



Appeal Decision

Site visit made on 25 May 2021

by Cullum J A Parker BA(Hons) MA MRTPI MCMI IHBC

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 14th June 2021

Appeal Ref: APP/R1010/W/19/3241373

**Barlborough Springs Fishery, Ward Lane, Barlborough,
Chesterfield S43 4JD**

- 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 S Grantham against the decision of Bolsover District Council.
 - The application Ref 19/00179/FUL, dated 27 March 2019, was refused by notice dated 1 July 2019.
 - The development proposed is described as '*siting and personal residential use of two temporary static residential caravans on land at Barlborough Springs Fishery, Ward Lane, Barlborough, Chesterfield S43 4JD (Retrospective)*'.
-

Decision

1. The appeal is allowed and planning permission is granted for siting and personal residential use of two temporary static residential caravans on land at Barlborough Springs Fishery, Ward Lane, Barlborough, Chesterfield S43 4JD in accordance with the terms of the application, Ref 19/00179/FUL, dated 27 March 2019, subject to the conditions set out in Appendix A.

Main Issues

2. Whether the proposal would be inappropriate development in the Green Belt, including any impact on openness, having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies; and,
3. The effect of the proposal on heritage assets or their settings, including the Grade I, Grade II* and II listed buildings including Barlborough Hall, The Stable Block, and Gazebo, the Grade II Registered Park and Gardens of Barlborough Hall, and the Barlborough Conservation Area; and,
4. The effect on the living conditions of occupiers of the development with regards to noise from the surrounding area; and,
5. Would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

Reasons

Whether inappropriate development

6. The appeal site lies within the Green Belt. Policy SS10: Development in the Green Belt of the *Local Plan for Bolsover District, March 2020* (LP) and

Chapter 13 – Protecting Green Belt Land of the *National Planning Policy Framework* (the Framework) set out that Green Belt serves five purpose, including to assist in safeguarding the countryside from encroachment. Moreover, both local and national policy set out that the construction of new buildings in the Green Belt should be regarded as inappropriate development, unless listed as an exception.

7. Exceptions within Policy SS10 and Paragraph 145 of the Framework include buildings for agriculture and forestry and the provision of appropriate facilities for outdoor sport and 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.
8. In this case, the buildings concern are two static caravans, moved onto the site in the winter of 2015 with bills being addressed to them from April 2016, for which temporary permission was sought for a two-year period¹. The main caravan is used by the Appellant's immediate family, with the smaller caravan used sporadically by another family member to assist in the running of the fishery business. The history of the site is linked to an adjoining site (to the east of the appeal site) which prior to the caravans being placed on the appeal site were part of one site. On that adjacent site, which does not form a part of the appeal site, there is a static caravan and a partially built building.
9. The two static caravans would be for residential occupancy and are not therefore buildings for agriculture or forestry. Whilst some outdoor recreation or sport in the form of fishing activity appears to have taken place on the appeal site (although there is no financial or other evidence supporting such activities) the static caravans are sought for residential occupation rather than the storage of items associated with the outdoor activity.
10. Even were I to find that the two static caravans were facilities for outdoor sport or recreation exception, both static caravans would reduce the openness of the Green Belt. This would be through the both the site coverage of the static caravans and also their overall size and height which erode the openness of the Green Belt. Moreover, the introduction the two static caravans have encroached on the countryside. Where previously the site was undeveloped there are now two urbanising features in the form of the static caravans. Even with the use of screening, potentially through planting which would take time to grow and the siting of the static caravans in a discreet location within the site, the fact remains that they erode both the openness of the Green Belt and encroach into the countryside.
11. As such, I find that the appeal scheme for which permission is sought would represent inappropriate development in the Green Belt. Furthermore it would not fall into one of the exceptions listed in LP Policy SS10 or the Framework. Inappropriate development is, by definition harmful to the Green Belt and should not be approved except in very special circumstances. I now consider any other harms that might arise before considering other considerations.

¹ See paragraphs 3.6, page 7 and 7.5, page 13 of the *Planning Statement including Design and Access Statement in relation to the siting and personal residential use of two temporary static residential caravans on land at Barlborough Springs Fishery, Ward Lane, Chesterfield S43 4JD (Retrospective)*

Heritage assets

12. The appeal site is located within the grounds of the Grade II Registered Park and Gardens of Barlborough Hall (RPG) and the Barlborough Conservation Area. It is also located reasonably close to the Grade I, Grade II* and II listed buildings including Barlborough Hall, The Stable Block, and Gazebo.
13. The RPG is formed of a planned and semi-natural landscape surrounding the Barlborough Hall and the village of Barlborough, covering around 125 hectares. Physically it not only includes the appeal site, but also a wider areas of land that includes a nearby school, public playing fields and wooded areas.
14. The Barlborough Conservation Area covers a similar area of land, and also includes part of the settlement of Barlborough and some land called Nitticarhill Wood and Crabtree Wood to the north east of RPG. The significance of both heritage assets derives in part from the contribution to the rural landscaped setting of both Barlborough Hall and the village.
15. The appeal scheme has introduced two static caravans into the RPG and Conservation Area, at odds with the prevailing rural character of the area and wider planned landscape setting of the RPG. As such, the static caravans fail to preserve or enhance the character and appearance of the Conservation Area, special attention of which should be paid to under Section 72(1) of the Planning Listed Buildings and Conservation Areas Act 1990, as amended (PLBCA). For similar reasons, it fails to preserve the special interest of the nearby listed buildings and their settings in accordance with Section 66(1) of the PLBCA. In a similar fashion, the appeal scheme would harm the significance of the RPG through the introduction of further eroding features within its designated area.
16. The Council's Conservation consultation response indicates that the harm arising would amount to 'substantial harm'. However, it has not been articulated as to why this would be substantial harm when the static caravans are fairly easily removeable and limited to one small part of considerably sized heritage assets in the form of the RPG or Conservation Area for example.
17. Accordingly, I find that the appeal scheme would result in no more than less than substantial harm as set out in Paragraph 196 of Framework. Less than substantial harm does not equate to less than substantial planning objection and considerable importance and weight should be given to the desire to conserve heritage assets in a manner appropriate to their significance. Paragraph 196 goes on to indicate that this less than substantial harm should be weighed against the public benefits of the proposal. I undertake that assessment in my overall conclusion.

Noise

18. The appeal site is located in close proximity to the M1 motorway, with the static caravans sited around 60 metres from it. The motorway results in noise that is audible from and around the appeal site. The Council indicates that a noise survey was sought from the Appellant. The Appellant indicates at paragraph 6)h) of their *Statement of Case* that they have been advised by a local acoustic company that until there is a decision that the current caravan is to be lived in it wouldn't be advisable to have an acoustic assessment undertaken. The Appellant goes on to indicate that the acoustic technician said

that 'log cabins do meet the same standard as a residential home'. However, the scheme before me relates to caravans and not a log cabin.

19. Moreover, in the absence of an acoustic assessment it is not possible to assess what the impacts of the existing M1 motorway is or would be on occupiers of the two caravans for which permission is sought. Nevertheless, given the typically thin walls associated with static caravans and the proximity to the M1 motorway it is highly likely that the occupiers of the caravans and their surrounding land forming the appeal site would be adversely affected by the noise both internally and externally primarily emanating from the motorway. This is further compounded by the absence of an acoustic assessment or survey which would typically identify mitigation measures; as indicated by the comments of the Council's Environmental Protection Officer.
20. The absence of a relevant assessment relating to noise appeal scheme means that it is not possible to determine what appropriate mitigation is required. Accordingly, I find that the scheme would be contrary to Policy SC11 of the LP which, amongst other aims, seeks to ensure that applicants need to demonstrate that a significant loss of amenity would not occur as a result of the development. It would also be contrary to Paragraph 127 of the Framework which sets out that planning decisions should ensure that developments create places which promote health and well-being, with a high standard of amenity for existing and future users.

Other considerations

21. The Appellant indicates that their presence on the site was not intentional and arose due to the need to have a constant onsite presence to deter poachers and fly-tippers. There is little substantiated evidence before me which indicates the prevalence or quantum of these activities – for example police incident numbers. Nor how their frequency has changed since the stationing of two further caravans in this location.
22. These would be in addition to the nearby static caravan and partially built building on the adjoining site, the dwelling known as Manor House Farm to the north east of the caravans for which permission are sought, and the school occupying Barlborough Hall near to the site to the east. Moreover, by their own admission, this was not a 'new issue' and there had been an onsite caravan on the adjoining site (which previously formed part of the wider appeal site) in residential use for a period of 15+ years². Added to this, it is unclear as to why the use of CCTV, in conjunction with private security arrangements, would not potentially provide adequate or suitable alternatives.
23. I acknowledge the points made in terms of the need for two caravans to support the creation of the business on site in addition to security matters. However, the lack of any financial accounts and/or business plans means that it is not possible to have any certainty that the Appellant 'don't have any intentions of building on the land once this is solved'.³ The problem is that without any idea of the business plan, there is no certainty as to when the growing business would turn a profit sufficient to provide funds for the Appellant to live elsewhere or that this would be sufficient to fund on-site

² See Appellant's Statement of Case, paragraphs 4e) and 4f)

³ Paragraph 3k)

security without the need for permanent or long-term residential occupation of the site. As such I afford this factor limited weight.

24. I note that the Appellant indicates that they pay council tax, are on the electoral register and have all mail addressed to the appeal site. However, that does not in itself provide justification for the residential use of the land. This factor is afforded minimal weight.
25. I acknowledge the various personal factors including health conditions and educational needs of occupiers and supporting documentation cited by the Appellant. I agree that having to move to an alternative location could have an adverse impact on these and that it is likely to be more beneficial to not have to move from the static caravans to another location. I note the points raised in respect of a log cabin could be constructed that could contain specific adaptations that would assist occupiers. However, that is not the proposal before me which relates to two static caravans. I afford these factors modest weight in favour of the scheme.
26. The Appellant indicates that they have had discussions with the Council's Housing Officer, but were informed that it was rare that anything became available in the needed area. There is little written evidence which demonstrates the geographical area such accommodation would be sought in. Having taken the personal decision to leave previous accommodation to move to the appeal site around five years ago, the Appellant indicates that they do not currently have the financial resources to get back onto the property ladder.
27. At the same time, there is an acute housing shortage within England and, whilst I am unable to ascertain the magnitude within this specific part of the country, there is little evidence presented by the Council which indicates to the contrary. It is also necessary to consider whether the grant of a temporary permission as sought by the Appellant would be justified. There is little evidence which supports that there is alternative accommodation for the family within close proximity to the appeal site where the Appellant makes their living.
28. Moreover, if planning permission were to be refused, the outcome would be that the Appellant and his immediate family would lose their home. This would represent a serious interference with the family's right to respect for private and family life and the home (Article 8 of the European Convention on Human Rights). In addition, any minors living in the caravan would be likely to lose the opportunity to continue to attend local education facilities if the family were required to leave the site within the next two years.
29. If a planning permission for a temporary period of two years were to be granted it would avoid the Appellant and his family becoming homeless and give them an opportunity to pursue accommodation either through the local housing officer, the private market or alternative options on the site which they have suggested in the form of a log cabin – though the latter is a matter for the LPA, and I offer no view on such a building being acceptable or not.
30. This would be a proportionate approach to the legitimate aim of protecting the environment, and granting a permission for a limited period would have no greater impact on the Appellant and his family than would be necessary to address the wider public interest. I afford this factor substantial weight in favour of a temporary grant of permission.

31. I find that the other considerations in this case clearly outweigh the harm that I have identified. Looking at the case as a whole, I consider that very special circumstances exist which justify the development albeit for a temporary period as sought.

Conditions

32. The Council have suggested a number of conditions within its Statement. I consider these in light of Paragraph 55 of the Framework and the guidance within the national Planning Practice Guidance.
33. A condition restricting occupation to the Appellant and their immediate family is necessary and related to the development to be permitted. However, I do not consider it necessary or reasonable that a detailed business plan be secured by condition in this instance. Nonetheless, the Appellant will note that submission of such information with any future applications would assist the LPA.
34. The Council have suggested that the second caravan which is used occasionally by a family member to support the business activity on the site is removed by condition. However, the additional family member provides sporadic support to the fledgling business on the site and a condition that restricts occupancy of the smaller caravan to no more than 50 days and nights within a twelve-month period would strike a fair balance between intermittent use and supporting the business activities.
35. The Council has also suggested the use of a condition to remove any other unauthorised structures. However, they have failed to specifically define which other structures this means. In this respect, such a condition would lack precision and likely not be enforceable. As such I do not consider it should be imposed in this case.
36. A condition relating to landscaping has been suggested by the Council's Conservation Officer. However, given the limited two-year period this permission would permit and the time it would take for any landscaping to mature to screen the site, I do not consider such a condition is necessary in this instance.
37. Lastly, a condition securing the submission of an acoustic report/details of sound insulation should be submitted within two months of the date of the decision, with methods of mitigation to protect the amenity of residents from undue levels of road noise from the adjacent motorway is reasonable, necessary and precise to protect the living conditions of occupiers of the static caravans.

Overall Conclusions

38. I have found that the development causes harm to the Green Belt by reason of it being inappropriate development and the impact on openness. I attach significant weight to this harm. However, I find that the other considerations in this case outweigh this harm, subject to permission being granted for a temporary period as sought.
39. There would also be less than substantial harm to the significance of heritage assets. However, I find that the public benefits, which include the fact that refusal of permission would make the Appellant and their family homeless, that

the changes made are relatively easy to reverse, and would be for a period of only two years, outweigh the less than substantial harm in this instance.

40. I have also identified some harm in terms of potential noise impacts; although I consider that this could be mitigated by the use of a suitably worded planning condition.
41. As per Section 38(6) of the Planning and Compulsory Purchase Act 2004, as amended, whilst the proposal would be contrary to the development plan as a whole, I find that material considerations in this case indicate a decision otherwise than in accordance with it.
42. For these reasons, and having regard to all matters raised, I conclude that the appeal should be allowed and planning permission should be granted for a temporary period of two years, subject to appropriate conditions.

Cullum J A Parker

INSPECTOR

Annex A

List of conditions

- 1) The use hereby permitted shall be for a limited period being the period of 24 months/ two years from the date of this decision. The two structures hereby permitted (in the form of two residential caravans) shall be removed and the land restored to its former condition on or before two years from this decision in accordance with a scheme of work that shall first have been submitted to and approved in writing by the local planning authority.
- 2) The development hereby permitted shall be occupied only by Mr S Grantham, his spouse or partner, and his dependents.
- 3) Notwithstanding Conditions 01 and 02, the smaller of the two static residential caravans shall only be occupied by no more than two related family members of the Appellant, or their spouse, for no more than a total of 50 days and nights per one twelve-month period.
- 4) Within two months of this decision, an acoustic assessment should be undertaken by a suitably qualified acoustic technician which, amongst any other requirements, assesses what sound insulation measures or mitigation is required to minimise the noise impact from the nearby M1 motorway for occupiers of the two static residential caravans. The assessment shall be submitted to and approved in writing by the local planning authority and any sound insulation works shall be completed within a time frame agreed in writing with the local planning authority and retained thereafter.

*** END OF CONDITIONS ***