The Planning Inspectorate

Appeal Decision

Site visit made on 11 January 2022

by Mark Caine BSc (Hons) MTPL MRTPI LSRA

an Inspector appointed by the Secretary of State

Decision date: 9 February 2022

Appeal Ref: APP/P2365/W/21/3280932
Land adjacent to Mains Lane, Bispham Green, nr Mawdesley, Lancashire

- 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 Jason Millar against the decision of West Lancashire Borough Council.
- The application Ref 2021/0612/FUL, dated 10 May 2021, was refused by notice dated 11 August 2021.
- The development proposed is described as 'To site a green shipping container connected to a series of drainage pipes laid out in a line with a suitable back stop, covered with soil.'

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr Jason Millar against West Lancashire Borough Council. This application is the subject of a separate Decision.

Procedural Matters

3. The plans and diagrams that the Council determined the original planning application against have no scale bar or dimensions on them, and are therefore inaccurate. The size, siting, design and scale of the proposal, and how much of it would be underground is therefore also unclear. Nonetheless, for the avoidance of doubt, I can confirm that my determination of this appeal has been made on the basis of the drawings submitted and the evidence before me.

4. I have taken the description of development above from the appeal form as it describes the appeal scheme in more accurate and concise terms than that provided in the application forms and the Council's decision notice. However, I have omitted the references to safety and noise as these are superfluous and not acts of development.

Main Issues

5. The main issues are:

   (i) Whether the proposal would be inappropriate development in the Green Belt;

   (ii) The effect of the proposed development on the character and appearance of the area, with specific regard to protected trees.

(iii) The effect of the proposal on the living conditions of the residents of neighbouring properties, with particular regard to noise and disturbance.

(iv) If the proposal would be inappropriate development, whether any 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 it.

Reasons

Whether Inappropriate Development

6. The appeal relates to an irregular shaped piece of land adjacent to the junction of Hall Lane and Mains Lane. It is enclosed by a man-made bund to 3 sides, and mature trees that are protected under a Tree Preservation Order (TPO). It is accessed via metal gates off Hall Lane. Although there are some houses in the locality, the surrounding area is rural, characterised by open fields, mature hedgerows and trees.

7. According to the appellant's description on the diagram entitled 'Range 2', the proposal comprises a green shipping container that is 20 feet in length and would abut a 100 foot long concrete pipe. The design and size of the backstop area that would be positioned adjacent to the other end of the pipe is unclear, but it is shown on this diagram to be the same height as the pipe. The appellant states that the pipe would be elevated above the ground level by 2 feet, and covered with soil and grass. The plans also indicate that a roughly rhombus shaped car parking area would be situated next to the shipping container.

8. Policy GN1 of West Lancashire Local Plan 2012-2027 Development Plan Document 2013 (the Local Plan) advises that development proposals within the Green Belt will be assessed against national policies. The National Planning Policy Framework 2021 (the Framework) identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness. It goes on to state that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

9. The Framework further establishes that the construction of new buildings in the Green Belt should be regarded as inappropriate, subject to a number of exceptions as set out in paragraph 149. Exception b) permits 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.

10. Paragraph 150 of the Framework also lists other forms of development that are not inappropriate development in the Green Belt provided that they preserve its openness and do not conflict with the purposes of including land within it. Amongst other things, these include b) engineering operations and e) material changes in the use of the land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds).

11. The appellant's arguments about the temporary nature of the shipping container are noted. Whilst the size and scale of this are not stipulated in the submitted plans, I am mindful that the appellant suggests that it would be approximately 20 feet in length. Furthermore, shipping-style containers are typically large structures with a substantial degree of permanence. They cannot be easily moved around a site without the assistance of plant or machinery. As such, I am of the opinion that the proposed container would not be temporary in nature but would constitute a building.

12. There is also little evidence to suggest that the shooting carried out on the appeal site and in the surrounding agricultural fields is more than being primarily a hobby/recreational activity and use incidental to the appellant, as the landowner. On the basis of the evidence before me I therefore consider that the proposal, which would be a dedicated facility for shooting, would lead to a material change of use of the land. Furthermore, the shipping container element of the proposal would be likely to have a roof and the pipe is described as being sealed and covered with soil. My understanding is that this is to ensure that a round of ammunition could not leave the site and that the shooter is not exposed to the weather elements. It thereby cannot be considered to be an appropriate facility in connection with the change of use for outdoor sport or outdoor recreation as the activity taking place would not be outside.

13. In terms of openness, I recognise that a combination of the man-made bunds, mature trees and metal gates may screen some of the proposal from views into the site. However, I have not been provided with accurate plans or the dimensions of the proposal, or the existing topography and proposed finished floor levels. As such I am unable to be satisfied that it would not be visible from the public domain, particularly above the vehicular entrance to the site.

14. I am also mindful that the appellant indicates that some of the soil from one of the bunds would be used to cover the pipe. However, there is little detail in terms of where this bund is (other than to the left of the site) or how its size, scale and form would be altered as a result of the movement of soil. It is therefore unclear whether this would offer the same level of concealment.

15. I appreciate that there are numerous drainage pipes in the Green Belt that are covered in soil below ground. However, the appellant's statement of case emphasises that the proposed pipe would be above the existing ground level. The form, bulk and massing of the shipping container and covered pipe, would therefore be clearly visible within the site and result in development where there is presently none. As such, it would inevitably result in the reduction to the openness of this part of the Green Belt.

16. Furthermore, the provision of the car park would be an engineering operation that would be likely to introduce a large exposed, bare, hard surfaced area near to the entrance into the site. When in use, parked cars would also occupy this area during certain times of the day. Although the appellant has referred to an existing area of hardstanding on the site it is not shown on any plans and its extent was not clear on my site visit due to the amount of overgrowth. The surfacing of the proposed car park, along with activity associated with vehicle movements into and out of the site would therefore undermine the openness of the Green Belt further.

17. The appellant contests the Council's measurements of the proposed car parking area, nonetheless, they have provided little evidence to substantiate what the exact size of it would be. I also note the appellant's willingness for the car park to be removed from the proposed scheme. However, this would fundamentally alter the proposal and I must deal with the application as submitted.

18. Given the failure to preserve the openness of the Green Belt in visual and spatial terms, it follows that the proposal would impact on the Green Belt purpose of safeguarding the countryside from encroachment as set out at paragraph 138 of the Framework. It would therefore be inappropriate development which is, by definition, harmful to the Green Belt.

Character and Appearance

19. Local Plan Policy EN2 states that to assist the Council in decision-making, sufficient information should be submitted alongside proposals for development to enable the Council to assess the effects on trees. The level of detail should be in accordance with BS.5837:2012 – Trees in relation to design, demolition and construction, or any subsequent document.

20. The appeal site contains a number of protected mature trees that make a positive contribution to the visual amenity and verdant rural character of the area. The appellant states that no trees will be removed and that no excavation will take place near to their roots. I am also mindful that the Council's Tree Officer's consultation response indicates that if the pipe was to be located centrally within the site that it would be unlikely to impact on the trees.

21. However, the plans have not been amended to show this, and I have little substantive evidence before me to sufficiently demonstrate that these trees would be adequately protected during or after the construction of the development. In the absence of any compelling evidence to the contrary I am therefore unable to be certain that the proposed construction would not harm the future health of these trees, the loss of which would cause further harm to the character and appearance of the area.

22. It would therefore conflict with Local Plan Policies EN2 and GN3. Amongst other matters, these require proposals to be of high quality design, having regard to the historic character of the landscape, and to preserve and enhance West Lancashire's Natural Environment.

Living Conditions

23. The appellant has put forward that the green shipping container will serve as the shooting point and that a round fired in an insulated container down a pipe would be less noisy than a round fired in the open air. On my site visit I also noted that the nearest residential property was over 250 metres away. Nonetheless, I am mindful that the nature and intensity of the noise associated with a shooting range and its audibility could still have the potential to result in frequent noise complaints from the residents of these properties.

24. This is because the noise from the proposed use would be intermittent and percussive. However, there is little firm technical evidence or verification through modelling to demonstrate the likely noise levels that would be generated by the proposal and the impact of mitigation required. This would usually be in the form of a Noise Impact Assessment and include existing background noise readings, predicted gunfire sound levels and the frequency of

the proposed use. Given the lack of detail in respect of the design of the proposal I am also unable to establish whether the proposed facility would contribute to reducing and achieving acceptable noise levels from gun shots.

25. In addition, there is little conclusive evidence to demonstrate that the noise generated by the appellant's continuing use of the site to shoot game and for target practice would be more intensive and disturbing to local residents than the noise that would be associated with the proposal. This consequently limits the weight that I can apply to this argument.

26. In reaching my conclusions on this issue I have had regard to a planning application and noise table for a pipe range that the appellant has referred me to. I am informed that this was approved with no permitted open air shooting. However, I have not been provided with the full details of this case so cannot be certain that it is directly comparable to the appeal proposal.

27. On the basis of the evidence before me I am therefore unable to conclude, with a sufficient degree of certainty, that the occupiers of neighbouring residential properties would not be disturbed by the sound from gunfire associated with the proposal. As such I find that the proposal would have a harmful effect on the living conditions of the residents of neighbouring properties, with particular regard to noise and disturbance. It would therefore conflict with Local Plan Policy GN3 in this respect, which amongst other things, requires proposals for development to retain reasonable levels of amenity for the occupiers of neighbouring properties.

Other Considerations

28. The safety protocols put forward by the appellant in respect of the proposal reducing ricochets and ensuring that bullets would not leave the site are noted. Albeit these are more means to offset impact rather than tangible benefits.

29. The appellant has suggested that a storage container the same size and scale as the proposal, but used for agricultural purposes, could be positioned on the appeal site without the need of planning permission. Nonetheless, given the uncertainty about the lawful use of this land it is unclear whether permitted development rights would be available to the appellant. There is also little before me to demonstrate that such an agricultural storage container would be as substantial as the proposal before me, which includes a 100 foot long covered pipe, along with some form of backstop. There is also no substantive evidence to indicate that there is a significant probability that this would happen should this appeal be dismissed. I could therefore only attribute this matter very limited weight.

30. My attention has been drawn to other examples and photographs of shipping containers in the borough and I note the appellant's reference to other types of tube range in the Green Belt. However, I do not have full details of these developments or the circumstances that led to them being in situ and so cannot be sure that they represent a direct parallel to the appeal proposal, including in respect of scale, location, use and development plan policy. I therefore attribute minimal weight to these factors.

31. It is argued that the proposal would not have an unacceptable effect in respect of ecology, wildlife and flood risk. However, these matters did not appear to be

contentious in the appeal and the absence of harm in these respects would be a neutral matter.

32. The appellant's concerns about the Council's handling of the case are noted. In particular, why the application was validated, and the lack of communication before and during the time the application was being determined. I have been made aware of a Freedom of Information Request in respect of the TPO making process, which has also been reported to the Ombudsman. However, these administrative matters are for the Council and the appellant to resolve. As such, they have had no bearing on my determination of the appeal. I have only had regard to the planning merits of the case, on the basis of the evidence that is before me.

Other Matters

33. The appellant states that the proposal would not be a commercial operation and that it would be for their personal use only. They also contend that they have used the site to shoot shotguns through to rifles for the past 15 years. Reference has been made to a Lancashire firearms licensing approval of the site for the use of a 22 RF rifle in 2015, and a subsequent 'open ticket' to allow the appellant to use their rifle on land that they own or sees fit to use with permission. In addition, it is uncontested that planning permission was granted for infilling the Old Marl Pit with inert material on the appeal site in 1973 (Ref: 8/6/15029). Nonetheless, it is not within my remit to determine the existing lawful use of the land within the context of an appeal under section 78 of the Town and Country Planning Act 1990 (the Act). However, I have considered the evidence so far as it is material to this appeal.

Conclusion

34. I have identified that the proposal would be inappropriate development in the Green Belt. To which I would ascribe substantial weight as per the Framework. In addition, it would cause harm to the character and appearance of the area (protected trees specifically), and it has not been demonstrated that the proposal would not cause unacceptable harm to the living conditions of neighbouring residents. Even when taken together, the weight I would attach to the other considerations would not clearly outweigh the harm that the proposal would cause. Consequently, the very special circumstances required to justify the proposed development have not been demonstrated. As a result, the proposal would conflict with Local Plan Policy GN1 as set out above, and with Section 13 of the Framework which both seek to protect Green Belt land.

35. The appeal scheme would conflict with the development plan and there are no material considerations worthy of sufficient weight, including the approach of the Framework, which would indicate a decision otherwise in accordance with it. The appeal should therefore be dismissed.

Mark Caine

INSPECTOR