
Appeal Decision

Site visit made on 20 October 2020

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 November 2020

Appeal Ref: APP/N4720/C/20/3257304

Land to the south side of Linton Common and adjacent to the River Wharfe, Linton, Wetherby, LS22 4JD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Simon Kunz against an enforcement notice issued by Leeds City Council.
 - The enforcement notice was issued on 10 July 2020.
 - The breach of planning control as alleged in the notice is, without planning permission, the erection of a jetty structure.
 - The requirements of the notice are:
 - Step 1 – Dismantle the jetty structure and its foundations in their entirety.
 - Step 2 – Remove from the site any resulting material, rubbish and equipment arising from compliance with Step 1.
 - The period for compliance with the requirements is six weeks.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.
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Summary Decision: the appeal is dismissed and the enforcement notice is upheld

Procedural matters

1. The appeal is proceeding on ground (a) only namely that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. In addition to seeking planning permission to retain the jetty structure, the appellant also seeks planning permission for a timber stepped access into the bank leading from Westfield House to the river and for the removal of earth adjacent to the eastern side of the jetty to facilitate boat access and storage out of the river.
2. Section 177(5) of the 1990 Act provides that where an appeal against an enforcement notice is brought under section 174 of that Act, the appellant shall be deemed to have made an application for planning permission in respect of *the matters stated in the enforcement notice as constituting a breach of planning control* (emphasis added). In this case, the matters stated in the notice as constituting a breach of planning control are confined to the erection of the jetty structure. Consequently, pursuant to Section 177(5) of the 1990 Act, I am unable to entertain granting planning permission for the timber stepped access into the bank or for the removal of earth to facilitate boat access and storage out of the river. It follows that my consideration of the evidence submitted will be confined to matters relating to the erection of the jetty structure.

Reasons

3. The City Council has stated three substantive reasons for issuing the enforcement notice, from which the following main issues are raised:
 - whether the breach of planning control alleged in the notice is inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (Framework) and the development plan
 - the effect of the development on the Special Landscape Area
 - the effect of the development on the Site of Ecological and Geological Importance
 - whether the development would hinder the use of the land as a functional floodplain, and
 - if the breach of planning control alleged in the notice is inappropriate development in the Green Belt, 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

Whether the proposal is inappropriate development for the purposes of the National Planning Policy Framework and the development plan

4. Paragraph 145 of the Framework indicates that, with some exceptions, the construction of new buildings is inappropriate development in the Green Belt. The exceptions stated at paragraph 145 include the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport and/or 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.
5. Although pre-dating the publication of the Framework, the policies in the development plan are largely consistent with it insofar as they relate to the Green Belt. Policy N33 of the Leeds UDP Review provides, amongst other things, that except in very special circumstances approval will only be given in the Leeds Green Belt for the specific types of development listed in that policy. These include essential facilities for outdoor sports and outdoor recreation.
6. I am satisfied that the jetty structure is a facility for outdoor sport and/or outdoor recreation in connection with the existing use of the land. In that context, I consider that the jetty structure is a facility in the form of a new building rather than an engineering operation. I am also satisfied that the jetty structure is appropriate for the intended purpose, namely providing safe access to boats, canoes, etc used for recreational purposes and as a platform for fishing from. I am therefore satisfied that the jetty accords with the provisions within paragraph 145(b) of the Framework in these respects.
7. However, the exceptions stated at paragraph 145 only apply 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 Courts have held that the openness of the Green Belt has a spatial aspect as well as a visual aspect. This means that the absence of visual intrusion does not in itself mean that there is no impact on the openness of the Green Belt.

8. At the time of my site visit, the jetty was not complete and comprised a steel frame and a concrete base, but without a platform. Nevertheless, even in that incomplete state, the jetty erodes the openness of the site in both a spatial and a visual sense. I acknowledge that the jetty structure as existing has only a limited effect on the openness of the Green Belt in this location, and that this would remain the case even in its completed state. However, the corollary is, because there is a limited adverse impact on openness, that openness is not preserved.
9. The appeal site is located within a ribbon of largely residential development leading out of Linton. Nonetheless, in my assessment, the area overall retains a rural character. Albeit to a limited extent, the jetty constitutes the introduction of a built structure into this rural setting. It therefore fails to assist in safeguarding the countryside from encroachment, and as such conflicts with one of the purposes of including land within the Green Belt.
10. I therefore conclude that the breach of planning control alleged in the enforcement notice is inappropriate development in the Green Belt in the context of Paragraph 145 of the Framework, as well as Policy N33 of the Leeds UDP Review. Paragraph 143 of the Framework confirms that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

Effect on the Special Landscape Area

11. The appeal site falls within the Linton/Wetherby Special Landscape Area (SLA), as described in Volume 2: Appendices to the Leeds UDP Review. This section of the SLA exhibits a strong visual unity derived in large part from the tree-lined north bank of the River Wharfe. This provides the SLA with a cohesive character of high scenic quality.
12. The introduction of the jetty structure constitutes an incongruous intrusion into the otherwise cohesive character of the River Wharfe and its immediate environs. I noted at my site visit that the jetty is not visible in the key vista from Linton Bridge. I also note that the appellant has produced a landscape strategy which details how the site would be landscaped, including retention of existing vegetation and wildflower seed planting. I accept that this would soften the appearance of the jetty structure to some extent and assist in integrating it into the landscape. Nevertheless, this landscaping would not assist in overcoming the visual harm of the jetty structure projecting into the river itself. Consequently, and notwithstanding the presence of other jetty structures in the wider area, the incongruity of the jetty structure into this high-quality landscape is harmful to the character of the SLA, and would continue to be so even with the proposed landscaping of the riverbank.
13. I conclude that the development subject to the enforcement would have an unacceptably harmful effect on the Special Landscape Area. Although not cited in the reasons for issuing the enforcement notice, I therefore conclude that the development would be contrary to Policy A1 of the Linton Neighbourhood Plan¹. This policy forms part of the development plan for the area and seeks, amongst other things, to secure carefully and sensitively designed development that protects and enriches the landscape.

¹ Referred to in the City Council's Appeal Statement and a copy provided with the appeal questionnaire.

Effect on the Site of Ecological and Geological Importance

14. The appeal site is within the Leeds Habitat Network (LHN) and the River Wharfe Site of Ecological and Geological Importance (SEGI). The Environment Agency commented that any potential ecological impacts arising from the unauthorised development are difficult to determine, given that no environmental assessment was provided before works started. The Environment Agency considered the development to be contrary to policies G8 and G9 of the Leeds Core Strategy on that basis. The City Council has also sought to substantiate the reason for issuing the enforcement notice in a Nature Conservation Response form its Environment and Design Group. In summary, the City Council's position remains that it is hard to argue that there could be any positive impacts on the Leeds Habitat Network and River Wharfe SEGI, pointing out that protection of this environment would be best delivered through ensuring that access to the site not encouraged.
15. The appellant has, however, subsequently commissioned an Ecological Impact Assessment (EcIA). This EcIA found that the habitats likely to have been present in the working area prior to clearance and construction of the jetty structure included bare ground, tall ruderal vegetation (mostly invasive species) and scrub. The EcIA also identified no harm to any protected species. On that basis, the EcIA concludes that the development subject to the enforcement notice has not caused any significant adverse effect on the ecology value of the site. Moreover, with the mitigation and enhancement proposed, the EcIA considers that the development could secure a significantly positive deliverable net biodiversity gain, including from the management of the invasive vegetation.
16. Having considered the evidence before me on this main issue, I prefer the more detailed evidence in the appellant's EcIA. I take the City Council's point about discouraging access by people but, given that the land is private, I am not persuaded that damage by a limited number of people using the jetty is a major issue in this case.
17. I conclude that the development subject to the enforcement notice would not have a harmful effect on Site of Ecological and Geological Importance. I therefore find no conflict with policies G8 or G9 of the Leeds Core Strategy which, amongst other things, require that development will not seriously harm any sites designated of national, regional or local importance for biodiversity.

Whether the development would hinder the use of the land as a functional floodplain

18. The Flood Risk Assessment (FRA) commissioned by the appellant has identified that the appeal site is partly within Flood Zone 2 and partly within Flood Zone 3b. Even taking the higher risk zoning of Flood Risk 3b, the jetty would be categorized as a 'minor development' and, in accordance with paragraph 163 of the Framework, would not be subject to the sequential or exception tests. I concur with the FRA insofar as the jetty should be considered a water-compatible development and, as such, is permissible in Flood Zone 3b functional floodplain. The jetty presents a limited cross section to the river, equating to some 0.125% of the total cross-sectional area of the

river. Consequently, even when fully submerged, I accept that the jetty would have negligible effect on the carrying capacity of the river. Moreover, I again concur with the FRA insofar as the risk of debris being caught on the upstream face of the jetty is relatively low and that the robust construction of the jetty means that the risk of it being dislodged by during high river flows is also low.

19. The City Council maintains its objection to the development on these grounds but has not challenged the findings of the appellant's FRA.
20. I conclude that the development subject to the enforcement notice would not hinder the use of the land as a functional floodplain. I therefore find no conflict with Policy EN5 of the Leeds Core Strategy or Policy Water 3 of the Natural Resources and Waste Local Plan 2013. These policies, amongst other things, seek to protect area of the functional floodplain from development, other than for water compatible uses.

Green Belt balancing exercise and conclusion on the ground (a) appeal

21. In accordance with paragraph 144 of the Framework, I attach substantial weight to the harm to the Green Belt by reason of the inappropriate nature of the development. I further conclude that the development subject to the enforcement would have an unacceptably harmful effect on the Special Landscape Area, a matter to which I attach significant weight. These harms could not be overcome by the imposition of suitably worded conditions.
22. Against this, I attach moderate weight to the positive biodiversity gain resulting from the mitigation and enhancement measures proposed by the appellant.
23. The development subject to the enforcement notice would not hinder the use of the land as a functional floodplain, but that matter is neutral in terms of the weight to be afforded to it in the Green Belt balancing exercise.
24. Consequently, in weighing the overall balance, the harm by reason of inappropriateness and any other harm, is not clearly outweighed by other considerations, such that the very special circumstances necessary to justify the development do not exist.
25. For the reasons set out above, the breach of planning control alleged in the notice is also contrary to a number of policies in the development plan. I have not been advised of any material considerations of sufficient weight, either taken individually or cumulatively, to indicate that determination should be made otherwise than in accordance with the development plan.

Conclusion

26. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decision

27. The appeal is dismissed, 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.

Paul Freer

INSPECTOR