



Appeal Decision

Site visit made on 7 February 2023

by C Dillon BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th July 2023

Appeal Ref: APP/A4710/W/22/3292694

Field 9031, North of Slack Lane, Ripponden, Soyland

- 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 M Mansha on behalf of Rest Gardens Ltd against the decision of Calderdale Metropolitan Borough Council.
 - The application Ref 20/00324/FUL, dated 3 April 2020 was refused by notice dated 22 December 2021.
 - The development proposed is change of use from fishponds and angling facility to burial ground including engineering works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. There is a discrepancy between the appeal site address specified on the planning application form and that cited on the decision notice and the appeal form. The site location plan confirms that these all refer to the same site. I have relied upon the former for the purposes of my Decision, being that which was originally specified by the appellant.
3. There is a differential in the description of development cited on the planning application form and that on the Council's decision notice and appeal form. For the purposes of my Decision I am satisfied that no interests would be prejudiced by relying on the original description as that is what the appellant sought and there is no record of the revision being formally agreed.
4. The appellant has sought to address the concerns raised about their Environmental Statement through their appeal and both the Council and interested parties have had the opportunity to respond to this. I have taken account of all submissions received in reaching my Decision.
5. During my site visit, I observed that obscurely glazed doors and windows have been installed. As those works do not form part of the proposal before me, they fall beyond the scope of my assessment and their existence has not affected the outcome of this appeal.
6. In March 2023, subsequent to the Council's decision and the submission of this appeal, a new development plan known as the Calderdale Local Plan ("the Local Plan") has been adopted. The Council has confirmed that this supersedes all of the policies cited in the Council's decision notice and the submitted evidence. I must make my determination against that new Plan, being the statutory development plan now in force. The main parties have had an opportunity to

review their submissions in light of this change and in reaching my Decision I have taken account of the comments received.

7. The appeal site is located within the Green Belt and as such I have necessarily made my assessment in the context of national and local Green Belt policy.

Main Issues

8. The main issues are:

- whether or not the appeal proposal is inappropriate development in the Green Belt in terms of the National Planning Policy Framework and the development plan and its effect on openness;
- the effect of the appeal proposal on accessibility and highway safety;
- the effect of the appeal proposal on the natural environment, with particular regard to hydrology and biodiversity interests; and
- should the appeal proposal constitute inappropriate development, whether or not any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify it.

Reasons

Green Belt considerations

9. The appeal site is a roughly grassed, sloping and somewhat undulating, broadly rectangular land parcel. It is set within a far-reaching expanse of exposed upland slopes above the settlement of Ripponden. It is located within the District's designated Green Belt and Special Landscape Area ("SLA").
10. Policy GB1 of the Local Plan sets out the circumstances in which development proposals will not be inappropriate development in the Green Belt. This policy is consistent with the national approach to Green Belt set out in paragraphs 149 and 150 of the National Planning Policy Framework ("the Framework").
11. Both Policy GB1 of the Local Plan and paragraph 147 of the Framework direct the decision-maker to resist inappropriate development in the Green Belt, except in very special circumstances. Paragraph 148 of the Framework clarifies that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. Furthermore, Policy GB1 requires that development which is not inappropriate should not detract from the visual amenity of the Green Belt by reason of siting, materials or design or lead to traffic, amenity, environmental or other problems which cannot be effectively mitigated.
12. The Government attaches great importance to Green Belts and the fundamental aim is to prevent urban sprawl by keeping that land permanently open. The purposes of this policy approach are cited in paragraph 138 of the Framework. The spatial and visual effects on openness of this part of the Green Belt determines whether or not the appeal proposal meets any of the development exceptions permitted by both the Framework and Policy GB1.

13. The appeal site is located outside of the geographical extent of the built-up form of any settlements. As such, it is located within countryside. The associated SLA is characterised by the sporadic scattering of limited building groups of mainly agricultural descent. A substantially constructed, but modest scale building and manmade ponds fall within its boundaries. The site's existing boundary enclosures are consistent with the low dry-stone walling and post and wire fencing which is characteristic of these upland slopes.
14. The design of the existing building allows it to be read as a sporadically placed barn. The earth works that have previously been undertaken to create the existing ponds do not read as formal manmade features. The appeal site exhibits a substantial degree of both spatial and visual openness which is not inconsistent with its surrounding rural landscape context. The appeal site's current low-key, informal visual attributes have enabled it to retain a rural character and appearance and a positive contribution to the predominantly uninterrupted special landscape of this part of the Green Belt.
15. The proposed engineering works to infill the ponds and regrade the land would create a landform which would not be at odds with the surrounding exposed upland slopes and would not in itself affect openness. The proposed changes to the building to facilitate its reuse would not increase its size and could be controlled by a planning condition to ensure that its understated, simple rustic character would not be unduly eroded.
16. However, the proposed alterations to the site entrance off Slack Lane, including the double gates and the creation of radii, would formalise the current understated entrance. This would be particularly visible on approach in either direction along Slack Lane. Within the site itself, the laying of a permeable stone surfaced car parking and long vehicular and pedestrian access routes would be prominent from surrounding short, medium and longer distance vantage points.
17. These new features, along with the proposed placement of seating around the appeal site's perimeter would emphasise the increase in the developed footprint and operational areas. This would be exacerbated by the activity of traffic and people that would be drawn to the area in terms of the comings and goings and activities associated with the undertaking and attendance of burial ceremonies, those visitors wishing to pay their respects through the year and the necessary ongoing maintenance and upkeep of the site and the business operation. Cumulatively, this would all lead to a significant reduction in openness of the site.
18. The appellant has stated that the proposed design of the cemetery combined with the low numbers of annual burials and site management including the approach to grave tributes means that the proposal will have a minimal visual impact. However, all of the features and activities which are undeniably reasonably necessary to support the proposed use would give a more manicured appearance and character which would reduce openness. Furthermore, overtime there would be a gradual increase in the site's occupancy which would only serve to raise the presence of the proposed operation across the appeal site.
19. Overall, the appeal proposal would lead to the formalisation and intensification of use of what is a very exposed, rough upland slope even with the most simply defined burial plots. Regardless of the lawfulness of the angling use of

the appeal site and the landscape findings of the submitted Environmental Statement, the proposal before me would result in permanent changes to key components of the appeal site which contribute to its sense of openness in visual and spatial terms. For the same reasons, the appeal proposal would conflict with the Framework's purpose (c) of Green Belt, which is to assist in safeguarding the countryside from encroachment. Crucially, based upon the evidence before me, the appellant has not demonstrated that these effects would not be any greater than its use as an angling centre and thus I attach no weight to that argument.

20. Therefore, in line with the interested parties submission, the appeal proposal would give rise to a clear conflict with the Government's aim of keeping this Green Belt permanently open and its purpose of assisting in safeguarding the countryside from encroachment. For these reasons, the appeal proposal would result in significant harm to the visual and spatial openness of the appeal site and, because of its exposed disposition, the wider Green Belt within which it would be experienced.
21. 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. In view of my findings on openness and purpose (c) of Green Belt, the appeal proposal would not meet any of the national or local policy exceptions provided for. This indicates that the appeal proposal would be inappropriate development which is harmful by definition. In line with the Framework, these harms each weigh substantially against the appeal proposal.
22. In conclusion therefore, the appeal proposal is inappropriate development in terms of the Framework and the Local Plan and would cause a significant reduction to the openness of the Green Belt.

Other effects

Accessibility and highway safety

23. The appeal site is located uphill, at a distance from the main centres of population. It would be possible for visitors to gain access by motor vehicle, public transport, bicycle, but to a much lesser degree walking because of the distance, topography and relative level of isolation and exposure of the appeal site.
24. The appellant has stated that the number of burials, visitor numbers and vehicles would be restricted. The appellant's transport evidence advises that the area's highway safety record does not signify any issues and the appeal proposal would have a lower vehicle trip impact than the angling use. The appellant has also drawn my attention to the findings of the submitted Environmental Statement in regard to the environmental impacts relating to highways.
25. However, upon approach, the local highway network becomes narrower, undulating and winding. There is an absence of dedicated surfaced footways, formal passing points and street lighting, reinforcing the appeal site's remote countryside location. Upon turning off Blue Ball Road, the narrow, unmade, uneven and undrained condition of Merry Bent Lane is immediately apparent. This situation continues to the junction with Slack Lane, at which point the limited width and unmade surface diminishes even further to a cart track. That

network of barely passable vehicular routes currently serves the existing limited number of sporadically dispersed properties and rural businesses in the area.

26. Unlike the angling use, the proposed use could attract a significant number of people together at the site at a specific time for burials and then for other unquantifiable instances, times and durations thereafter. Crucially, this is not an unreasonable expectation for such a use. The nature of the proposed use and its remote location off the adopted highway and public transport network indicate to me that there could be a high reliance by both employees and the majority of its visitors on motor vehicles, regardless of any site management plans. Although there are bus stops on Cross Wells Road and a series of Public Rights of Way, visitors travelling by public transport, bicycle or by foot would need to navigate their way along these challenging routes to access the site.
27. Even if improvements were made to the poor surfacing, access along Slack Lane would be difficult because of its limited width. It has not been adequately evidenced that the parking and manoeuvring of vehicles would not spill out onto the surrounding local routes as a consequence. There is a reasonable prospect that this could amount to regular serious conflicts between those using the local network of tracks whether they be pedestrians, cyclists or motorists. Crucially, such outcomes would be extremely difficult to effectively monitor and enforce because of the high degree of sensitivity around the purpose of the visit to the appeal site. Hence, a planning condition which sought to address this would fail to meet the prescribed tests set out in the Planning Practice Guidance ("the PPG").
28. In conclusion therefore, a satisfactory level of accessibility has not been demonstrated and the appeal proposal could give rise to serious conflicts between users which could be prejudicial to highway safety. Overall, such poor outcomes represent severe and unacceptable harm which weighs very heavily against the appeal proposal.
29. Paragraph 110 of the Framework states that it should be ensured that safe and suitable access to the site can be achieved for all users and any significant impacts from the development on the transport network or on highway safety can be cost effectively mitigated to an acceptable degree. Paragraph 111 of the Framework states that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety. In view of my findings, the appeal proposal is not supported by the Framework.
30. Policy BT4 of the Local Plan states that, amongst other things, proposals should ensure the safe and free flow of traffic in the interests of highway safety and provide convenient and safe pedestrian routes and connectivity within the site and its surroundings. In view of the unacceptable harm that I have identified, the appeal proposal conflicts with this policy.

Hydrology and biodiversity interests

31. The appeal proposal is supported by a revised Environmental Statement which has been subject to screening. The screening undertaken has concluded that with mitigation, there would be no Likely Significant Effects ("LSEs"). The Environment Agency has not raised any cause to doubt the screening outcome. The Council has not altered its case subsequent to the appellant's appeal

- submission in this regard. I also acknowledge that interested parties have strongly disputed the appellant's evidence through their submission.
32. In terms of hydrology, the Council has agreed that the appellant's evidence covers all hydrological risks, including that of groundwater, in what is a very wet upland area which has the potential to be sensitive to pollution from the proposed use. The Flood Risk Assessment confirms that discharge from the appeal proposal would be limited to an appropriate level. The submitted Tier 1 Groundwater Risk Assessment identifies that the appeal site has a low risk of ground water flooding and contamination to known receptors, subject to recommendations regarding the location of burial plots relative to existing known watercourses and any unexpected drainage channels. Through the use of a suitably worded condition the appellant's evidence concludes that the proposed use presents a low risk to existing water features in the area in terms of pollution.
33. The Local Lead Flood Agency and The Environment Agency have maintained their objections. The latter's consultation responses are firmly linked to general binding rules which are contested by the appellant as being a misrepresentation of the principle of a risk assessment and minimum requirements which are not strictly enforceable. The appellant believes that site specific data should also be taken into consideration. Based on the geological and hydrogeological setting and the relative topographical difference between the local spring and the proposed burial site, the appellant is confident that hydraulic connectivity between the local spring and the proposed burial site would be implausible.
34. Nonetheless, the relevant environmental technical evidence before me has been prepared by suitably qualified technical specialists. The screening opinion undertaken as part of this appeal has screened out any LSEs. However, this does not necessarily mean that there will be no harm at all in respect to environmental matters, rather any effects are unlikely to be significant. From my reading of the contrasting hydrological findings, I find that the consequences of the particular appeal proposal are inconclusive in terms of whether the appeal proposal would pose a credible risk to controlled waters or human health. In this instance there is insufficient certainty to control this by way of a planning condition which would meet the prescribed tests for such.
35. In terms of biodiversity, the appeal site's current condition has been evidenced by the appellant as currently being of low value to foraging birds and no target bird species which are Phase 1 and 2 Qualifying Interests of the nearby South Pennine Moors Special Protection Area have been recorded within it. I note that the appeal site also relates to a wider designated Wildlife Habitat Network.
36. The submitted Ecological Impact Assessment concludes that the appeal proposal would result in a biodiversity net loss of 33% post site development and restoration and that a minor negative effect would remain from the resulting shortfall in Biodiversity Habitat Units. However, my attention has been drawn to the Council's 'Interim Guidance On Biodiversity Net Gain Requirements For Developments' which identifies that shortfalls in biodiversity can be dealt with through one, or a combination of 3 options. Furthermore, although not specifically quantified, the appellant has argued that there is potential for planting to be further maximised and greater connectivity between

the appeal site and the South Pennine Moors encouraged, thus enhancing the Wildlife Habitat Network.

37. However, there remains uncertainty over the extent to which the appeal site's potential for enhancement can be maximised both in its own right and relative to what could be secured by use as an angling centre. This leads me to attribute limited favourable weight to the potential for any greater benefit to the Wildlife Habitat Network to be secured through a planning condition.
38. In terms of securing the necessary compensatory measure to address the accepted predicted shortfall in Biodiversity Habitat Units, the PPG states that the use of a negatively worded condition which limits the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases. Ensuring that any planning obligation is entered into prior to granting planning permission is the best way to deliver sufficient certainty for all parties about what is being agreed and is important in the interests of maintaining transparency. The particular circumstance before me does not fall within the scope of the exception to this stance cited in the PPG. Therefore there is no suitable means before me to secure the purchase of the required compensation value from a Habitat Bank.
39. In summary therefore, although the opposing views on the hydrological aspects of the appeal proposal are inconclusive, and taking a precautionary approach, I cannot rule out that there could be some harm on the natural environment, with particular regard to hydrology and biodiversity interests.
40. Policy EN1 of the Local Plan states that consideration will be given to the potential impact on the environmental quality of ground water and surface water and the potential for pollution to affect biodiversity and human health. Development which does not incorporate suitable and sustainable mitigation measures to reduce pollution levels to an acceptable level will not be permitted. Policy EN3 of the Local Plan expects that development will not give rise to environmental hazards, including in relation to groundwater pollution. Applications which do not incorporate suitable and sustainable mitigation measures which reduce environmental hazards to an acceptable level will not be permitted. Policy CC3 of the Local Plan states priority will be given to protecting and enhancing ground and surface water, preventing aquatic pollution and only permitting development if there is no adverse impact to the quality or use of surface or ground water resources, or on habitats and species dependent on the aquatic environment.
41. Furthermore, Policy GCN3 of the Local Plan requires developments to conserve and enhance biodiversity features by protecting and improving habitats, species, sites of wildlife and maximising biodiversity opportunities in and around new developments, including important strategic wildlife networks. Proposals are required to ensure there are no residual adverse impacts. Where in exceptional circumstances the reasons for the proposal clearly outweigh the value of the ecological features adversely affected and there are no appropriate alternatives the adverse impacts must be proportionately addressed in accordance with the hierarchy of mitigation, compensation, and finally offsetting.
42. In view of my findings on these matters, it has not been adequately demonstrated that the appeal proposal accords with these policies.

Other considerations

43. There are particular site requirements to meet the operator's needs which have led to the identification of this particular site over others. This weighs heavily in favour of the appeal proposal. The appeal proposal has generated a strong level of support from a considerable number of people who hold it as an important and much-needed community facility. This level of support is an indication of the social benefit that such a use could be for the local communities which it would serve and also weighs heavily in favour of the appeal proposal.
44. The proposal has been advanced as a green development and site management measures have been proposed to assist in this. However, the overall sustainability of the appeal proposal is compromised by the potential harm that I have identified and therefore this argument carries very limited weight in this instance. No other considerations weighing in favour of the proposal have been demonstrated through this appeal.

Whether very special circumstances exist

45. The appeal proposal would harm the Green Belt by virtue of its inappropriateness. Furthermore, it would cause significant harm to its openness and to the purpose of restricting encroachment into the countryside. In accordance with paragraph 148 of the Framework, I attribute substantial weight to each of these harms. In terms of other considerations, the poor accessibility and severe effect on highway safety are unacceptable and weigh very heavily against the appeal proposal. The evidence on hydrological effects is inconclusive and there is no suitable delivery mechanism to secure necessary biodiversity compensatory measures. Thus I attach moderate unfavourable weight to the potential harm to local biodiversity interests.
46. I attribute limited favourable weight to both the scope for the appeal proposal to provide biodiversity benefit, given the uncertainties which exist, and also to the green credentials of the appeal proposal. I also attribute limited weight to the alleged potential differential in trip generations relative to the previously permitted angling use. Furthermore, the site specific requirements and identified social benefit that would arise each weigh very heavily in favour of the appeal proposal.
47. Paragraph 148 of the Framework states that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. The necessary demonstration of very special circumstances is an extremely high policy bar. The potential harm to the Green Belt by reason of inappropriateness, and the other identified harm resulting from the proposal, would not be clearly outweighed by other considerations. Consequently, in this particular instance it has not been demonstrated that very special circumstances exist. Even if I was to concur with the appellant on the hydrological matters in contention, this would not be of a sufficient consequence to alter this overall finding.

Planning Balance

48. The starting point for decision taking is to make decisions in accordance with the development plan unless material considerations indicate otherwise. I have

found that very special circumstances have not been demonstrated to justify allowing this particular proposal in the Green Belt, contrary to the development plan. I have identified other policy conflicts relating to accessibility and the natural environment. My findings indicate that the appeal proposal conflicts with the development plan for the area when read as a whole. Overall, the appeal proposal is therefore not supported by Policy SD1 of the Local Plan.

49. Therefore, both local and national Green Belt policies provide a very clear reason for refusing the development in accordance with the development plan. Even if I were to assume the appellant's stance in respect to hydrology, the overall conflict with the development plan is not outweighed by any other considerations, including the benefits of the appeal proposal which have been put before me.

Habitat Regulations Assessment

50. The appeal site falls within the defined buffer zone of the South Pennines Moorland which is designated as a Site of Special Scientific Interest, a Special Protection Area and also a Special Area of Conservation. However, the reasons which indicate that this appeal should be dismissed would remain unaffected by the outcome of an Appropriate Assessment undertaken to meet the provisions of the Habitat Regulations. Therefore, it is unnecessary for me to undertake such an assessment in this instance.

Conclusion

51. For the reasons given, I conclude that the appeal should be dismissed.

C Dillon

INSPECTOR