



Appeal Decision

Site Visit made on 13 July 2021

by K A Taylor MSC URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 August 2021

Appeal Ref: APP/M1005/W/21/3272014

**Former mineral railway track to the east of Park Hall Lane, West Hallam
DE7 6HR**

- 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 Justin Mooney, MEG Properties Limited against the decision of Amber Valley Borough Council.
 - The application Ref AVA/2020/0752, dated 31 July 2020, was refused by notice dated 8 October 2020.
 - The development proposed is Tea Room.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. For clarity, the description of development is taken from the Council's decision notice as it is not stated within the application form. This is also the description used at section E of the appeal form.
3. A revised version of the National Planning Policy Framework (the Framework) was published on 20 July 2021. In the interests of natural justice both main parties have had the opportunity to make representation. In reaching my decision I have had regard to the revised Framework.

Main Issues

4. The main issues are:
 - Whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies;
 - The effect of the proposal on the openness of the Green Belt;
 - The effect of the proposed development on the character and appearance of the area; and
 - If the proposal is inappropriate development, whether 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

Inappropriate development

5. The Framework sets out the Government's planning policies for England and is an important material consideration in all planning decisions. Paragraph 149 of the Framework sets out that the construction of new buildings in the Green Belt should be regarded as inappropriate development, unless it meets one or more of a list of exceptions. Paragraph 147 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
6. The exception which is set out at paragraph 149(b) of the Framework, is the provision of appropriate facilities (in connection with the existing use of the land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.
7. Saved Policy EN2 of the Amber Valley Borough Local Plan, 2006 (LP) sets out that planning permission will only be granted for appropriate development. It sets out a number of exceptions including (b) essential facilities for outdoor recreation; which would preserve the openness of the Green Belt and not conflict with the purposes of including land within the Green Belt. However, it is not wholly consistent with the terminology or the exceptions of inappropriate development which are set out in the Framework. As such, in accordance with paragraph 219 of the Framework, I afford limited weight to this policy and have assessed primarily against Green Belt policy within the Framework.
8. The appeal site is located within the Green Belt and sited on a former railway line, which forms a multi-user recreational trail. Planning permission was granted on 29 January 2020¹ for 6 glamping pods which have now been constructed and the site is in use. Therefore, the existing use of the land is considered to be in connection with outdoor recreation.
9. The proposal would entail the construction of a new single storey building falling within the Use Class E² as a café/tea room. The building would contain tables, wc facilities and would provide drinks, sandwiches and light meals. The building would be located alongside the glamping pods, but to the rear of the site at the eastern boundary. The appellant's evidence confirms that the use of the building would be used not only by the occupants/visitors of the glamping pods but also the general public, including walkers of the trail/footpaths.
10. Although, the building would be in close proximity to those glamping pods, they are self-catering facilities, site managed remotely, and it would be likely that the reliance of those occupiers on the café/tea room would be limited. As such, there would be no functional need associated with the existing glamping pods or recreational use. Therefore, the proposal would not be a 'facility' required in connection with the existing change of use of the land for outdoor recreation.
11. Furthermore, it would more than likely be that the primary use of the new building would be for visiting members of the public, particularly given the limited number of pods on the site, the opening days/hours proposed, and that

¹ AVA/2019/0521

² The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020

a specific area is designated for customer parking and cyclists. Thus, resulting in a standalone building for the purposes of café/tea room within the Green Belt.

12. For the reasons given above, the proposed building would not be for the purposes of appropriate facilities, in connection with the existing use of the land for outdoor recreation. The proposal would not meet the exceptions in paragraph 149 of the Framework, it would form inappropriate development in the Green Belt.

Openness

13. As set out in paragraph 137 of the Framework, the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, the essential characteristics thereof being its openness and permanence. The physical presence of built forms may affect openness, which can also have a visual and spatial element.
14. The proposal would result in the erection of a sizeable single storey detached building with increased car parking, hardstanding and associated commercial paraphernalia. It would increase built form at the appeal site with its height, width, floor space and volume. Therefore, having an adverse impact on openness. Despite existing landscaping, the site is clearly visible from public views along the trail and public footpaths, there would be glancing views at the rear from along the former railway track. It would be viewed from the immediate area of the glamping pods and given the proposal is for additional built form, it would be clearly discernible in those views.
15. For the above reasons, the proposed development would harm the openness of the Green Belt in both visual and spatial terms. The scheme would therefore be contrary to the main aims of Green Belt policy at local and national levels, which I have set out above.

Character and Appearance

16. Saved Policy EN7 of the LP, in considering development proposals requires that the design of development is appropriate to the landscape character type within which it is proposed, having regard to landform and natural drainage patterns, pattern and composition of trees, woodlands and field boundaries, type and distribution of wildlife habitats, pattern and distribution of settlements and roads, the presence and pattern of historic landscape features and the scale, layout, design and detailing of local buildings and other traditional man made features.
17. Saved Policy LS3 of the LP requires development proposals to reflect the principles of good design, by conserving or enhancing the quality and local distinctiveness of the natural and built environment; respecting character of the locality in terms of the scale nature of development. Both EN7 and LS3, are consistent with the approach in the Framework at paragraphs 130 and 174.
18. Whilst the appeal site is located within the context of the existing built form of the glamping pods, it is within the open countryside with the nearest residential dwelling being some 60m away. The siting of the building would be at the lowest point of the former railway embankment, to the furthest point of the site, resulting in limited screening of the building. Despite, the building being of single storey, with a grassed roof and the appellant having made changes to its

design during the planning process, it would still be a prominent permanent building within an area of open countryside, free from any such building. I accept that there are existing glamping pods. However, the proposal would add to the development bulk within the immediate landscape setting and the wider countryside, to its detriment. Moreover, it would be visible within the landscape due to the limited screening and public access within the site and wider trail/footpaths, resulting in an incongruous building within the open countryside.

19. For the reasons given above, I conclude that the proposed development would cause harm to the character and appearance of the area. It would be contrary to Saved Policies EN7 and LS3 of the LP, as set out above. It would also conflict with the Framework, in regard to being sympathetic to local character and history, including the landscape setting and recognising the intrinsic character and beauty of the countryside.

Other Considerations

20. The appellant has made reference to the change of use of the site and that this has shown to be in favour of buildings for recreation in this Green Belt location, and that the proposal should be considered on this basis. Whilst this may be the case, the proposal before me is not considered to be an appropriate 'facility' in connection with the existing use of the land for outdoor recreation and would be a café/tea room with unrestricted access to any user including the general public. In any event, the appeal is necessary determined on its individual merits on the basis of the evidence before me.
21. The appellant contends that the proposal should be supported due to the provision of service that would be offered to the occupants of the glamping pods and users of the trail. However, this service provision would only benefit those individual users of the café/tea room at that time and not a benefit to the wider public. Moreover, I have not been provided with any substantive evidence of projected turnover or exactly how the business would be run, including service provision. As such, I attach limited weight to this consideration.
22. Some economic benefits would arise from, for example, the purchase of building materials during the construction period. I also acknowledge that future occupiers of the glamping pods and visiting members of the public would also contribute to some degree to the local rural economy and tourism by visiting the facility and purchasing items. However, given the modest scale of the development such benefits would be limited.
23. I note that local residents and the Parish Council have expressed additional concerns about the proposed development, including highway safety, ecology, litter, previous uses of the site, design and landscaping. However, the Council did not raise these points as reasons for refusal and I have no substantive evidence to support those concerns. Given my findings in relation to the main issues, it is not necessary to consider these matters in detail.

Planning Balance and Conclusion

24. The appeal scheme is inappropriate development in the Green Belt. This is harmful by definition. The proposal would reduce the Green Belt's openness, which gives rise to additional harm. In each case, these harms render the

- appeal scheme contrary to the aims of both the policies of the development plan, as I have identified them, and the relevant sections of the Framework.
25. Against this, the other considerations that have been advanced are not sufficient, either individually or cumulatively, to clearly outweigh the harm to the Green Belt and the other harm I have identified including the harm to the character and appearance of the area. Consequently, the very special circumstances necessary to justify the development do not exist.
26. The Council have acknowledged that certain policies most important for determining the application, including Saved Policy EN2 are out of date. In this case, paragraph 11d(i) of the Framework grants permission unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed (footnote 7), Green Belt is one such area. As a result, the presumption in favour of sustainable development does not apply.
27. The proposed development would be contrary to the development plan and the Framework, taken as a whole. There are no other material considerations that would indicate that the proposed development should be determined other than in accordance with the development plan. Therefore, for the reasons given, the appeal should not succeed.

KA Taylor

INSPECTOR