
Appeal Decision

Site Visit made on 9 November 2021

by Luke Simpson BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 January 2022

Appeal Ref: APP/G2245/W/21/3268765

Penshurst Off Road Cycling, Grove Road, Penshurst TN11 8DU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by Treetops Penshurst Ltd against Sevenoaks District Council.
 - The application Ref 20/01523/FUL, is dated 29 May 2020.
 - The development is described as 'Section 73A retrospective application for the creation of a decking area used ancillary to the lawful D2 (leisure/recreation) use of the land.'
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Decision

1. The appeal is allowed and planning permission is granted for development described as 'section 73A retrospective application for the creation of a decking area used ancillary to the lawful D2 (leisure/recreation) use of the land' at Penshurst Off Road Cycling Club, Grove Road, Penshurst, TN11 8DU in accordance with the terms of the application, Ref 20/01523/FUL, dated 29 May 2020, subject to the following conditions:
 - 1) The development hereby permitted is as shown on the following approved plans: 569-05-010, 569-05-020, 2952.1 Deck - Elevation – East , 2952.1 Deck - Elevation – South, 2952.1 Deck - Board – Layout, 2952.1 Deck - ISO NE.
 - 2) The use of the development hereby permitted shall only take place between the following hours:
 - 0730hrs and 2100hrs on any day
 - 3) Notwithstanding the plans hereby approved, no external lighting shall be installed on the site until details, including the position, height, design, measures to control light spillage and intensity of illumination, have been submitted to and approved in writing by the local planning authority. The development shall be carried out and thereafter retained in accordance with the approved details.

Preliminary Matters

2. There is contention between the parties as to the lawfulness of the activities on the wider Kingdom site. As such, and notwithstanding the description of development shown on the application form, I have considered the appeal on the basis that it is for development comprising a decking area for use as an outdoor gym and for exercise classes (Use class D2). In addition, and given that the development has been carried out, the appeal seeks retrospective planning permission.

3. Since this is an appeal against non-determination, there is no decision notice. That said, the Council has provided an officer report and a letter, which together set out the reasons why they would have refused planning permission. This evidence has informed the main issues of the appeal.
4. The main parties have had opportunity to comment on the revised National Planning Policy Framework 2021 (the Framework). Accordingly, I have had regard to it in this decision.
5. The appeal site is located within the Impact Risk Zone for Ashdown Forest Site of Special Scientific Interest, which is approximately 10km to the south west. The development falls within the description at 10 (b) of Schedule 2 to the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations). As such, given that no screening response was provided by the Council, the Secretary of State has considered this application under the EIA Regulations and on 05 November 2021 concluded that the development is not Environmental Impact Assessment development. Therefore, this issue has no further bearing on my assessment of this appeal.

Main Issues

6. The main issues are:
 - Whether the development is inappropriate development in the Green Belt.
 - The effect of the development on the character and appearance of the area with specific regard to the High Weald Area of Outstanding Natural Beauty (AONB).
 - The effect of the development on the living conditions of the occupiers of neighbouring properties, with particular regard to noise and disturbance.

Reasons

Inappropriate Development in the Green Belt

7. The appeal site is in the Green Belt, as identified on the Council's Local Plan¹ (2015) Policies Map. Core Strategy² (2011) Policy LO8 states in part that 'the extent of the Green Belt will be maintained'.
8. Paragraph 149 of the Framework sets out that the construction of new buildings in the Green Belt should be regarded as inappropriate development except in certain circumstances. The Council considers that the development comprises an engineering operation. However, Section 336 of the Town and Country Planning Act (1990) (as amended) states that a "*building*" includes any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building.' The development comprises a timber structure, including decking supported on beams. As such, it is a building within the above terms.
9. The appeal site is located within the wider 'Kingdom' site which, the evidence suggests, provides for a range of recreational and leisure activities, including cycling facilities. The appellant and the Council also both refer to a fairly

¹ Sevenoaks District Council Local Plan – Allocations and Development Management Plan (2015)

² Sevenoaks District Council Local Development Framework Core Strategy (2011)

extensive planning history. Despite this, there is insufficient evidence before me to ascertain the existing lawful use of the appeal site and as such, whether it comprises a use, such as for outdoor sport or recreation, for the purposes of applying paragraph 149(b).

10. Nonetheless, this paragraph also applies where a 'change of use' is sought. It is clear that the appellant is seeking planning permission for an area of decking for use (emphasis added) as an outdoor gym and for exercise classes (Use Class D2), which is compatible with the provisions of 149(b). It is therefore necessary to consider the effect of the development on the openness of the Green Belt and the purposes of including land within it.
11. Paragraph 137 of the Framework states that the essential characteristics of Green Belts are their openness and permanence. An assessment of openness requires a consideration of both spatial and visual aspects.
12. The development comprises an area of timber decking covering approximately 106 square metres. Much of the land which surrounds the decking is elevated above it. Taking this into account, along with the minimal height of the decking, the spatial impact on openness is almost imperceptible. As such, overall, it preserves the spatial aspect of the Green Belt's openness.
13. Visually, the site is well enclosed by existing mature trees and two existing buildings. The development is only visible from within the immediate locality. Given the limited height of the development, the intervening buildings and trees within the surrounding area and the assimilation of the development with the sloping land, it does not have a visually harmful impact upon the openness of the Green Belt.
14. There are five purposes for the Green Belt set out at paragraph 138 of the Framework, these are of a strategic nature which in brief seek to check unrestricted sprawl, prevent neighbouring towns merging, safeguard the countryside from encroachment, preserve the setting and special character of historic towns and assist in urban regeneration.
15. The Council allege that the development results in encroachment in the countryside. However, this part of the countryside is characterised by a range of buildings within the wider Kingdom site. In particular, the appeal site is largely enclosed by existing buildings, a car park and mature trees. As such, given the relatively small scale and low height of the development, it does not result in encroachment in the countryside. Neither does it harm any of the other purposes identified in paragraph 138.
16. I am therefore satisfied that the development is not inappropriate development in the Green Belt for the purposes of the Framework. It is therefore in accordance with the aims of the Framework in regard to development in the Green Belt. For the same reasons, the appeal scheme complies with Core Strategy Policy LO8, which seeks to maintain the extent of the Green Belt.

Character and Appearance

17. I have had regard to the duty under section 85(1) of the Countryside and Rights of Way Act 2000 (as amended) (the CRW Act), which requires that relevant authorities have regard to the purpose of conserving and enhancing the natural beauty of an AONB. Furthermore, Paragraph 176 of the Framework

states that great weight should be given to conserving and enhancing the landscape and scenic beauty of an AONB.

18. The Council accept that the development has a 'neutral' visual impact upon the AONB. I agree with this assessment. Given its limited height and scale, combined with the intervening mature trees and existing buildings surrounding it, the development is not visually prominent within the wider surrounding area, beyond the Kingdom site. As such, I consider that the development conserves the landscape and scenic beauty of the AONB.
19. The Council has suggested that the noise and general disturbance associated with the use of the site is harmful to the intrinsic qualities of the AONB. I accept that there would likely be increased noise associated with the use and general comings and goings. However, the scale of the development is relatively small, within the wider context of the existing recreational uses of the Kingdom site. As such, the increase in visitor numbers is likely to be minor and would not have a harmful impact upon the tranquillity of the AONB. The extent to which the development gives rise to noise and disturbance is also considered later in this decision in relation to the living conditions of neighbouring residents.
20. The Council allege that the development must both conserve and enhance the AONB in order to meet the requirements of the CRW Act. However, the statutory requirement is that the relevant authority must 'have regard' to the purpose of conserving and enhancing the natural beauty of the AONB. I have concluded that the development conserves the natural beauty of the AONB. In having regard to the enhancement of the AONB, given the small scale of the development and the very limited visual relationship between the site and wider landscape setting, it is neither necessary nor feasible for the development to enhance the AONB. Indeed, criterion 'B' of Local Plan Policy EN5 outlines that development within an AONB should only secure enhancements 'where feasible'.
21. For these reasons the development conserves the natural beauty of the AONB. As such it complies with Local Plan Policy EN5 and Core Strategy Policy LO8, which in part seek to conserve and enhance the natural beauty of the AONB. The development also accords with Paragraph 177 of the Framework, which seeks in part to ensure that the scale and extent of development in an AONB is limited and sensitively located.

Living Conditions

22. The development is used as an outdoor gym and for outdoor exercise classes. As such, the use results in additional visitors to the wider Kingdom facility, who participate in the aforementioned activities. No information has been provided by either party in relation to the number of visitors or the frequency of visits. Notwithstanding this, given the small scale of the development, it is only capable of accommodating a small number of visitors. This increase in visitors would be minor within the context of the wider Kingdom site, which is much larger and provides a wide range of recreational facilities.
23. Nonetheless, as a result of the increase in visitor numbers and the activities associated with the proposed use, it is likely to result in some increase in noise levels. However, no technical evidence has been provided by either party in relation to this matter.

24. Notwithstanding the lack of technical evidence, there is a substantial distance between the appeal site and the nearest neighbouring dwellings, with the nearest being located approximately 100m from the decking area. There is also intervening woodland between the site and these properties, which would assist in mitigating noise impacts. In addition, a condition restricting hours of operation, such that the decking is not used at night-time, will further ensure that the development does not have a significant harmful impact on the living conditions of neighbouring occupiers.
25. Interested parties have referred to disturbance from increased traffic but given that any vehicular movements would occur in the daytime and in the context of the existing use of the wider site, there would not be any significant harm to living conditions arising from noise and disturbance in this regard.
26. For these reasons, the development does not result in significant harm to the living conditions of the occupiers of neighbouring properties. As such, the development complies with Local Plan Policy EN2, which seeks in part to ensure that the living conditions of existing occupiers are protected from excessive noise.

Other Matters

27. Several interested parties have made representations in relation to the wider lawful use of the Kingdom site. However, this appeal relates to a retrospective development and use which should be considered on its own merits. Whilst there may be ongoing contention between the parties as to the lawful activities within the wider Kingdom site, the decking area and the associated use are not reliant on this matter, given that the appellant is seeking a separate planning permission.
28. An interested party has referred to the increase in vehicle movements, which they allege would be generated as a result of the proposed development. The interested party is concerned about the associated impact on highway safety and wildlife. However, the existing vehicular access has been utilised and given the small scale of the development the use does not result in a significant increase in vehicular movements. As such there is no adverse impact on highway safety or significant harm to wildlife as a result of the development.

Conditions

29. I have considered the Council's suggested conditions in light of advice contained in the Planning Practice Guidance and the tests within the Framework. As a result, I have amended some of the conditions so that they are enforceable, precise, relevant, necessary and reasonable in all other respects.
30. Despite the fact that the development has been carried out, a condition listing the approved plans is necessary in this instance to provide certainty and to ascertain the area which is the subject of the approved use.
31. A condition restricting the hours of operation of the approved use is necessary in the interests of protecting the living conditions of neighbouring residents.
32. The appellant has not indicated that they intend to install any lighting. However, the hours of operation extend into hours of darkness during winter months. As such, in the event that the appellant does decide to install

additional lighting, it is necessary to include a condition which requires that the appellant first submits lighting details to the Council for approval in writing. This condition is necessary in the interests of preserving the character and appearance of the surrounding area, including the AONB.

Conclusion

33. The development is not inappropriate development in the Green Belt. In reaching this conclusion I have found that the development preserves the openness of the Green Belt and does not conflict with the purposes of including land within it. As the development would not be inappropriate development in the Green Belt, and hence there would be no harm caused to it, it is not necessary for me to consider whether very special circumstances exist. In addition, the development conserves the natural beauty of the AONB and is not significantly harmful to the living conditions of the occupiers of neighbouring dwellings.
34. For these reasons the development complies with the development plan taken as a whole. There are no other considerations which indicate that a decision should be made other than in accordance with it. As such, the appeal should be allowed, subject to conditions.

Luke Simpson

INSPECTOR