



Appeal Decision

Site visit made on 15 November 2022

by R J Jackson BA MPhil DMS MRTPI MCMi

an Inspector appointed by the Secretary of State

Decision date: 22 November 2022

Appeal Ref: APP/M2270/W/21/3282652

**Isaacs Farm Livery, Franks Hollow Road, Bidborough, Tunbridge Wells
TN3 0UB**

- 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 M Nahum against the decision of Tunbridge Wells Borough Council.
 - The application Ref 20/03566/FULL, dated 30 November 2020, was refused by notice dated 25 June 2021.
 - The development proposed is construction of equestrian track and associated works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The works the subject of the appeal have taken place, although the appellant indicates that further landscaping is proposed. I have removed the word “retrospective” from the description of the proposal in the heading as this does not represent an act of development.
3. As the site is within the High Weald Area of Outstanding Natural Beauty (the AONB), Section 85 of the Countryside and Rights of Way Act 2000 (as amended) requires regard to be had to the purpose of conserving and enhancing the natural beauty of that AONB.

Main Issues

4. The main issues are:
 - whether the development represents inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;
 - the effect of the development on the openness of the Green Belt;
 - the effect on the character, appearance and scenic beauty of the area being within the AONB;
 - the effect on ecology; and
 - 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 required to justify the development.

Reasons

Whether inappropriate development

5. The appeal site lies in the Green Belt. Under Core Policy 2 of the Tunbridge Wells Borough Core Strategy 2010 (the Core Strategy) there is a general presumption against inappropriate development in the Green Belt that would not preserve the openness of the Green Belt or which would conflict with the purpose of including land within it. Under the terms of the policy any new development should accord with, the now withdrawn Planning Policy Guidance Note 2: Green Belts (PPG2), or its replacement. Policy MGB1 of the Tunbridge Wells Borough Local Plan 2006 (the Local Plan) seeks to preserve the openness of the Green Belt but allows for the carrying out of engineering operations provided that they maintain the openness of the Green Belt and do not conflict with its purposes.
6. Paragraph 219 of the Framework indicates that existing policies should not be considered out-of-date simply because they were adopted prior to the publication of the Framework. Due weight should be given to them according to their degree of consistency with the Framework. More weight should be given the closer the policies are in the plan to those in the Framework.
7. The Framework has replaced PPG2. As this represents the most up-to-date espousal of Government policy, I shall use this for the decision making and doing this resolves any inconsistencies between it and the development plan. Paragraph 150 of the Framework indicates that certain forms of development are not inappropriate development in the Green Belt provided that they preserve openness in the Green Belt and do not conflict with the purposes of including land within it. Included within these is 'engineering operations'. The parties agree that the provision of the track and associated development represents engineering operations and I agree. Thus, whether the development is inappropriate development depends on an analysis of whether it affects openness and the purposes of the Green Belt.

The effect on openness and purposes

8. Openness has two dimensions, spatial and visual. I will discuss the visual dimension later in this decision.
9. The development is made up of three elements, the track itself, two earthen mounds consisting of some of the spoil from the creation of the track, although grass seeded, and the fencing, which consists of wires strung between wooden posts approximately 1.6 metres high.
10. The track was created by removing approximately 150 millimetres (mm) of soil and replacing it with limestone chippings. The level closely follows that of the previous ground level and has no effect on spatial openness. However, the two mounds and the fence posts take up volume where there was previously none. This affects spatial openness to a limited extent. The use of the track by horses for exercising is at most transient and has no effect on spatial openness.
11. In respect of the purposes of the Green Belt set out in paragraph 138 of the Framework, given the nature of the use, I consider that the development only harms that purpose relating to the safeguarding of the countryside from encroachment and this is only from the mounds and fence posts.

12. Overall, the development taken as a whole represents inappropriate development in the Green Belt. I will discuss the implications of this below.

The effect on the AONB

13. The appeal site lies in the AONB. Core Policy 14 of the Core Strategy indicates the countryside will be protected for its own sake. This is different from paragraph 174 of the Framework, which indicates that planning decisions should contribute to and enhance the natural environment by protecting valued landscapes. Core Policy 4 indicates that the AONB will be conserved and enhanced, which again is differently expressed from paragraph 176 of the Framework which states that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs.
14. The Council has published a Landscape Character Assessment Supplementary Planning Document. I give this significant weight. The appeal site is located in Local Character Area 5: Speldhurst Wooded Farmland. This is a topographically distinct landscape of high ridges with a complex network of valleys and steep sided ghylls. The landscape is distinguished by weathered outcrops of sandstone, deep ravine woodlands and an important swathe of unimproved pasture.
15. The track was constructed with limestone, which while local is not the underlying geology for this area. It has a brighter colouration than the underlying sandstone I saw during my visit. However, it must be noted that in use and through the effects of weather this colour has become more muted and is likely to become more so over time. There were even areas where grass has started to grow through the track further reducing the effect.
16. The mounds appear as incongruous features in the landscape with gradients which clearly display their man-made origins. They interrupt the topography of the overall landscape. The fence posts also provide a regimented line within a field in contrast with other fences around the perimeter of fields. These other fences are often visually absorbed into hedgerows and other field boundary vegetation. The wires between the fence posts, however, have no material visual effect.
17. There are a number of public rights of way in the vicinity of the appeal site, most notably to the north and east, and the site can be readily seen from Brookhurst Field which has benches upon it and signs describing its function; this indicates a public use. All three elements of the development are visible from both the public rights of way and from Brookhurst Field. The mounds and fence posts are particularly intrusive and the current lighter colouration of the track is also clearly seen.
18. The appellant has indicated that additional landscaping could be introduced to mitigate the effects. However, the steep sided ghyll means that this would be only partially effective since public views would be over anything at ground level. In addition, the proximity of the track to the edges of the fields means that there would be little room for landscaping to be introduced in such locations. Any landscaping within the fields would affect the appearance of the unimproved pasture which forms part of the defining characteristics of this part of the Landscape Character Area.

19. The Council has also expressed concerns about the effect on trees. This is because no arboricultural studies were undertaken and adverse effects from the development, particularly the track, could affect their health and longevity which itself would harm the landscape in the longer term. It seems to me that as the excavations to construct the track were only some 150 mm deep any effects would have been likely to non-structural roots, which are likely to be of lesser concern to the health and longevity of those trees. The permeable nature of the track allows water and nutrients to reach the main root system which had not been affected. Any harm has been limited.
20. In conclusion on this issue, the development is harmful to the character, appearance and scenic beauty of this part of the AONB. The mounds and the fence posts are the more intrusive elements and give rise, respectively, to significant and moderate harm. There has also been limited harm to trees. The visual and landscape effect of the track, as time goes by, would become less, so that in due course I consider it would have a negligible effect on scenic beauty so as to do no harm.
21. The development is therefore contrary to Core Policies 4 and 14 of the Core Strategy. In line with paragraph 176 of the Framework great weight should be given to this harm. The development is also contrary to Policy EN13 of the Local Plan.
22. Reverting back to the effect of the development on visual openness in the Green Belt, I conclude that there is harm from the effects of the mounds and fence posts.

Ecology

23. The appeal site forms part of a Local Wildlife Site, Bidborough Woods and Pastures, which is designated for its mosaic of semi-improved and unimproved pastures and woodland on acid soils. The site is also within proximity of Brookhurst Wood which is an area of Ancient Woodland, which is, of course, an irreplaceable ecology resource.
24. Local Plan Policy EN13 seems to conflate Ancient Woodland to landscape effects and arboricultural practice when it is an ecological designation. I therefore consider this policy not to be material in assessing this issue.
25. The Council's concern relates to the lack of surveys as to the underlying ecology so as to determine whether the development had or would have a harmful effect.
26. It is not the purpose of this appeal to determine the lawful use of the land, but as a minimum the site could be used for the grazing of horses as this represents an agricultural use, which would have a similar effect as the development on the site itself. The mounds have been constructed from spoil so will have the same composition and therefore are not harmful. Although I have found additional landscaping may be of limited use in landscape and visual terms it could be designed to enhance biodiversity.
27. In relation to Brookhurst Wood it appears that this is located some distance from the appeal site so that the development does not adversely affect it as an ecological resource.

28. Overall, I am satisfied that the development has not had a harmful effect on ecology and therefore complies with Core Policy 4 of the Core Strategy which seeks to avoid a net loss of biodiversity and Policy EN1 of the Local Plan which seeks no significant adverse effect on any features of nature conservation importance.

Other considerations

29. The appellant indicates that the track is used in the management and exercising of horses. Due to the particular management regime, of using unshod horses acting as a herd, the track improves horses' health and longevity, and allows for year round use to avoid churning up of the fields and 'poaching'.

30. It seems to me that the condition of any field is, at least partially, a function of the number of horses kept upon it, so I give that little weight since they can be appropriately stocked. But I do give moderate weight to the benefits to the horses' health and longevity from the provision of the track.

Planning Balance

31. The development represents inappropriate development in the Green Belt as while it is for an engineering operation it has a harmful effect on openness and conflicts with one of the purposes for the Green Belt. Paragraphs 147 and 148 of the Framework make clear inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances and substantial weight should be given to any harm to the Green Belt. I give it that weight.

32. The development, particularly the mounds and to a lesser extent the fence posts, is harmful to the character, appearance and scenic beauty of this part of the AONB. In line with paragraph 176 of the Framework I give this great weight. However, the development does not have any harmful effect on ecology.

33. I have taken into account the benefits of the development and have given them moderate weight. However, I find that the other considerations in this case do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist.

Conclusion

34. While the development complies with some parts of the development plan it conflicts with others. Overall, I conclude it does not comply with the development plan taken as a whole.

35. The proposed development is contrary to the development plan and there are no material considerations that outweigh this conflict. Consequently, with reference to Section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended), the appeal should be dismissed.

RJ Jackson

INSPECTOR