



Appeal Decision

Hearing held on 10 May 2022

Site visit made on 10 May 2022

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 June 2022

Appeal Ref: APP/P3040/W/21/3281233

Overgrown Acres, Cotgrave Road, Normanton-on-the-Wolds, Nottingham, Nottinghamshire NG12 5PE

- 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 Ms Michelle Woodward against the decision of Rushcliffe Borough Council.
 - The application Ref 20/00810/FUL, dated 2 April 2020, was refused by notice dated 11 June 2021.
 - The development proposed was originally described as 'Seasonal change of use. Erection of 3 tipis each 10metre radius as a triangle in the corner of grass grazing paddock from 1st May to 30th September annually to allow for 28 events to be held e.g. wedding/anniversary plus pagoda for wedding ceremonies'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. At the hearing, it was confirmed that the pagoda, referred to in the original description of the proposal on the planning application form, no longer forms part of the description of the development. I sought clarification on the proposed site layout as the range of drawings submitted included some variances in terms of the precise position and number of existing and proposed structures. It was agreed between the parties that drawing no. OA13 was to be considered, albeit with a reference to 'camping' removed. This plan confirms amongst other things that each of the proposed tipis would actually have a diameter of 10.3 metres and not the dimension detailed in the original description. I have considered the appeal on the basis of these confirmed matters.
3. The original decision of the Council to grant a temporary planning permission for the proposal was subsequently quashed by the High Court. Whether or not the tipi bases and an associated acoustic barrier were installed before the original decision was quashed, given their continued presence on the site, I have assessed the proposal on the basis that planning permission is sought part retrospectively.

Main Issues

4. The main issues are:

- (i) Whether or not the proposal is inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;
- (ii) The effect of the proposal on the openness of the Green Belt;
- (iii) The effect of the proposal on the living conditions of nearby residential occupiers with particular regard to noise and disturbance; and
- (iv) If the proposal is inappropriate, whether the 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 the development.

Reasons

Whether or not inappropriate development in the Green Belt

- 5. Policy 21 (Green Belt) of the Rushcliffe Borough Council Local Plan Part 2: Land and Planning Policies (2019) (LPP2) confirms amongst other things that applications for development in the Green Belt will be determined in accordance with the Framework.
- 6. The Government attaches great importance to Green Belts and the construction of new buildings is inappropriate in the Green Belt. Exceptions to this are set out at paragraphs 149 and 150 of the Framework (2021).
- 7. Due to the fixed position of the tipi bases and the degree of permanence of the tipis that would be erected upon them for 5 months of the year, the proposal would as a matter of fact and degree include buildings. Even if I were to reach an alternative conclusion in this respect and was to consider the proposal as being solely for a change of use, as detailed below, the proposal would not preserve the openness of the Green Belt. In addition, there would also be conflict with one of the purposes of the Green Belt, namely, to assist in safeguarding the countryside from encroachment. In these respects, the proposals do not fall under any of the exceptions listed within the Framework and therefore constitute inappropriate development.
- 8. Notwithstanding my own assessment, it was confirmed at the hearing that the main parties are also in agreement that the proposal constitutes inappropriate development.
- 9. The Framework details that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

The effect on the openness of the Green Belt

- 10. Paragraph 137 of the Framework sets out the essential characteristics of Green Belts, which are their openness and permanence. The Framework confirms that one of the purposes of the Green Belt is to assist in safeguarding the countryside from encroachment. It has been held in the High Court that openness is epitomised by the lack of buildings or development. Openness can have a spatial aspect as well as a visual aspect.

11. At the hearing, the main parties clarified that some of the existing structures on the site, and the plastic grass reinforcement grid which provides access to the proposed parking area, either already have planning permission, were subject of a separate planning application or were deemed not to require permission. Even when these are excluded from my assessment, the development undoubtedly has a spatial impact on the openness of the Green Belt in terms of the areas permanently occupied by the tipi bases and the acoustic barrier that has been installed. The volume of the tipis would also have a spatial impact when they are in place between 1st May and 30th September annually. The ancillary catering tent, mobile toilets and mobile bar that would be brought on and off the site between events would have a more transient spatial impact.
12. When I visited the site, the tipis were not in their proposed position on the timber bases but were erected close to this area. I was able to appreciate the relationship of the site with its surroundings from various vantage points along Cotgrave Road and Cotgrave Lane. In these views, I saw that the site is heavily screened by trees and other mature vegetation. This vegetation would likely be in leaf during the proposed months of operation. Therefore, even accounting for the alternative position of the tipis during my site visit, views of the development from the road would be heavily filtered by the soft landscaping which borders the site.
13. The seasonal erection of the tipis means that they would be in situ at times of the year when weather conditions are more likely to encourage use of 'Footpath 1 Clipston (On The Wolds)'. From the higher ground levels on this footpath, I was able to obtain clear views towards the site. At those distances the perception of scale meant that the tipis were not a dominant feature within the landscape. Even so, their individual triangular form could be appreciated and appeared conspicuous compared with the more traditional building forms visible in the wider landscape and the prevailing less developed context of surrounding fields. This view is depicted on 'Photoviewpoint EDP 6' within the appellant's Landscape and Visual Appraisal (November 2021). I accept that when re-sited on the tipi bases, it is likely that the trees within the appeal site would provide a more filtered view of the tipis thereby reducing the visual impact of the tipis on openness.
14. The appellant agreed with the Council at the hearing that associated activity can contribute to the effect of a development on the openness of the Green Belt. In that regard, associated lighting, and vehicles manoeuvring and parking within the site also have the potential to draw attention to the development. Any related effect in these respects would be limited to times when events are taking place.
15. I conclude, the proposal would result in encroachment into the countryside and taking both the spatial and visual effects into account would have a modest effect on the openness of the Green Belt.

Other harm – noise and disturbance

16. The nearest dwellings to the site are situated on the opposite side of Cotgrave Road and are set back within their plots. The nearest neighbouring dwellings on the same side of Cotgrave Road are situated to the east beyond intervening fields. I visited the site both on the morning of the hearing and after the hearing had been closed. During both visits, Cotgrave Road was heavily

trafficked and the sound of vehicles dominated the noise climate in the vicinity of the appeal site. I acknowledge that this only represents a snapshot of the noise environment in the vicinity of the site. This is particularly the case given that my visits coincided with the morning and evening commutes and the traffic levels would have had a considerable influence on the background noise levels at those times.

17. The Council's Environmental Health Officer confirmed during the planning application process that there should be no statutory noise nuisance as a result of the development and no adverse impact on residential amenity from noise level breakout from the site. Since then, noise monitoring work has been undertaken during 12 events at the site. This assesses noise levels during events with new noise control measures implemented, including a zonal array speaker system used to carefully control amplified sound and the way this is distributed during events.
18. The zonal array speaker system was in operation during my post hearing site visit. I was able to experience that there was a significant difference between the sound levels within the confines of the tipis and those outside within the appeal site. When I stood in close proximity to the site access and the nearest residential frontages on Cotgrave Road, the music being played on the system was not audible.
19. Notwithstanding the above, I am unable to verify whether the zonal array speaker system was being operated at the same levels that were monitored by the appellant's noise consultant during the events they monitored. There are also other factors related to the proposal which have the potential to influence levels of noise and disturbance in the area. These include for example the raised voices of people enjoying themselves at an event, car doors, engines starting and vehicles travelling to and from the site. In these respects, I am reliant on the technical evidence provided by the appellant. In that regard, it has been confirmed that the noise monitoring was set up to capture all noise from events.
20. Third-parties have provided anecdotal evidence to suggest that noise has been perceptible during previous events and that this has had a harmful effect on their living conditions. I do not doubt that there have been times when noise from events has been perceptible. However, the evidence before me indicates that although some noise will be audible during events, it is likely that this would be at the Lowest Observable Adverse Effect Level (LOAEL) and when assessed against the existing noise climate when no event is occurring it would more often be at the No Observed Effect Level (NOEL). A noise management plan could be made a condition of planning permission. This would ensure that the mitigation measures that were in place when the site was monitored would also apply to future events.
21. Copies of comments made on the internet by several people who have attended events have also been provided. Third-parties suggest that this indicates that amplified levels and cheering and clapping were carefully controlled at the time when monitoring was undertaken. However, these are individual accounts and cannot be verified. The Council has not disputed the accuracy of the technical noise information recorded or the methodologies employed. Without any objective evidence to demonstrate otherwise, nor do I.

22. There is a distinction to be made between noise which can be measured, and levels of disturbance. At the hearing, the appellant confirmed that the site has a capacity for 75 cars. I was told that several previous events on the site had over 150 people attending with one recording 226 people when employees were included. When events attract large numbers, this has the potential to increase the perception of activity on the site.
23. However, I am mindful of the significant levels of daytime traffic on Cotgrave Road. The numbers arriving in association with events are unlikely alone to result in significant levels of disturbance above the established movements during the day. The substantial screen planting between the area where events take place and Cotgrave Road in addition to the intervening distances to the nearest residential properties further reduces the perception of activity from outside the site.
24. With regards to the potential for disturbance as those leaving events pass residential properties on Cotgrave Road, the noise appeal statement suggests that the noise climate is not considered to be tranquil until after 01:00am when traffic lulls become more prolonged. Events are proposed to finish by 23:00pm and the 'Traffic Movements' data provided confirms that the peak traffic movements relating to events took place between 23:00pm and 00:00am and ranged between 14 – 40 vehicles. That equates to average increases in traffic of 17% eastbound and 25% increase westbound. The evidence before me indicates that a 25% increase in traffic would result in a 0.7dB increase in noise and that this would be imperceptible. The appellant's noise consultant has advised that a 3dB increase would be noticeable during those hours and that this would require a doubling of the vehicle numbers.
25. Taking all the above factors into account, I am not persuaded that events resulting from the appeal proposal would be likely to give rise to significant adverse impacts on health and the quality of life of local residents.
26. I therefore conclude that, the development would not have a materially harmful effect on the living conditions of nearby residential occupiers with particular regard to noise and disturbance. In that specific regard it would comply with the amenity requirements of Policy 10 (Design and Enhancing Local Identity) of the Rushcliffe Borough Council Local Plan Part 1: Core Strategy (2014) (LPP1) and Policy 1 (Development Requirements) of the LPP2.

Other Considerations

27. The use of the site for events under permitted development rights would require the dismantling and removal of the tipis and their bases in between events. Under permitted development rights, the site could only be utilised for such a use for 28 days in a calendar year and some of these days would be required for pre-event set up and post-event removal of the associated structures. I heard that, with effective scheduling, up to approximately 20 events a year could take place under this fallback scenario.
28. In contrast, the appeal proposal would result in tipis being in place for 153 days annually and the timber bases would permanently occupy the site. Up to 28 events could be held with the associated activity. Therefore, I agree with the Council that the proposal would have a significantly greater degree of permanence than the fallback position and therefore a greater effect on the

openness of the Green Belt. I therefore attach limited weight to the fallback position.

29. The appellant has a smallholding on the site. The Framework supports a prosperous rural economy and diversification of agricultural and other land-based rural businesses. Policy 5 of the LPP1 also encourages economic development of an appropriate scale to diversify and support the local economy. I have carefully considered the written and verbal evidence of the appellant and those supporting the proposal. I accept that the events business would make a positive contribution to the local economy. This includes direct employment related to the events on the site as well as the indirect benefits for businesses and employment as a result of related expenditure in the wider area. I am also aware of some of the positive experiences of those who have held events at Overgrown Acres.
30. Events held at Overgrown Acres include weddings, a sector which makes a substantial contribution to the national economy. Even so, the appeal proposal would only account for a very marginal percentage of this industry. Any benefits for the national economy are likely to be even more minimal in terms of the uplift in revenue when compared with the fallback position.
31. The appellant's business, like many others in the service industry, would have lost potential income as a result of the Covid-19 pandemic. I also acknowledge that the events business has been successful in the past and that making it a more permanent arrangement is likely to mean that the business prospers with positive economic consequences for the wider local economy. However, there are no detailed financial appraisals before me to suggest that the appellant's business or other local businesses would not be economically viable without the additional revenue that might result from the proposal. Overall, the economic benefits of the proposal therefore carry moderate positive weight.
32. With regards to any demand in the area for a tipi based events venue, some of this would already be catered for through the use of the site under permitted development rights. Even if there is no similar offering elsewhere in the Borough, there is no evidence to suggest that demand is such that it could only be met by locating such a business in the Green Belt or indeed on the appeal site.
33. The support that the appellant has given to charities and community causes is commendable. Their intention is to offer 5 event days to charity and community events. However, this could already occur under the sites permitted development rights and the take up of this opportunity cannot be guaranteed. The appellant agreed at the hearing that limited weight could be attached to this possibility.
34. My attention has also been drawn to other developments in the Green Belt. These include glamping sites in Stanton on the Wolds as well as one instance of a barn being converted to a wedding venue which included glamping and tipis. The Council confirmed at the hearing that the glamping proposals were smaller in scale with the potential to attract much fewer numbers. The conversion of an existing barn in the Green Belt is not the same as the proposal before me. In any case, no detailed information has been provided as to the material considerations which led to those particular cases being granted planning permission.

35. The appellant has already directed revenue from the business towards site maintenance with an ongoing aim to improve the site's long-term biodiversity credentials. The appellant also confirmed at the hearing that they would be agreeable to a condition requiring a biodiversity enhancement scheme to achieve a biodiversity net gain of no less than 10% as determined by the v3.1 Defra metric. The potential for bio-diversity net gain is a matter to which I afford some positive weight in the planning balance.
36. Even if I were to agree that the proposal would not be materially harmful to the character of the landscape, this is of course different to an assessment of openness. Similarly, I acknowledge that no highway safety concerns have been raised by the Council or statutory consultees. From what I have seen and heard; I find no reason to reach a different decision on that particular issue. However, the acceptability of these matters carries neutral weight.

Green Belt Balance and Conclusion

37. The development constitutes inappropriate development in the Green Belt. This is an adverse matter to which I afford substantial weight. The Framework states that inappropriate development is by definition harmful to the Green Belt and should only be approved in very special circumstances.
38. I have also found that the design and scale of the proposal and the site-specific circumstances of the development mean the development would have a modest impact on the openness of the Green Belt. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. This is a high hurdle for a development proposal to overcome. The other considerations put forward in favour of the proposal carry only moderate weight.
39. In conclusion and on balance, the substantial weight to be given to Green Belt harm, in addition to the other harm identified is not clearly outweighed by other considerations and therefore the very special circumstances needed to justify the proposed development do not exist.
40. For the reasons given the overall conclusion is therefore that the appeal should be dismissed.

M Russell

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Ms Michelle Woodward	Appellant
Sarah Butterfield BSc(Hons) DipTP MRTPI	Director at Pegasus Planning Group
Hannah Race BSc(Hons)	Planner at Pegasus Planning Group

Mrs Lizzie Marjoram LLB	Solicitor of Bird Wilford & Sale Solicitors
Mr Christian Hawley	Counsel No5 Chambers
Mr Will Gardner BSc(Hons) MSc(Merit) CMLI	Director at The Environmental Dimension Partnership
Mr Peter Rogers BSc(Hons) MSc CEng FIOA FRSA MIOL	Sustainable Acoustics Ltd
Mr Nigel Fern BSc(Hons) MSc DIC MCIHT	Senior Associate Transport Planner of Stantec

FOR THE LOCAL PLANNING AUTHORITY:

Rachel Gaskell BA(Hons) DipTP MRTPI	Consultant Planning Officer
Stephanie Hall	Counsel Kings Chambers

INTERESTED PERSONS:

Mr Jack Robson	McArtney's Catering
Ms S Fennell	Local resident

DOCUMENTS SUBMITTED AT THE HEARING

1. Amended layout drawing OA13 with reference to 'camping' removed following clarification and agreement between main parties in respect of the proposed layout drawing under consideration.
2. Copy of written statement of Jack Robson (Director of McArtneys Catering) and accompanying letters of support as verbally presented at the hearing.

DOCUMENTS SUBMITTED AFTER THE HEARING

1. Copy of suggested conditions agreed between the main parties