



Appeal Decisions

Site visit made on 19 May 2021

by Roy Curnow MA BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th February 2022

Appeal A Ref: APP/P0119/C/20/3257042

Land at Bristol Activity Centre Hollywood Lane Easter Compton

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Bristol Activity Centre Limited against an enforcement notice issued by South Gloucestershire Council.
 - The enforcement notice, numbered COM/13/0851/OD/3, was issued on 22 June 2020.
 - The breach of planning control as alleged in the notice is Without planning permission, the change of use of land from outdoor paintball games area (sui generis) and nil use to outdoor activity centre (sui generis) including engineering works comprising construction of a quad biking track.
 - The requirements of the notice are: (1) Cease the use of the land as an outdoor activity centre aside from the area of land granted permission under application reference PT11/2437/F (attached as Annex 2), which may be used for paintballing (sui generis) use only in accordance with permission PT11/2437/F and the conditions attached to it; (2) Restore the land outside of the land granted permission under application reference PT11/2437/F (attached as Annex 2), to its condition before the breach took place; and (3) Remove the quad bike track (as shown in Annexe 3) and return the land to its condition before the breach took place.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matters

2. The appeal form included a further appeal by a Director of the appellant company. The company's agent subsequently confirmed that only the above appeal would be taken forward.
3. A site visit was arranged for the 17 November 2020. As the Appellant did not attend, and the site was inaccessible, this was aborted. When I visited on the date set out in my Header, the Council did not attend. It appears that both absences were the result of parties not receiving notification of the site visits. However, as representatives of the Appellant company were present on the second occasion, I was able to access the site. Therefore I visited the site on the basis of an Access Required Site Visit. The Council were asked if they objected to the appeal being taken forward after this form of visit; it confirmed that it did not.

4. The site lies in the Bristol and Bath Green Belt ('GB'). Although the Council does not refer to harm to the GB in its Notice or statement, given the great importance that the Government attaches to the protection of the GB, it is a matter that I must address.
5. Paragraph 147 of the Framework states that "Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances". Paragraph 150 identifies that, amongst other things, "material changes in the use of land (such as changes of use for outdoor sport or recreation...)..." are not inappropriate development in the GB, so long as they preserve its openness.
6. Neither party has identified that the development is inappropriate, nor that it affects openness. On the basis of the information before me, I find that I have no reason to find otherwise.

Reasons

Ground (a)

7. An appeal made on this ground is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted.
8. The Main Issues are the effect of the development on:
 - Matters of nature conservation interest;
 - Trees covered by the (Woodlands adjacent to Spanorium Farm, Berwick Lane, Easter Compton) Tree Preservation Order ('TPO')
 - The health of users of the Activity Centre, with particular regard to past activities on the site; and
 - Whether the site is safely accessible to its users without undue reliance on the use of private cars.

Site and Relevant Planning Background

9. The site lies close to the edge of the urban area of Bristol, effectively separated from it by the M5. It is accessed by way of a lane that runs from the public highway, Hollywood Lane. What might be termed the site proper, is irregularly shaped in plan form and, I am told¹, runs to 3.9ha in area. The bulk of the site has an undulating landform. This appears to be as the result of previous activities there. The northern end of the site falls away steeply and is well-wooded, with thick undergrowth.
10. The Council granted planning permission PT11/2437/F on 27 July 2012 for the "Change in use of land from Army camp (sui generis) to outdoor paintball games area (sui generis) as defined in the Town and Country (Use Classes) Order 1987 (as amended). (Retrospective) (Resubmission of PT10/2964F)". The evidence shows that the boundary of the land to which that permission related largely accords with the site before me. The main difference being that the sloping wooded area at the appeal site's northern end, whilst being in the then appellant's ownership, was outside the application site.

¹ Appellant's Grounds of Appeal

Nature Conservation

11. Condition 2 attached to PT11/2437/F has relevance to this main issue. It reads as follows

"The development hereby approved shall be implemented and the use carried out strictly in accordance with the Ecological Management Plan (dated July 2011) and prepared by Aherne Ecology as submitted to the Council on 1st August 2011".

It was attached for the following reason

"To ensure the use is carried out in an appropriate manner and in the interests of the health and vitality of the Ecological Interest contained within the site; and to accord with Policy L1 of the South Gloucestershire Local Plan (Adopted) January 2006".

12. The Ecological Management Plan ('EMP') identified a "mosaic of habitats" across the site. Amongst these, it recognised that the sloping wooded area at the northern part of the site lies within the non-statutory designated Spanorium Hill Site of Nature Conservation Interest ('SNCI'). Paragraphs 1 and 4 on page 11 of the EMP refer to the erection of a post and rail fence to separate the area of the SNCI from the area where paintball games would be undertaken. Though not explicit, it is clear that this is to aid the beneficial management of this part of the SNCI.
13. I have not been told whether the post and rail fence was erected; however, it was not in-situ at the time of my site visit. Similarly, I have not been given full details as to how much of the work that was recommended in the EMP was actually undertaken. There is, however, evidence that the Appellant has undertaken considerable planting at the site, including what I saw at my site visit.
14. What the evidence from application PT11/2437/F, and in particular the EMP, shows is that much of the site either had good biodiversity value or had the potential for this. In terms of the latter areas at that time, the biodiversity value could have been further improved through relatively minimal interventions highlighted in the EMP.
15. The EMP pre-dates the latest iteration of the Government's National Planning Policy Framework ('the Framework') and the Council's development plan. However, its approach mirrors the guidance set out in those documents. The South Gloucestershire Local Plan Core Strategy, adopted January 2014, ('CS'), advocates an approach whereby there is a requirement in its Policy CS1 for proportionate information to be submitted to demonstrate that, amongst other things, existing features of nature conservation are safeguarded and enhanced. Following on from this, CS Policies CS9 and CS34 expect new development to protect, conserve and enhance the natural environment, avoiding or minimising effects on biodiversity. The terms of Policy PSP19 of the South Gloucestershire Council Policies, Sites and Places Plan, Adopted November 2017, ('PSPP') are similar. The approach in the development plan is consistent with guidance in chapter 15 of the Framework.

16. The EMP stands in marked contrast with the 'Ecology Technical Note'², ('ETN'), submitted by the Appellant. He describes it as "refreshingly brief". Whilst this might be the case, it is not comprehensive and is apparently based mainly on a walkover of the site. It includes an 'Ecological Assessment' of 7 paragraphs, some of which are a single sentence, and 4 'Recommendations'.
17. Although it is not determinative in my decision, it is unusual in that it does not inform the reader of the name or qualification of the ecologist that undertook the visit.
18. Its first three recommendations would appear to represent work that would be likely to benefit the site's biodiversity. Its fourth, that to re-site certain activities would largely accord with the terms of the EMP. However, the EMP was completed some years ago and its terms cannot be relied upon now. The situation regarding biodiversity on the site needs to be updated and assessed in the light of the activities that are now taking place, and are proposed to be retained.
19. The onus is on an applicant to show that what he proposes would accord with the terms of the CS policies. This is not adequately done in the ETN. For example, it does not reference protected species, such as badger, reptiles and great crested newts, as was the case with the EMP. It which highlighted that the site had the potential to be used by those species. I would have expected the ETN to take a comprehensive approach similar to the EMP.
20. Given the previously identified biodiversity value of the site, the ETN is not a proportionate assessment of the site's potential, and thus does not demonstrate that features of nature conservation would be protected, safeguarded and enhanced.
21. I do not say that the biodiversity potential of the site rules out the activities that have been undertaken, in principle. I simply do not have a suitable environmental assessment before me to allow the approval of the scheme. The Appellant cites cases where planning permission has been granted in similar circumstances by the Council and the appeal allowed at Berwick Lodge Farm³. I have not been given sufficient details of those cases to allow me to conclude that the case before me should be allowed as a consequence of those decisions and I note that the appeal decision pre-dated the current development plan policies.
22. For the above reasons, I find that insufficient evidence has been provided to demonstrate that increased use of the site protects, conserves or enhances existing features of nature conservation as required by CS Policies CS1, CS9 and CS34, PSPP Policy PSP19 and chapter 15 of the Framework.

Health of users of the activity centre

23. Evidence shows that the land has been used in the past for the tipping of waste. The Council suggests that lindane and asbestos are possibly on the site, though in the absence of evidence of this I give the suggestion little weight. However, I am told that a Phase 1 contaminated land survey was undertaken in 2012, in respect of application PT11/2437/F. Twelve boreholes were drilled, with one showing signs of carcinogenic waste. That area of land was

² Environmental Gain Ltd – Dated 28/10/20

³ POINS Reference: APP/P0119/C/06/2013593

remediated, and planning permission was granted without a condition requiring further work in respect of contaminated land.

24. I have not seen the contaminated land survey; therefore, I cannot be sure where those boreholes were drilled, and how they might relate to the development that is proposed in this appeal. However, I note that the development permitted by PT11/2437/F was for a change of use of land from army camp to a paintball games area and that the Officer's report made it clear that permission was being granted for the change of use only. I have not been given evidence to show that engineering operations were permitted. Such operations have occurred here in the formation of the quad bike track. It is probable that further operations would be required if the Appellant's suggestion to re-site the quad bike track was followed.
25. As contaminants have been found on the site, the terms of PSPP Policy PSP21 are relevant. Its section B allows for the use of land which may be affected by contamination where adequate remedial measures are taken to ensure that the site is suitable for the proposed use and will remain so. Amongst other things, it sets out that development proposals should address any existing contamination of the land and propose appropriate mitigation measures, to ensure that the site is suitable for the proposed use. Its supporting text sets out that proposals for development should be accompanied by an appropriate level of supporting information. This has not been submitted in respect of the proposal before me.
26. For the above reasoning, I cannot be sure that the development would protect the health of users of the Activity Centre. Given the possibility of harm to their health, I find it necessary to take a precautionary approach. Therefore, permission for the quad bike part of the appeal proposal should be refused on the basis of a lack of information contrary to PSPP Policy PSP21.

Trees

27. The Notice draws attention to the proposal in the EMP to fence off the SNCI, which includes an area of broad-leaved woodland. This wood, which adds greatly to the character and appearance of the area, lies on land that falls away steeply at the northern end of the site. Amongst the reasons for issuing the Notice is the activities undertaken in the SNCI are likely to damage trees protected by the TPO. At my visit, I saw that clay pigeon shooting, as well as archery and crossbow shooting, took place in and around these trees.
28. The clay pigeon shooting points face the steep downward slope. As traps are flown upwards, participants fire out over the trees that are set lower down the steep slope.
29. Archery and crossbow shooting take place lower down the steep slope, amongst the trees. Simple, wooden-framed tracks have been formed through the sloping woodland that lead to a number of small shooting points.
30. People undertaking these activities shoot towards targets set at a low level. Very close behind these, suspended from trees, are curtains of thick netting with a very fine gauge. These are designed to stop arrows that miss the targets from travelling far past them. In this way, trees beyond are protected, though some trees were located between the shooting area and the targets.

31. The Council did not draw my attention to any specific damage, only the possibility of this occurring. Although difficult to see clearly, due to the netting and undergrowth, I saw little damage to trees in the archery/crossbow areas. I did see some light scarring to a few trees, but I could not conclude that this was caused by arrows or bolts.
32. Elsewhere, axe throwing took place facing away from trees, so could not affect them.
33. From the evidence before me, including what I saw on-site, it has not been demonstrated that the activities cause harm to the protected trees. The Appellant has shown that it is possible to prevent harm occurring through the positioning of shooting areas, targets and netting. As such, I find that the use of the land accords with the terms of Policy PSP 3 of the South Gloucestershire Local Plan 'Policies, Sites and Places Plan', adopted November 2017, ('PSPP'), that seeks to avoid loss or damage to valuable trees.

Accessibility

34. The site is served by Hollywood Lane, which runs north-westwards from the A4018, a busy dual carriageway serving the large commercial area at Cribbs Causeway and housing development in the area. The A4018 is flanked by lit footways and cycle paths and there is a safe, traffic light controlled crossing near to the junction of the two roads. Buses run along this road.
35. The character and nature of Hollywood Lane has changed considerably in the time since the Notice was issued. At that time, it was a through road that gave access to the rural area to the northwest of Bristol. However, the road has been closed to through vehicular traffic at a point just beyond the access to the site and thus is now a cul-de-sac. It is not lit, nor does it have – save for a short length under the bridge carrying the M5 – properly constructed footways. It is a defined and signposted cycle route, being part of a long-distance route from Bristol to the Severn Bridge and beyond.
36. Essentially, the Council's position is that an increase in activities on the site would be likely to lead to an increase number of people visiting and, consequently, an increase in private vehicle usage. Although no highway statement was produced it says that, in discussions, its transport team considered that the site was not accessible by public transport, on foot or by bicycle and has the potential to have impacts on highway safety.
37. As they need space, and as their use might conflict with residents' living conditions, developments such as that which is run at the site are likely to be sited in areas where reliance on car travel is most likely. I am told that this was the position that was reached by the highway authority in relation to the application for a paintball facility on the site. The Council did not contest this evidence, so I take it to be the case.
38. The Framework requires development to provide safe and suitable access to the site for all users, and that if there would be an unacceptable impact on highway safety, development should be refused. PSPP Policy PSP11 requires that commercial development is located on safe, useable walking routes, that are an appropriate distance to a suitable bus stop facility, served by appropriate public transport services, linking to major settlement areas.

39. Bus stops on the A4018 are reported by the Appellant to be 600m and 670m from the site, and the Council does not counter this. Neither the policy, nor its supporting text, define 'appropriate distance' in terms of commercial development. The supporting text sets out that an appropriate walking distance for residential development to a bus stop served by Metrobus services would be between 400 and 800 metres. Although not specific to this development, I can see no reason why these parameters cannot be applied to this development. Therefore, I find that the development accords with this part of the policy.
40. Notwithstanding the above, given the activities on the site numbers of customers using the bus or arriving on foot would be limited. The Appellant has explained how the covid 19 pandemic changed travel patterns to the site. Prior to its onset, most people arrived in buses, minibuses or shared cars. Given that the events staged at the site would be likely to appeal to groups of people who know one another, this seems logical. In the periods where the business could trade after the onset of covid 19, the main mode of transport changed to individuals using cars. Whilst it has not been argued, it seems likely that as restrictions continue to be lifted so travel patterns would return to those prior to the pandemic. Should this occur, as seems likely, users will nonetheless have the option of taking public buses to the A4018 and proceeding to the site along Hollywood Lane. The site is accessible by well-signed and safe cycle routes from quite far afield.
41. The Council does not expand on its assertions regarding the impacts of the development on highway safety. I have been provided with no data showing accidents along Hollywood Lane. Since being closed off, it has become a very quiet lane. In my opinion, after visiting the site, it presents little danger to its users, whether on foot, bike or in motorised transport.
42. For the above reasons, my finding on this issue is that the development would have the required accessibility to public transport provision and would offer suitable opportunities for customers to access the business by bicycle or on foot. Irrespective of their mode of transport, the route to the site would provide a safe and suitable access and there would not be an unacceptable impact on highway safety. Therefore, the development accords with the terms of PSPP Policy PSP11 and the Framework.

Planning Balance

43. The Appellant sets out the value to the community of the Activity Centre and has supplied me with copies of policies, in addition from those that I have mentioned above, that it says supports the appeal. CS Policy CS24, whilst not specifically mentioning the activities that occur on the land, supports the provision of outdoor sport and recreation facilities. I agree that it lends support to the appeal proposal. I find similarly with regard to that part of CS Policy CS34 that sets out to protect rural employment sites and facilities.
44. CS Policy CS5 sets out that significant development will occur on the northern fringes of Bristol; CS Policy CS26 relates to the provision of a new neighbourhood of 5700 dwellings at Cribbs/Patchway, which I am told will be within 500m of the site. The former lends a degree of support to the principle of the development and the latter development would quite likely bring houses within walking distance of the site.

45. I agree that these policies, which accord with the terms of the Framework, lend support for the development and must be weighed against the negative aspects of the scheme that I have previously identified.
46. I find that the health of people using the site has to be of paramount importance. Furthermore, for the reasons given above, I afford greater weight to the nature conservation provisions of the development plan and Framework than I do to the benefits arising from the development. However, my decision does not say that the development is wrong *per se*; it reflects the fact that I have not been supplied with adequate evidence to show that the health of the site's users and the nature conservation potential of the site would not be adversely affected. It might be possible to demonstrate this, but it has not been done here.
47. Therefore, on balance and taking the terms of the development plan as a whole, I find that the policies in favour of the proposal do not outweigh the reasons I set out above.
48. The Appellant states that it would be willing to accept suitably worded conditions regarding the proposed ecological improvement and relocation of the Quad Bikes and Axe and Knife throwing into the central activity area. The Council suggested that conditions are imposed to ensure that the habitats outlined within the EMP submitted alongside application PT11/2437/F that have been lost are replaced, and the SNCI and the associated trees are adequately protected.
49. Given that the EMP is now some 12 years old, I cannot be sure that it reflects the current situation regarding the biodiversity value of the site. On the other hand, the ETN is inadequate for the reasons I have set out. Therefore, a condition requiring compliance with either, or their recommendations, would fail the 'relevant to the development' and 'reasonableness' tests in paragraph 56 of the Framework.
50. For the reasons set out above, the Ground (a) appeal is dismissed.

Ground (f)

51. An appeal under this ground is that that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
52. Here, the Notice was issued under S173(4)(a) of the Act; that is to say to remedy the breach by making it comply with the terms of an earlier planning permission.
53. The Appellant's case that the requirements of the Notice are imprecise. Furthermore, it requires land outside the area granted planning permission by PT11/2437/F to be returned to its condition before the development took place and this would require the removal of trees that have been planted there.
54. The Notice is directed against the use of the land and the engineering works associated with the creation of the quad bike track. Established case law sets out that an EN directed at an unauthorised material change of use may lawfully require reversion to the pre-change position as well as the removal of

operational development integral to it. The planting of trees is not operational development and, therefore, cannot be attacked by the Notice, which I find to be suitably precise.

55. I find no reason to correct or vary the Notice. Therefore, the Ground (f) appeal fails.

Conclusion

56. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Roy Curnow

Inspector