



Appeal Decision

Site visit made on 5 July 2022

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 July 2022

Appeal Ref: APP/R1038/W/22/3294790

Moorhay Farm, High Lane, Wigley S42 7JJ

- 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 Ben Lamb against the decision of North East Derbyshire District Council.
 - The application Ref 21/01088/FL, dated 1 September 2021, was refused by notice dated 25 November 2021.
 - The development proposed is 'The proposed development includes the provision of three temporary pods located on an existing campsite field that has established access and parking for the purposes of tourist accommodation, designed in response to available guidance'. [sic].
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the time of the Council's decision, it has adopted the North East Derbyshire Local Plan 2014-2034 [Nov 2021] (the NEDLP). This supersedes the Policies in the former North East Derbyshire Local Plan and a Publication Draft referred to in the Council's Decision Notice. For the purpose of the appeal the Council have referred me to the relevant policies of the NEDLP, including Policies SS1: Sustainable Development, SS9: Development in the Countryside, SS10: North East Derbyshire Green Belt and ID3: Sustainable Travel.
3. At the time of my site inspection a development as shown on the appeal plans was substantially complete. Some deviations were apparent between the installed development and the submitted plans. For the avoidance of doubt, this appeal is determined on the basis of the plans as submitted with the planning application.
4. The appellant contends that the site has been used for camping for some time. It is not for me, under a section 78 appeal, to determine whether or not an existing development is lawful. To that end, it is open to the appellant to apply for a determination under s191 of the Town and Country Planning Act 1990 and my determination of this appeal under s78 does not affect the issuing of a determination under s191 regardless of the outcome of this appeal.
5. Pursuant to the duty imposed by Section 197 of the Town and Country Planning Act 1990 in relation to trees, I have sought the further views of the main parties concerning the proximity of the development to Chaneyfield Wood Local Wildlife Site. The wildlife site includes ancient woodland. I have had regard to those further comments in framing the main issues and in coming to my decision.

Main Issues

6. The main issues are:

- whether the proposal would be inappropriate development within the Green Belt for the purposes of the National Planning Policy Framework (the Framework) and the relevant development plan policy
- the effect of the proposal on ancient woodland
- if the development 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 inappropriate development in the Green Belt

7. The Government's approach to protecting the Green Belt is set out in Section 13 of the Framework. It states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of the Green Belts are their openness and their permanence. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
8. Paragraph 149 of the Framework makes it clear that new buildings are inappropriate in the Green Belt. However, it lists a number of exceptions. Of these, the appellant draws my attention to Paragraph 149 b) which includes the provision of appropriate facilities (in connection with the existing use of 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. Policy SS10 of the NEDLP restates the provision of the Framework in relation to buildings for outdoor recreation.
9. In addition, Paragraph 150 of the Framework, states the certain other forms of development are not inappropriate provided that they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it. These exceptions include engineering operations and material changes in the use of land (such as changes of use for outdoor sport or recreation).
10. The development includes 3 pod buildings with an associated external flagged amenity area. A separate communal parking area is located close to the end of the main access road. The road coincides with a public right of way (Brampton Footpath No.61). The pods are finished in timber with a recessed glazed elevation incorporating the entrance at one end. They provide holiday accommodation consisting of sleeping areas, lounge, kitchen and a small shower/wc room. Access to the buildings is facilitated by gravelled tracks.
11. As a form of development aimed at positively enhancing the beneficial use of the Green Belt by facilitating the recreational enjoyment of the countryside, the pods are comparable to chalet and lodge types of accommodation as supported under Policy WC6 of the NEDLP. Accordingly, I find that their use would be within the scope of the land uses referred to in Paragraphs 149 and 150 of the Framework.

12. In consideration of the relevant tests of preserving openness and avoiding conflict with the purposes of including land in the Green Belt, it is necessary to consider the scale of the development, its locational context and its spatial and visual effects.
13. Despite the appellant's contention that the pods are of a temporary nature and capable of being easily removed once they are no longer required, they would have a significant degree of permanence on the site. As units with supporting infrastructure and service connections intended to be used year-round, they would be a substantially permanent feature in the locality.
14. As fixed forms of development on a field previously free from buildings, there is an inevitable effect on the spatial openness of the Green Belt. Nevertheless, as a scheme restricted to 3 pods of a minimal scale to serve their intended use, I find that the extent of the effect on the spatial openness of the Green Belt is appropriately limited.
15. In terms of visual openness, their compact form and low overall height ensure that they are predominantly screened by, or seen against, the backdrop of the adjacent woodland and an adjacent agricultural shed. They are located on a lower part of the field and set on the edge of a cluster of operational rural buildings alongside.
16. The external timber cladding serves to provide some visual softening and assimilation against the woodland setting. Although the development is visible from the public footpath (High Lane), it is tempered by the landscape expanse of those views and association with the wider group of buildings at Moorhay Farm. Moreover, the minor effect on visual openness could be further limited by suitably designed landscaping.
17. In the context of the existing surface infrastructure serving the farm and the area used for camping, I find the design and spatial distribution of the development has a negligible urbanising effect on the existing countryside character.
18. As appropriately scaled buildings which do not unduly impose on the openness of the site and avoid urbanising forms of encroachment, I find the proposals constitute 'appropriate facilities' in the context of Paragraph 149 b) of the Framework. It would not therefore constitute an inappropriate form of development in the Green Belt and is consistent with its stated aims. The development therefore complies with section 13 of the Framework and Policy SS10 of the NEDLP and very special circumstances are not required to justify the development.

Ancient Woodland

19. The woodland skirting the site forms part of the Chaneyfield Wood Local Wildlife Site and includes areas of ancient woodland, an irreplaceable habitat. Two of the pods are shown to be sited in close proximity to the woodland, the northwesternmost pod is shown to be within the woodland area.
20. There is little evidence of a detailed assessment of the siting of the pods and their associated facilities with respect to the woodland, or individual trees within it. Given that 2 of the pods lie within or close to the canopies of trees on the edges of the woodland, as do other elements of the supporting infrastructure, there is some potential to cause adverse effects on the long-

term health of the trees. In turn this may cause harm to their associated ecological and habitat value.

21. Paragraph 180 c) of the Framework is clear that development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient and veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists. This is reflected in Policies SDC2 and SCD4 of the NEDLP.
22. In the absence of recognition of the ancient woodland status or detailed assessment of the impacts upon it, I cannot be sure that there would be no adverse impact on the woodland or its associated value. The appellant proposes that the pods could be re-sited in accordance with guidance issued by Natural England to ensure development is a minimum of 15m from the woodland to avoid conflict with it or its habitat value.
23. Section 197 of the Town and Country Planning Act 1990 places a duty on Local Planning Authorities [or other decision maker] to ensure, whenever it is appropriate, that in granting planning permission for any development, adequate provision is made, by the imposition of conditions, for the preservation and planting of trees.
24. However, there are no plans formally submitted as part of the appeal showing potential alternative locations. Furthermore, the appeal site is tightly constrained such that the siting of the pods a minimum distance of 15m from the woodland could not be achieved within it.
25. As any alternative siting has not been considered by the Council or other parties, would rely on land outside of the identified appeal site, and, could alter the assessment in terms of the visual or other effects of the development, I find a condition requiring it could not meet the tests of precision or enforceability. Moreover, it would fail the test of reasonableness in the event agreement could not be reached as it would nullify any benefit of a permission it might be attached to.
26. I acknowledge that the appellant has carried out some planting and proposes to establish hedges on the site. I also note that he is open to the suggestions for restorative and enhancement planting about the woodland edge. However, in the absence of evidence to demonstrate the extent or nature of any harm caused by the development, there is little to assure me that it would achieve a suitable strategy for compensation.
27. In support of the proposal, the appellant refers me to the economic benefits of the development as a diversification of the existing agricultural business at Moorhay Farm. It would broaden the visitor accommodation offer throughout the year and facilitate access to the countryside. There would be attendant benefits from local spend by visitors utilising the facilities. Whilst I accept that such benefits would arise, they are not dependent on the specific siting of the pods as shown. They are therefore of limited weight in the appeal.
28. In the context of Paragraph 180 c), I find that the wholly exceptional circumstances required to justify the development have not been demonstrated. The proposal is therefore in conflict with the Framework and Policies SCD2 and SCD4 of the NEDLP as they seek to protect irreplaceable habitats including ancient woodland.

Conclusion

29. Whilst I have found in favour of the appellant in relation to Green Belt matters, this, or the other considerations raised by the appellant, do not outweigh the conflict with policies aimed at preserving irreplaceable habitats. Accordingly, I find that the development conflicts with the development plan taken as a whole. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should not be allowed.

R Hitchcock

INSPECTOR