



Appeal Decision

Site visit made on 7 November 2023

by S Brook BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 December 2023

Appeal Ref: APP/R4408/W/23/3317415

Land off Mortimer Road, Midhopestones, S36 4GW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Andrew Harrison against the decision of Barnsley Metropolitan Borough Council.
 - The application Ref 2022/0342, dated 24 March 2022, was refused by notice dated 15 December 2022.
 - The development proposed is described as 'A development on currently waste land to include a community facility and café which would provide toilet and riding facilities'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

1. Outline planning permission is sought, with appearance to be considered at this stage. I have determined the appeal on this basis. Whilst not formally part of the scheme, I have considered any details submitted with the appeal application relating to matters of access, landscaping, layout and scale as a guide to how the site might be developed.
2. Notwithstanding access is a reserved matter, the site location plan shows that Mortimer Road is the adjoining highway.

Main Issues

3. The main issues are:
 - Whether the proposal would be inappropriate development in the Green Belt having regard to any relevant development plan policies and the National Planning Policy Framework (the Framework) including, where appropriate, its effect on openness;
 - The effect of the proposed development upon biodiversity;
 - The effect of the proposed development upon highway safety;
 - If the development is inappropriate, whether 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 the proposal.

Reasons

Whether inappropriate development

4. The appeal site comprises an enclosed area with vegetation and small shed. The site boundaries consist mainly of low stone walls. An unmade track lies to the northern boundary of the appeal site and links to the highway to the east and to a public footpath to the west and south, which includes the former railway line positioned on a raised embankment. A group of buildings lie beyond the embankment and Midhopestones is further south. The wider area to the north is rolling agricultural land with pockets of woodland. The site is in the designated Green Belt.
5. Policy GB1 of the Barnsley Local Plan, adopted 2019 (LP), states that the Green Belt will be protected from inappropriate development in accordance with national planning policy. The Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. It goes on to state that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
6. Paragraph 149 of the Framework establishes that the construction of new buildings should be regarded as inappropriate, except in specific circumstances. The appellant contends that the appeal scheme should benefit from exception (b) 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.
7. Paragraph 150 of the Framework states that certain other forms of development are also not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. The appellant also suggests that the appeal scheme benefits from exception e) material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds).
8. The evidence before me does not demonstrate any existing use of the appeal site, for any of those purposes set out in Paragraph 149 (b), particularly for outdoor sport or recreation. It is described in the application form as waste land. Whilst I accept that the network of footpaths may make the wider area popular recreationally for walkers, cyclists and horse riders, this dispersed recreational use is not specific to the use of the land subject of this appeal.
9. The proposed building and parking would take up a large portion of the appeal site. As such, the proposal itself would not result in any change in use of the land for the purpose of outdoor sport or recreation.
10. The proposed building is described on the application form as a community use and café. No detailed floor plans have been provided, but section 18 of the application form indicates that all the proposed floorspace would be for café/restaurant usage. As there is no existing or proposed use of this land for outdoor sport and recreational use, consequently, this commercial/community

use would not constitute the provision of appropriate facilities connected with the existing or proposed use of the land for outdoor sport or outdoor recreation. As such, the proposed development does not benefit from exception (b) of paragraph 149, or exception (e) of paragraph 150.

11. The appeal scheme would introduce a new building to the site that would be much larger than the existing shed. As a result, it would have a greater impact on the openness of the Green Belt in spatial terms. The railway embankment would screen the proposal partially from the south, whilst woodland and the natural landform would screen it in wider views to the north and west. Nevertheless, it would be visible when approaching from the east along Mortimer Road and when travelling along the footpath of the former railway line. Trees, landform, and boundary walls would not sufficiently screen the proposal in these views, resulting in a greater impact on the openness of the Green Belt in visual terms. There would be additional transient impacts from parked cars, and outdoor seating.
12. Consequently, both spatially and visually the proposal would harm the openness of the Green Belt. The proposed development would not preserve openness and it would result in encroachment into the countryside, extending the built form north of the railway embankment, conflicting with one of the purposes of including land within the Green Belt. As such, even if the proposed building could be considered to provide appropriate facilities for outdoor sport or recreation, the requirements of exception (b) of paragraph 149 would not be met. The proposal constitutes inappropriate development, which is, by definition, harmful to the Green Belt.

Biodiversity

13. LP Policy BIO1 sets out that new development will be expected to conserve and enhance the biodiversity and geological features of the borough, including by protecting and improving habitats and species, following the national mitigation hierarchy (avoid, mitigate, compensate). The proposal has been supported by an Arboricultural Impact Assessment (AIA) and Ecological Survey.
14. The indicative parking layout would be within the root protection area of a category 'C' oak tree. The AIA considers the tree to be low quality due to the quantity of deadwood within its trunk and indicates its removal to allow for parking. However, following concerns relating to a lack of survey effort relating to bats using this tree, the appellant subsequently confirmed to the Council that the tree would be retained.
15. Retention of the on-site tree would seem to negate the need for further survey work for bats and the evidence before me indicates that the root protection area and canopies of all off-site trees would be unaffected by the proposal.
16. Possible measures have been proposed by various parties to mitigate for the loss of onsite habitat. Suggestions include a green roof or living wall, as well as off-site tree planting, or bird boxes. Such measures could be detailed within a biodiversity management plan, to be provided before development commenced.
17. Had I been minded to allow the appeal, this biodiversity management plan could have been secured by condition. Consequently, the proposed development would not have a harmful impact on biodiversity, and the

proposal would comply with LP Policy BIO1, the purposes of which have been set out above, and advice within Supplementary Planning Documents Trees and Hedgerows, and Biodiversity and Geodiversity, (adopted 2019). Further, the requirements of the Framework would be met in terms of contributing to and enhancing the natural and local environment.

18. The retention of the oak tree on-site could have implications for parking provision, which is shown to be within the root protection area of the on-site tree, albeit layout is a reserved matter. I consider this issue below.

Highway safety

19. LP Policy T3 requires new development to be located and designed to reduce the need to travel, be accessible to public transport and meet the needs of pedestrians and cyclists. The supporting text recognises that the availability of car parking is a key factor affecting whether people choose to travel by car or use an alternative and it aims to balance car parking needs with highway safety considerations. LP Policy T4 states that new development will be expected to be designed and built to provide all transport users within and surrounding the development with safe, secure and convenient access and movement.
20. Additionally, the Council has adopted Supplementary Planning Document Parking (2019) (Parking SPD), which sets out at Table 1, car parking standards by use. The Parking SPD explains that these are broad categories and that the parking requirements are an indicative figure only of what could be considered acceptable. As no detailed floor plans showing the split of community/café use of the building are provided, the Highway Authority considers 9 parking spaces would be required based on an 50/50 split and taking account of the staffing levels indicated.
21. Four parking spaces are shown on the indicative plan. Given the size of the site and proposed building, there would be limited scope to increase this number. Given the appellant's commitment to retain the oak tree on site, the delivery of Four parking spaces within the indicative layout is questionable given their location within the root protection area of this tree. Therefore, the number of deliverable parking spaces on site could be lower than that shown on the indicative layout.
22. The proposed café/communal use is intended to serve the local community and walkers, cyclists and horse riders utilising the public footpath network. As such, some patrons may arrive by means other than the private car. However, it is likely that the facility could be attractive to people from a wider area, with differing levels of mobility, and whilst I note reference to bus services along the A616, I have not been provided with any timetable demonstrating the regularity of public transport. Given the location of the proposal, there remains the likelihood that some patrons would arrive by car.
23. Given the uncertainty relating to the provision of parking on site and the likely demand for parking from both staff and patrons, there is a risk of vehicles parking elsewhere, including on Mortimer Road itself. Where it passes the appeal site, Mortimer Road is subject to the National Speed Limit, it is narrow in width, and it bends sharply. Additionally, it is unlit, with a pavement to one side only, extending south to the A616.

24. Given the narrow width of the road, the limited forward visibility resulting from the bend, and the lack of lit, pedestrian facilities, on street parking close to the appeal site would be detrimental to highway safety. Parking restrictions on the road would most likely re-locate the issue rather than resolve it.
25. As such, in the circumstances of this case, a lack of parking provision on-site would be harmful to highway safety. Therefore, the proposed development would conflict with LP Policies T3 and T4, the purposes of which have been set out above, as well as advice contained within the aforementioned Parking SPD. Further, paragraph 111 of the Framework directs that development should be refused where there would be an unacceptable impact on highway safety.

Other Considerations

26. I am advised that there has been public investment in upgrading surrounding footpaths and bridleways. The proposal could provide an opportunity for refreshments, toilet facilities, mobility scooter charging, cycle parking and repair, horse corral and mounting block and so on, for walkers, cyclists and horse riders using footpaths in the wider area, as well as being available to the public generally. My attention is drawn to a draft improvement plan for rights of way and the encouragement therein for small scale tourism facilities along the greenway network to improve access, and I note the support in this regard, including from the Trans Pennine Trail office.
27. The presence of the appeal scheme could encourage those who may have otherwise been discouraged from accessing this network of footpaths, by a lack of such facilities. Alternatively, it may encourage users to go further. Indirectly therefore, the proposal could contribute to the health benefits associated with walking, cycling and riding. I note reference to the extent of limiting long-term illnesses within the local population and the requirements of the Framework to support healthy lifestyles. However, provision of similar facilities could be available at existing premises in the area, such as the Ye Olde Mustard Pot public house.
28. The proposed café would serve as an additional service/facility for the local community. As well as the café, there is an intention to offer a multi-functional use of the building, providing a village hall type facility in the evenings. This aspect of the proposal has not been clearly defined, nevertheless, I note the level of support that the proposal has attracted on this matter also. Reference has also been made to a plant /produce exchange to raise funds for medical equipment/services.
29. The proposal could make a positive contribution to the economy in the short term during the construction stages, as well as in the long term through the introduction of a new rural business, providing employment opportunities. I am advised that the proposal would use/sell a variety of good quality locally produced food and beverages, in order to support local businesses. There is also an intention to provide some tourist information at the premises, such as maps/leaflets relating to the local area, which could encourage tourism and the growth of other local businesses.
30. However, whilst paragraph 84 of the Framework is supportive of sustainable growth of all types of new business in rural areas, including sustainable rural tourism and the development of accessible local services and community facilities, paragraph 85 recognises the importance of ensuring that such

development does not have an unacceptable impact on local roads. For the reasons outlined above, I have concluded that the proposal would have an unacceptable impact on highway safety at this location and so the proposal does not accrue the full support of paragraphs 84 and 85.

31. Additionally, whilst LP Policies E5 and E6, seek to encourage a viable rural economy and promote the tourism offer, including hospitality, this is on the basis that it would not have a harmful impact on the Green Belt. For the reasons outlined above, I have found that the proposal would be inappropriate development in the Green Belt, and openness of the Green Belt would be harmed. Therefore, the proposal does not accrue the full support of these policies.
32. The submissions indicate that the proposal would utilise sustainable methods of construction, including a green roof and sustainable drainage, as well as being insulated to a high standard, and incorporating an air source heat pump. Such measures would meet the requirements of the Framework in terms of minimising energy consumption and supporting the use of renewable and low carbon energy.
33. Overall, given the small scale of the proposal, the above benefits are afforded modest weight.

Other Matters

34. Lower Hand Bank farmhouse is listed and lies to the south of the appeal site, beyond the former railway embankment, whilst other historic buildings lie close to the A616. I have only limited information relating to the significance of these heritage assets. However, as a result of the elevated former railway line and bridge to the south of the appeal site, along with the presence of mature trees, intervisibility with the appeal scheme would be limited. As such, I am satisfied that the proposal would preserve the setting of the listed building, along with any significance derived from it, as well as the setting and significance of these other historic buildings.
35. The appeal site is not within an area of high flood risk, nor does it fall within any local plan designation other than Green Belt. The Council has not raised any concerns relating to the effect of the proposal on the character and appearance of the area, the living conditions of occupiers of neighbouring properties, or compatibility with neighbouring land uses. It appears that adequate access would be maintained to surrounding public footpaths. These are neutral matters that do not weigh for or against the proposal.
36. It is suggested that the proposal would make an effective and efficient use of previously developed land. Whilst it is not for me as part of this appeal to establish the lawful use of the site, there is no substantive evidence before me demonstrating that the site meets the Framework definition of previously developed land. As such, this matter is not afforded any weight in favour of the appeal scheme.
37. The appellant indicates that the appeal site has been subject to fly tipping and damage to dry stone walling, whilst some interested parties raise similar concerns and consider that the proposal would tidy up an unsightly area. However, evidence before me does not show that these are persistent issues or that they could not be adequately resolved by other means.

Green Belt and Planning Balance

38. The appeal scheme is inappropriate development in the Green Belt, which is, by definition, harmful to it. I have also concluded that the appeal scheme would harm the openness of the Green Belt. Further, it would be contrary to one of the purposes of the Green Belt, which is to assist in safeguarding the countryside from encroachment. I give this harm substantial weight as required by paragraph 148 of the Framework. Additionally, whilst the proposed development would not have a harmful impact on biodiversity, it would have an unacceptable impact on highway safety.
39. I have had regard to the other considerations put before me in favour of the scheme. However, I conclude that these other considerations taken together do not clearly outweigh the substantial weight I have afforded to the Green Belt harm, and the other harm identified in relation to highway safety. Consequently, the very special circumstances necessary to justify the development do not exist.

Conclusion

40. For the reasons set out above, the appeal scheme would not represent a sustainable form of development. The proposed development conflicts with the development plan when taken as a whole and there are no other material considerations worthy of sufficient weight to suggest the decision should be made other than in accordance with it. The appeal should therefore be dismissed.

S Brook

INSPECTOR