



Appeal Decision

Site visit made on 9 August 2021

by C Coyne BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th October 2021

Appeal Ref: APP/N2739/W/21/3274714

Fields Garden Centre, Tadcaster Road, Sherburn-in-Elmet LS25 6EJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr M Bradley against the decision of Selby District Council.
 - The application Ref 2020/0549/S73, dated 2 June 2020, was refused by notice dated 26 November 2020.
 - The application sought planning permission for conversion of former glass house including recladding to provide extension to tea room extending covers to 66 in total, retention of terrace and its use as outdoor seating area/plant sales area, extension to existing car park to provide overflow and formation of children's play area without complying with a condition attached to planning permission Ref 2019/0663/FUL, dated 16 April 2020.
 - The condition in dispute is No. 2 which states that: The proposed tea room hereby approved shall not be operated on the premises except between the hours of 08:30am to 17:00pm Monday to Saturday and 09:00 to 17:00pm Sundays and Bank and Public Holidays.
 - The reason given for the condition is: To protect the residential amenity of the locality and in order to comply with Policy SP19 of Selby Core Strategy and Policy ENV2 of Selby District Local Plan.
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Decision

1. The appeal is allowed and planning permission is granted for conversion of former glass house including recladding to provide extension to tea room extending covers to 66 in total, retention of terrace and its use as outdoor seating area/plant sales area, extension to existing car park to provide overflow and formation of children's play area at Fields Garden Centre, Tadcaster Road, Sherburn-in-Elmet LS25 6EJ in accordance with the application Ref 2020/0549/S73 dated 2 June 2020, without compliance with condition number 2 previously imposed on planning permission Ref 2019/0663/FUL dated 16 April 2020 and subject to the conditions set out in the schedule to this decision.

Main Issue

2. The main issue is whether the condition is reasonable or necessary in the interests of preserving the openness of the Green Belt and in the interests of the living conditions of neighbouring occupiers having regard to noise and disturbance.

Reasons

3. The appeal property is a tearoom with an associated outdoor terrace/seating area set within a wider site comprising a garden centre with a greenhouse, shop

building and areas where plants and other gardening items are displayed for sale. Near the main entrance, just off Tadcaster Road, there is a relatively large car park for customers to use with a grassed area just beyond it. On the other side of the main entrance there is a residential dwelling which has a separate vehicular access onto the road.

4. The current permitted opening hours of the tearoom are between 08:30 and 17:00 Monday to Saturday and 09:00 to 17:00 on Sundays, Bank Holidays and Public Holidays. The proposal seeks to vary the disputed condition to allow longer opening hours from Monday to Saturday with the opening hours for Sundays, Bank Holidays and Public Holidays remaining unaltered.

Openness of the Green Belt

5. As set out in the Framework, the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open as set out in Paragraph 137. Given the small scale of the proposal, and its location, I consider that it would not have a significant adverse impact on the Green Belt purpose of assisting in safeguarding the countryside from encroachment. Policy SP3 states that planning permission within the defined Green Belt will not be granted for inappropriate development unless the applicant has demonstrated that very special circumstances exist to justify why permission should be granted. Consequently, I consider Policy N33 to be broadly consistent with the Framework.
6. According to the Council's officer report the proposal would increase the opening hours on Mondays, Tuesdays, and Wednesdays by 1.5 hours each day i.e., from 08:00 to 18:00 with the opening hours on Thursdays, Fridays and Saturdays being increased by 4.5 hrs each day, i.e., from 08:00 to 21:00, which would equate to an increase of approximately 18 hours in total. At the time of my visit, approximately 11:05, I observed that the car park was almost full. According to the evidence from both main parties, the tearoom has recently become a popular bespoke destination for customers who may not necessarily be purchasing any gardening items but instead be meeting friends or relatives there primarily for social reasons.
7. Consequently, even though what I observed on my visit represents but a snapshot in time, it would be reasonable to think that the car park would get busier in the run-up to lunchtime and similarly at the time for afternoon tea. Furthermore, it would also therefore be likely that should the opening hours of the tearoom be increased as proposed that the car park would be just as busy if not more so after 17:00 when many people would potentially be meeting there for an evening meal. As a result, I consider it likely that even though the car park would not necessarily be full all the time, that the proposed increase in opening hours would spatially reduce the openness of the Green Belt, albeit to a limited degree.
8. In relation to the proposal's potential visual impact, the cars in the car park are still partially visible during summer months despite the trees and other vegetation that bound the wider site close to the road as there are some gaps between them. As a result, it would be likely that the cars parking there would be more visible during winter months from the road and the footpath next to it. Consequently, as it would likely increase the number of cars using the parking area, I also consider that the proposal would visually reduce the openness of the Green Belt but as the car park would not likely be full all of the time that this too would be to a limited degree.
9. I therefore conclude that the proposed development would lead to a loss of openness in conflict with paragraph 137 of the Framework. The proposal would therefore also conflict with policy SP3 of the SLP which aims to ensure that development proposals are appropriate in the Green Belt.

Living Conditions

10. In their evidence the Council have raised concerns that the proposed increase in the opening hours of the tearoom to 21:00 for three evenings in the run-up to the weekend would, in their view, lead to an intensification of use that would have an adverse impact on the living conditions of neighbouring occupiers due to increased vehicular and pedestrian activity at the site and a resultant increase in noise and disturbance late into the evening from this and patrons' leisure activities. They also express a concern that during summer months the front curtilage would be used for outside drinking and for children playing which would also cause noise and disturbance to neighbouring residents.
11. However, no substantive evidence, such as a formal notice, has been submitted to support this which suggests that noise disturbance has not been an issue at the appeal property in the past nor that any noise or disturbance was directly related to or caused by the business. Indeed, the Council's Environmental Health Officer has raised no objection to the proposal in this regard stating that any potentially adverse impact could be adequately mitigated via the imposition of suitably worded conditions.
12. Furthermore, the appellant has submitted substantive evidence¹ (the YES report), that made an assessment on potential noise levels if the opening hours of the premises were from 17:00 to 23:00 Mondays to Fridays, 17:00 to 23:30 hours on Saturdays, and from 17:00 to 20:00 on Sundays and Bank Holidays. This report concluded that although this would have the potential to cause noise disturbance if functions were held within these operating hours, it did also nonetheless conclude that this potential harm could be mitigated by noise reduction measures.
13. Therefore, based on the evidence and given that the proposal would have shorter opening hours than the potential scheme assessed by the YES report, and only occasionally hold functions that would not go on past 21:00, I find that any potential adverse impact could be adequately mitigated via the imposition of suitably worded conditions. Consequently, I conclude that the proposal would not materially harm the living conditions of neighbouring occupiers having regard to noise and disturbance. It would therefore meet the requirements of Policy ENV1 of the SLP and paragraph 185 of the Framework.

Other considerations

14. In support of the proposal the appellant has advanced several considerations with the principal among these being the fact that the tearoom has become a focus for local social and community gatherings. Indeed, as part of their evidence they have submitted a report² (also referred to by them as the Wade report) which clearly demonstrates that the type of local business investment and development such as that proposed is a priority not only for the Council but also for local residents, local businesses and visitors to the area as evidenced by consultation responses highlighted in the report.
15. The Wade report also highlights that the existing low proportion of cafes, pubs and restaurants combined with customers' demands for more shows that the village's social role including on evenings and weekends, has unexplored potential. I therefore agree with the appellant that given the appeal site's location within walking distance of the village centre that the proposal would assist in meeting this clearly identified need. The proposal would therefore provide significant social,

¹ Assessment of the potential impact of change in hours of operation at Fields Garden Centre, Sherburn in Elmet YES Consultancy November 2019.

² Revitalising Sherburn in Elmet village centre; Forward Framework 2020

community and economic benefits to the area. As a result, I afford this consideration substantial weight in favour of the proposal.

Other Matters

16. The Council and interested parties have raised concerns relating to alleged unauthorised use of the premises in the past and that this makes it likely that this could be repeated in future. However, these are not matters for me to consider as part of this section 78 appeal as enforcement issues are something that should be dealt with by the local planning authority in the first instance.

Conditions

17. I have undertaken some minor editing and rationalisation of the conditions proposed by the Local Planning Authority (LPA) in the interests of precision and clarity and bearing in mind paragraph 56 of the Framework. I have imposed a necessary condition to define the plans with which the scheme should accord in the interest of precision. In the interest of the living conditions of neighbouring occupiers I have imposed necessary conditions: to restrict the opening hours of the premises; to restrict the number of covers that the tearoom shall operate at any one time; and to mitigate any potential impact in regard of potential noise and disturbance. I have also imposed necessary conditions to require the retention of a fence for the lifetime of the development and a condition prohibiting the parking of vehicles outside of the designated parking area.

Planning Balance and Conclusion

18. The Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Very special circumstances will not exist unless the harm to the Green Belt and any other harm are clearly outweighed by other considerations. Consequently, other considerations weighing in favour of the development must clearly outweigh any harm.
19. In terms of the harm, the proposal would reduce the openness of the Green Belt, both spatially and visually to a limited degree. Consequently, it would conflict with the adopted development plan and national policy in this regard. In terms of the benefits the proposal would provide significant social, community and economic benefits to the area and meet an identified need for such a hospitality venue near to the village centre to which I have attached substantial weight.
20. Consequently, given the proposal's limited harm to the openness of the Green Belt I find that the other considerations in this case clearly outweigh the harm that I have identified. Accordingly, looking at the case as a whole, I consider that very special circumstances exist which justify the proposed development.
21. I therefore conclude that the disputed condition as originally imposed is neither reasonable nor necessary in the interests of preserving the openness of the Green Belt and the living conditions of neighbouring occupiers having regard to noise and disturbance. Therefore, for the reasons set out above I also conclude that the appeal should be allowed.

C Coyne

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Proposed Floor Plans D-201 A; Proposed Block Plan D-101H; Proposed Elevations D-401B; Elevations swing/playhouse D-402.
- 2) The premises which includes the tea room, shop and plant sales area shall only be open for customers between the following hours:
0800 - 1800 Mondays to Wednesdays
0800 - 2100 Thursdays to Saturdays
0900 - 1700 Sundays, Bank Holidays and Public Holidays
- 3) The tearoom hereby permitted shall not operate in excess of 66 covers at any one time.
- 4) The fence erected following the requirement of Condition 4 of 2019/0663/FUL as shown on the approved block plan D-101H, shall be retained for the lifetime of the development.
- 5) No parking of vehicles should occur on the land outside the designated parking area as shown on block plan D-101H.
- 6) In relation to noise from amplified music, LAeq (EN) shall not exceed LA90 (WEN) by more than 5dB, and the L10 (EN) shall not exceed L90 (WEN) by more than 5dB in any 1/3 octave band between 40 and 160Hz. NB entertainment noise level (EN) and representative background noise level without the entertainment noise (WEN), both representative of 1m from the façade of the noise-sensitive premises.
- 7) The cumulative level of sound from all plant and equipment associated with the proposed development, when determined externally under free-field conditions, shall not exceed the representative background sound level at nearby sensitive receptors. All noise measurement/predictions and assessments made to determine compliance shall be made in accordance with British Standard 4142:2014: Methods for rating and assessing industrial and commercial sound, and/or its subsequent amendments.