure is an appropriate facility as fishing is an activity where adverse weather conditions are expected and therefore fishermen are prepared for these conditions. However, given that the structure exists, it is a matter for the appellant to show that its use does fall within the exception and that there is a functional relationship between fishing use and size.
13. With regard to the structure itself, the appellant's only comment is that the building has not been altered to meet the specific needs of the family. There is no information with regard to the size of the structure. Further, no details are provided for example of how many fishermen use the pools and ponds, the requirements to become a member, whether partners are also members and whether the appeal site operates all year round or on a seasonal basis and the hours of operation. Whilst it may be the case that a private members fishing club has been running at the site for approximately 20 years, justification for the use and size of the structure are still required.
14. With regard to use, the appellant states that development provides a sheltered area during inclement weather for those fishing to take a break and talk to each other away from the quiet of the poolside pegs. Reference is also made to the partners of club members visiting and that "Not all partners of the members fish but the building provides a valuable place for partners to sit under cover and interact with like-minded people." The principle purpose of the development is said to be serving members of the fishing club and the building is used frequently by the fishermen and their partners, particularly in the colder months of the year.
15. However, the use described goes beyond supporting fishermen by providing shelter in poor weather. In addition, the structure appears to provide a social facility where both fishing and non-fishing people interact. With regard to domestic use by the appellant and his family, it is unclear as to whether the appellant still proposes to use the structure for family gatherings or picnics as originally indicated to the Council. The appellant has sought to distinguish between the principle and primary use of the structure and other uses and has said that domestic use has been limited to one occasion. Nevertheless, the test is whether the structure is an appropriate facility (in connection with an

existing use ...) for outdoor recreation not whether the primary use is still fishing use. The information before me indicates that use for fishing is not the sole use and there is limited information before me to indicate why the structure is the size that it is. The structure is not therefore an appropriate facility for outdoor recreation or sport.

Openness and Purposes of the Green Belt

16. Paragraph 133 of the Framework states that the fundamental aim of the Green Belt is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belt are their openness and their permanence. The appellant has referred to a Supreme Court decision dated the 5 February 2020² and its implications for openness. The appellant states that preserving openness cannot mean that development can only be found to be not inappropriate if the openness would be left entirely unchanged. I agree that there may be instances where development may preserve openness depending on the individual circumstance of the case. Nevertheless, the judgement does make clear that matters relevant to openness in any particular case are a matter of planning judgement, not law.
17. The appeal site is largely undeveloped apart from the residential dwelling which is some distance from the structure. The previous Inspector described the development as a relatively large structure which as a result of its solid roof and timber frame and balustrades has a significant mass and presence despite its open-sided design and does erode the spatial openness of the Green Belt. There are limited public views and the mature planting to the boundaries does lessen the impact on visual openness and on the openness of the Green Belt overall, is limited. Whilst, I do not disagree with those views, although limited, there is still a small degree of additional harm to openness and some encroachment of the countryside due to the non-fishing uses referred to.
18. For the reasons given, I therefore conclude that the structure does not fall within the exception set out in Paragraph 145(b) and it is therefore inappropriate development.

Biodiversity

19. The appeal site is within the Lindridge Pool and Langley Mill Site of Importance for Nature Conservation (SINC). The Council states that the appeal site is designated for its pools and associated reed swamp, marginal vegetation and wet woodland. Policy TP8 of the Local Plan states that development which directly or indirectly causes harm to SINC's will only be permitted where it has been clearly demonstrated that : the benefits of the development outweigh the need to safeguard the site or important habitat or species; damage is minimised and measures can be put in place to mitigate remaining impacts; where damage cannot be avoided or fully mitigated and appropriate compensation is secured.
20. The the appellant has submitted an updated Ecological Appraisal Report (PEA) to a 2014 report based upon a survey in February 2020. The Council has commented upon the PEA and considers that the structure itself is unlikely to have an adverse impact upon the SINC because of the nature of habitats in the area and to that extent, the ecological objection to the development is

² Samuel Smith Old Brewery (Tadcaster) v North Yorkshire (2020) UKSC on appeal from (2018) EWCA (Civ) 489

overcome. However, the Council has concerns about artificial lighting having potential impact for bats. At the time of my site visit, the development did have some internal strip lighting and external lantern style lighting.

21. A generic recommendation is suggested by the PEA which refers to limiting light pollution and compact fluorescent lamps with low lux for buildings but it is unclear if such a recommendation allows for the design of the structure with its open sides or external lighting. I therefore consider that a detailed bat survey would be required should the appellant wish to retain existing lighting.
22. I therefore conclude that sufficient information has been provided to allow the effects of the development on biodiversity to be fully considered other than with regard to the retention of lighting. Subject to the lighting issue being resolved, the development does therefore comply with Policy TP8 of the Local Plan and with the Framework which, amongst other things, requires planning decisions to protect sites of biodiversity value.

Other Considerations

23. The appellant has referred to the health and wellbeing benefits of fishing as being in accordance with promoting healthy lifestyles as referred to in Paragraphs 91 and 96 of the Framework. However, those benefits are not dependent upon having a structure in addition to the longstanding outdoor fishing facilities. Whilst, there may be some benefits to the fishermen in using the structure, the use by fishermen only accounts for part of the use. For those reasons, I therefore give limited weight to the health benefits of having the structure.
24. Whilst the ecological issues have been largely addressed, this is a matter of neutral weight.

Green Belt Balance

25. The Government attaches great importance to Green Belts. Paragraph 143 of the Framework states that inappropriate development is by definition harmful and should not be approved except in very special circumstances. Paragraph 144 of the Framework states that substantial weight should be given to any harm in the Green Belt. I have found that the structure is inappropriate development in the Green Belt as it falls outside the exception relied upon for the reasons already referred to. Balanced against that are the other considerations. However, even when considered together, the other considerations do not clearly outweigh the harm to the Green Belt. Very special circumstances necessary to justify the development therefore do not exist. Consequently, the structure does conflict with the Green Belt Policy set out in Policy TP10 of the Local Plan and the Framework.

Conclusion

26. I therefore uphold the enforcement notice and refused to grant planning permission on the deemed application made under Section 177(5) of the Act.

E. Griffin

INSPECTOR