



Appeal Decision

Site visit made on 12 December 2023

by Melvyn Middleton BA(Econ), Dip Mgmt, DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th February 2024

Appeal Ref: APP/C3430/W/22/3311458

Seisdon Landfill Site, Ebstree Road, Seisdon, Wolverhampton, Staffordshire, WV5 7ES

- 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 Seisdon UK Limited against the decision of South Staffordshire District Council.
 - The application Ref 21/00561/OUT, dated 19 May 2021, was refused by notice dated 18 May 2022.
 - The development proposed is restoration of landfill site to provide up to 49 lodges with associated parking and landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application is in outline with all matters, apart from the means of access, layout and scale reserved for subsequent approval. Whilst the application was being processed by the Council, the Applicant amended the proposal to “restoration of landfill site to provide up to 49 affordable and self-build lodges with associated parking and landscaping”. The application was determined on that basis, as is this appeal.
3. The proposal is accompanied by a layout plan that shows how the site would be developed with 49 lodges, associated incidental landscaping and public open space, including a lake. It also shows land to the south that is owned by the Appellant, planted as woodland and containing a network of walkways. This land is edged blue on the site plan. The suggested layout and other design considerations are informed by the proposed access to Ebstree Road and demonstrate that the site could be satisfactorily developed from a layout and access perspective. The woodland planting could be secured by condition.
4. The Appellant points out that the wider site remains an operational landfill site with no conditional requirement for cessation of this land use or associated restoration and/or aftercare. The landfill operations are therefore in perpetuity. Nevertheless, tipping on the appeal site appears to have ceased (if only temporarily) and most of the land that is the subject of the appeal, is covered in grass, such that from a distance it has the appearance of an agricultural field.

Main Issues

5. The site is located within the West Midlands Green Belt. Core Policy (CP) GB1 - Development in the GB, of the South Staffordshire Core Strategy Development Plan Document defers to Section 13, Protecting Green Belt land, of the National Planning Policy Framework (NPPF). It says, at paragraph 142, that the Government attaches great importance to Green Belts and that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. At paragraph 152 it also says that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
6. The Framework goes on to say that when considering planning applications, decision makers should ensure that substantial weight is given to any harm to 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 resulting from the proposal, is clearly outweighed by other considerations.
7. However, at paragraph 154, whilst saying that the construction of new buildings in the GB should be regarded as inappropriate, the NPPF sets out exceptions. The partial or complete redevelopment of previously developed land, whether redundant or in continuing use, is not inappropriate development, providing it does not cause substantial harm to the openness of the GB and it contributes to meeting an identified affordable housing need within the area of the local planning authority.
8. Being land that was last used for waste disposal and without any provision for restoration, both parties consider this site to be previously developed land. Additionally, the Appellant's revised proposals restrict the use of what are now proposed to be temporary dwellings to affordable and self-build lodges.
9. In these circumstances I consider the main issues to be
 - a) Whether the proposal would be inappropriate development in the Green Belt having regard to the policies in the NPPF;
 - b) The effect of the proposal on the openness of the Green Belt;
 - c) Whether the proposal contributes to meeting identified affordable housing needs within the area of the local planning authority;
 - d) The effect of the proposal on the character and appearance of the local countryside;
 - e) Any other harm;
 - f) Other considerations;
 - g) Other matters;
 - h) 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 within the Green Belt.

Reasons

Openness

10. Para. 142 of the NPPF points out that the fundamental aim of Green Belt policy is to keep land permanently open, and that openness and permanence are the essential characteristic of Green Belts. The proposal would construct 49 temporary dwellings. When completed and its homes occupied, the development would contain parked cars and other vehicles, as well as the usual external paraphernalia that accompanies residential development, including that which is of a temporary nature. It would effectively result in the introduction of development onto land that currently has the appearance of a large open field. As a result, and although the dwellings and other structures and vehicles would be of modest height, all of this would impinge upon the spatial openness of this part of the GB to a significant degree.
11. The NPPF regards openness as an essential characteristic of Green Belts. The site is in an elevated position and although there is scrub woodland to the north-east of the site and a hedgerow above Ebstree Road to the south-east, there is limited vegetative cover on the western edges of the site and in the vicinity beyond. Consequently, whilst views of the site are limited from much of Seisdon village, largely because of topography, and also from the east, there are numerous views into and across the site from the nearby roads and public rights of way to the west and south, including the Staffordshire Way, a long-distance footpath that passes close to the site. This and other vantages currently endow users of the area's movement network with a visual appreciation of the site's openness.
12. Whilst the Appellant has indicated some tree planting within the site and on the retained land to the south, this would not fully screen the development from the long-distance footpath to the west or from the elevated parts of the A454 and other similarly located vantage points in the area. Additionally, trees would require many years of growth before they were able to contribute to the screening of this site.
13. The scale of the built development, together with its access, parking and other hard landscaped areas, would inevitably result in a permanent change to the spatial and visual openness of this site, which would additionally be visually perceived by passers-by in the form of the infrastructure and parked vehicles, as well as the dwellings. Furthermore, there would be paved roads and footpaths with lighting, which would add a nocturnal dimension to the issue. The overall perception, from some of the nearby roads and public footpaths, would be one of urban sprawl, in sharp contrast to the remaining open countryside that would surround most of the site. The checking of urban sprawl is one of the purposes of Green Belts (Purpose a, paragraph 143).
14. Whilst it can be argued that much development permitted in the GB encroaches into the countryside, the harm to the GB varies according to the circumstances of individual sites. This is especially so in the context of visual openness, which is an essential characteristic of GBs and important to a consideration of the third purpose (assisting in safeguarding the countryside from encroachment). In my judgement, whilst not as critical as some sites to the countryside safeguarding purpose, this site does play a role in maintaining the openness of the countryside for public enjoyment from the south and west of the appeal

site. There would be harm to this area of Green Belt countryside if the development occurred.

15. Overall, as well as the harm to spatial openness, there would be harm to visual openness. I conclude that there would be a considerable loss of both spatial and visual openness. The spatial and visual harm to openness would constitute substantial harm to the Green Belt such that the proposal would be inappropriate development in the Green Belt.

Affordable housing

16. Paragraph 154 of the NPPF does not consider development on previously developed land that contributes to meeting an identified affordable housing need within the area of the local planning authority, to be inappropriate, providing the development does not cause substantial harm to the openness of the Green Belt. I have already found that this development would cause substantial harm to openness and so it is inappropriate development.
17. Nevertheless, in some circumstances the provision of housing and in particular affordable housing, could contribute to the demonstration of very special circumstances. In its statement, the Appellant says that all of the proposed dwellings are now to be affordable housings. Additionally, they are to be temporary and to be considered as caravans rather than buildings. The statement also says they are to be self-build or custom-build housing.
18. The NPPF defines affordable housing as housing for sale or rent for those whose needs are not met by the market and which complies with one of four sub-definitions. There is no information to clarify how a proposal to locate 49 temporary homes on the site would meet the overall definition of affordable housing in national policy. Additionally, there is no information about discussions with affordable housing providers or others to indicate how any rented component would be managed or how the importation of temporary homes to the site would comply with the definition and regulations covering self-build and custom build housing. In such circumstances I cannot conclusively conclude that the proposal would result in the provision of affordable housing as defined in national policy.
19. In addition, Policy H3 of the South Staffordshire Core Strategy (CS) Development Plan Document (DPD) sets out the criteria that affordable housing on local exception sites should meet. The site is not immediately adjacent to a village. There is no evidence of any housing need being identified within the parish of Siesdon. Indeed, CS Policy CP1, Spatial Strategy for South Staffordshire, directs growth to the most accessible and sustainable locations in accordance with a settlement hierarchy. Seisdon only has a small local shop and a garage and has infrequent bus services. It is therefore not surprising that Seisdon has been considered to be an unsustainable location for significant new development and is outside of the settlement hierarchy.
20. Seisdon is not a large settlement, and 49 additional dwellings would represent a sizeable increase that would not reflect the existing size and scale of development within the parish. Additionally, the site is not within or adjacent to the village envelope that is inset into the Green Belt. Indeed, it is detached from the village and the circumstances suggest that most residents of the site, even when using the limited facilities in the village itself, would drive rather than walk. Most people using the necessary facilities that are located in other

villages would inevitably drive to them. The proposal is therefore not particularly sustainable and contrary to CS Policies CP1 and H3. In the above circumstances the proposed provision of affordable housing at the appeal site attracts only limited weight.

Character and appearance of the countryside

21. The harm to the GB's openness and the encroachment into the open countryside, discussed above, should be distinguished from other landscape and visual effects. This is an agricultural landscape containing open fields bounded by maintained hedges of mixed species that also contain numerous individual tree specimens. There are also some small copses. Nevertheless, to the west and south of the appeal site there are extensive views across the open countryside. The appeal proposal would remove an element of this landscape, replacing it with built development and hard surfaces. No amount of mitigation through planting and vegetative screening could avoid this. The proposal would represent a total change in the site's character from one of grassland to built development with some trees. The end product would in no way represent or contribute towards the positive attributes of the area's character.
22. I note the presence of the ribbon of housing to the east of Ebstree Road but this development does not relate to the appeal site, being across a depressed road and screened by vegetation. The existence of this and other nearby urban influences, nevertheless, gives added weight to the value of the appeal site as open land that contributes to the open character of this area of countryside and the rural tranquillity experienced by people travelling along the long distance footpath.
23. The site is currently a part of a landscape of good quality and the site now makes a positive contribution to this character. Its replacement with a caravan site, at least in the short term, could be nothing other than a significant change that would be alien to this character. This is despite the existing presence of development in the area.
24. Additionally, and as referred to above, the proposed planting outside of the appeal site has been largely designed to conceal the development rather than to complement the landscape and in consequence it may not be typical of the natural distribution of trees and shrubs within this landscape. I therefore consider the long-term harm to the landscape character would be adverse.
25. The proposed development would harm the character and appearance of the area, contrary to CS Policies EQ4 and EQ12, which seek to protect the character and appearance of the countryside landscape. Whilst I do not consider these negative aspects of the development to be sufficient to dismiss the appeal out right, there nevertheless would be some harm. Overall, I consider that there would be moderate harm to the local landscape as a result of the implementation of the proposal and that this should count as harm to be weighed against the proposal.

Any other harm

Resumption of tipping

26. In a visual context, were further tipping to take place on the site¹. it would be undoubtedly harmful, with the inevitable stockpiles of excavated material and imported machinery being clearly intrusive from external viewpoints. Additionally, there would be increased noise, dust and disturbance from traffic and site operations that would affect the locality. However, the site evidence suggests that the whole landfill site has not been recently used for tipping. Additionally, there is no evidence to suggest that such operations are likely to commence again but if they did, it would only be for a temporary period and subject to Environmental Permitting Regulations. In the circumstances I could only give moderate weight to the harm that the recommencement of tipping operations might cause.
27. However, on the other hand, the vast majority of any further tipping at the landfill site would not take place on the appeal site. There is no agreed proposal, accompanying the appeal, to close and restore the entire landfill site. In such circumstances and were the tipping to recommence, the disturbances discussed above would impact on any future residents of the site and reduces any benefits that might arise from a guaranteed non-resumption of tipping on the appeal site itself through its development.

Other considerations

Borehole monitoring

28. The site contains a number of vents that are used to monitor potential gases escaping from the landfill. The Appellant has submitted a report that suggests that there is no longer any risk of harmful gases escaping from the site. However, whilst ever there is no agreement between the Appellant and the Environment Agency that the vents are now obsolete and can be removed, then there needs to be access to them for monitoring. There is no information to confirm that the submitted layout would allow unrestricted access to all of the vents. Although not having a material effect on my overall decision, the absence of a scheme, agreed with the Environment Agency, to permanently close and fully restore this site, including the removal of the vents, weighs against the proposal.

Flooding

29. Both Policy CP3 and the NPPF in section 14 require development to have regard to the effects of climate change. The Framework says at paragraph 173 that when determining planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. It goes on to say that a site-specific flood risk assessment should be provided for all development above 1 hectare in size. This proposal extends to 3.47 hectares.
30. The proposal is accompanied by information that refers to flood risk and remediation but not a full site-specific flood risk assessment. The Lead Local Flood Authority has objected to the proposal, considering the supporting

¹ A potential of 30,000 tons of inert waste has been estimated, although much of this would probably be deposited on land within the Appellant's control that is not within the appeal site.

information to be insufficient to demonstrate that there will not be a risk of additional flooding elsewhere as a result of the development. In its view the flood risk assessment is inadequate, in particular the potential flooding impacts on the wider area, have not been properly assessed. I concur with this opinion.

31. Whilst I have no doubt that a scheme could be designed to ensure that any development at this site did not increase the risk of flooding elsewhere, that is not before me and was not before the Council. Other matters being neutral and in the absence of a comprehensive site specific Flood Risk Assessment, the appeal should be dismissed on potential flood risk grounds alone.

Other Matters

32. The Appellant has referred to the judgement in the case of *Samuel Smith Old Brewery (Tadcaster) & Others v North Yorkshire County Council*². The Supreme Court when reviewing the Court of Appeal decision³, found that “in any particular case the matters relevant to openness are a matter of planning judgement, not law” (paragraph 39). Whilst it found that not taking account of the visual impact of a quarrying proposal in that particular case was not unlawful, the judgement is not universally applicable. Although, this proposal, like the Supreme Court case is for a temporary proposal, the former involves built development whereas the Supreme Court case involved a quarry where there may well have been no visual impact on the openness of the wider area. In either case the fundamental point is that the issue is a matter of planning judgement and not law. In my judgement this proposal would cause harm to the openness of the Green Belt from both the spatial and visual perspectives.
33. The Appellant has referred me to two other appeal decisions without submitting the relevant parts of the appeal decisions, including their contexts. In such circumstances I am not in a position to award much weight to them. However, it is rarely the case that the circumstances and evidence that led to other appeal decisions are so similar as to significantly influence the outcome of an appeal. That is probably the position here. I have determined this appeal on the merits of the evidence put before me by all of the parties and in the absence of more information, have given minimal weight to the overall outcome of the other appeals referred to me.

Conclusion

34. National guidance in the Framework says in paragraph 147 that inappropriate development is by definition harmful to the Green Belt and that such development should not be approved, except in very special circumstances. I have found that despite the site’s agreed status as previously developed land, the proposal would cause substantial harm to the Green Belt’s openness and is inappropriate development in the Green Belt. Substantial weight attaches to the harm to the Green Belt by reason of the inappropriate nature of the development.
35. In addition to the harm by virtue of inappropriateness, substantial weight should be given to the harm caused to the openness of the Green Belt and to the proposal’s conflict with Green Belt purpose a). Consequently, the proposal would be at variance with the NPPF’s Green Belt policy.

² United Kingdom Supreme Court [2020] 3

³ England and Wales Court of Appeal [2018] Civ 489

36. I also give moderate weight to the harm to the character and appearance of the local countryside, having particular regard to the contribution this site makes to the wider landscape and the views of the appeal site from the adjacent roads and public footpaths by people using them. The proposal is contrary to CS Policies EQ4 and EQ12 and paragraph 173) of the NPPF.
37. In addition, I give moderate weight to the potential harm that the development could cause to flooding in the area, the Appellant having not demonstrated that the development would be appropriately flood resistant and resilient. It is contrary to CS Policy CP3 as well as the NPPF at paragraph 167.
38. I give limited weight to the provision of affordable housing and less than moderate weight to the prospect and ramifications of tipping resuming.
39. In the circumstances discussed above and taken together, the other considerations are not, in my view, the very special circumstances required to counter the harm to the Green Belt and the other matters that I have identified. I find that they fall far short of clearly outweighing that harm. In finding this, I have taken into account all of the other matters raised in evidence. Consequently, the very special circumstances necessary to justify the development do not exist.
40. Therefore, for the reasons given above, and having considered all other matters raised, the appeal is dismissed.

Melvyn Middleton

INSPECTOR