



Appeal Decision

Site visit made on 23 April 2024

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 May 2024

Appeal Ref: APP/N5090/W/23/3330398

Hill House, Wills Grove, Mill Hill, Barnet, LONDON NW7 1QL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mendel against the decision of the Council of the London Borough of Barnet.
 - The application Ref is 23/2095/HSE.
 - The development proposed is the reinstatement of tennis court in rear garden.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - Whether the proposed development would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (The Framework) and any relevant development plan policies and its effect on the openness of the Green Belt,
 - The effect of the proposed development on the character and appearance of the area, including the woodland landscape character being a woodland subject to Tree Preservation Order (TPO) and the Mill Hill Conservation Area (MHCA),
 - The effect of the proposal on the Site of Importance for Nature Conservation (SINC) and associated biodiversity matters, and
 - whether any harm found to the Green Belt is clearly outweighed by other considerations, so as to amount to very special circumstances to justify it.

Reasons

Inappropriate development

3. The appeal site is within the Metropolitan Green Belt. Policy CS7 of the Council's Core Strategy [2012] (CS) seeks to protect open spaces, including the Green Belt and ensure its positive management. Furthermore, policy DM15 of the Council's Local Plan [2012] (LP) and policy G2 of the London Plan [2021] require development in the Green Belt to comply with the National Planning Policy Framework (the Framework). LP policy DM15 also states that, except in very special circumstances, the Council will refuse development in the Green Belt which would be incompatible with its purposes and objectives and does not maintain its openness.

4. Paragraph 154 of the Framework establishes forms of development that would not be inappropriate with respect to the erection of new buildings. Although the tennis court would not be regarded as a building, I see no reason why a tennis court, as operational development, would not equally fall within this criterion. Paragraph 154(b) relates to the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport and outdoor recreation. Such facilities would therefore not be inappropriate provided it would preserve the openness of the Green Belt and not conflict with the purposes of including land within it.
5. The proposal relates to the provision of a tennis court, consisting of an area of hardstanding and a perimeter fence. The court would be within the open countryside, but close to existing development and a short distance from Hill House. The scheme is proposed as being used in connection with the owners of Hill House, as an ancillary facility. However, the house and formal gardens of Hill House seem to be separate to the woodland beyond.
6. The Appellant has explained that the woodland was acquired by the owner of Hill House in 1970, and as a result, should be regarded as part of the residential curtilage. However, a residential curtilage is not necessarily defined by ownership and must be intimately associated with the building to support the conclusion that it forms part and parcel of the building. The layout of the plot of land includes the house and its immediate grounds. The woodland beyond is a starkly different shape and size appearing as a disjointed addition, demonstrating a layout of land that does not naturally connect to the formal gardens and its house.
7. There is a clear change in historic ownership of the woodland, showing that these two plots were not originally under the same ownership. Furthermore, the use and function of the spaces appear substantially different between the dwelling and its mown lawns and the dense woodland beyond. Therefore, the woodland to the southeast of the house, accommodating the appeal site, whilst within the same ownership, is not deemed to be intimately associated with the building. Consequently, the woodland and the house and grounds are not regarded as being part and parcel of a single entity or an integral unit and the woodland is therefore outside the residential curtilage in planning terms.
8. There is no justification, within the submitted evidence, to corroborate the Appellant's assertion that the woodland is within the residential curtilage of Hill House. As the proposal is beyond the residential curtilage, it does not meet the qualifying requirements of paragraph 154(b), in being a "development used in connection with the existing use of the land" and is therefore deemed to be inappropriate development in the Green Belt. It is therefore unnecessary to consider whether the proposal would preserve the openness of the Green Belt, or conflict with the purposes of including land within it, as this would not alter its status of being inappropriate development.

Character and appearance

9. The proposed tennis court is within a woodland, subject to a TPO, in a semi-rural area. Built form in the surrounding area consists of a range of styles and ages of buildings, most being individually designed and of traditional form. The local pattern of development is loose formed in a low-density arrangement, providing for a strong sense of spaciousness within a verdant landscape. The

appeal site, being an open woodland setting, makes a positive contribution to the character and appearance of the area.

10. The Appellant's Arboricultural Impact Assessment plan¹ demonstrates the location of 13 individual trees and two groups that would be affected by the proposal. These consist of three Category B (significant) trees and the rest being category C (low quality). The Category B trees are considered to have a good overall condition and a life expectancy that would exceed 20 years, the category C trees are deemed to have fair condition and a life expectancy of less than 10 years. Although these trees are growing in a constrained environment, through a concrete base, several are of significant quality, and all make a positive contribution to the woodland setting.
11. The protected woodland makes a positive group contribution to the character and appearance of the area. The group TPO enables trees, that seed after the original designation, to be included within the Order ensuring that regeneration and new planting maintain the woodland in perpetuity. The proposed felling of the trees, within the middle of the woodland, would have a limited visual impact from nearby public views. Nonetheless, the loss of this part of the woodland would result in its incremental degradation, eroding the verdant character of the area. Replacement tree planting would not mitigate the identified harm.
12. The Council's character appraisal², for the MHCA, identifies that ecclesiastical institutions have made an important contribution to the way that the area has developed. Individually designed buildings, many within spacious grounds, contribute to its semi-rural character. Open spaces, in the form of fields, parkland and woodland also contribute to the significance of the MHCA's open and verdant character. Existing tennis courts exist behind dwellings within the local area. Being largely open features, and not being visible in the public realm, these convey a limited visual impact on the area.
13. Although the proposed development would be in a discreet location, the proposed removal of protected trees would result in harm to the character and appearance of the MHCA. The harm to the MHCA would be calibrated as less than substantial harm. Paragraph 208 of the Framework identifies that where less than substantial harm is found to a designated heritage asset, the harm should be weighed against the public benefits of the proposal. No public benefits of sufficient magnitude have been identified by the Appellant, to offset the identified harm.
14. Consequently, the proposal would result in harm, albeit moderate, to the character and appearance of the area, including its woodland landscape character and would not preserve the character or appearance of the MHCA. Accordingly, the proposal would conflict with London Plan policies D3, G7 and HC1, CS policies CSNPPF, CS1 and CS7, LP policies DM01 and DM06 and the Framework. These seek, *inter alia*, for development to be based on an understanding of local characteristics and ensure that the character of green spaces of historic significance are protected.

¹ Plan Reference: Arbtech AIA 01

² Mill Hill Conservation Area, Character Appraisal Statement, April 2008

Biodiversity

15. The Arrandene Open Space and Featherstone Hill Metropolitan SINC is designated for its hedgerow and unimproved natural grassland habitat. Parties agree that the woodland does not fall under the designation's key features, avoiding a direct impact on the important features of the SINC and reducing the significance of any adverse effect. Nonetheless, the woodland is classed as a Deciduous Woodland in the National Forest Inventory, a priority habitat and is therefore an important ecological resource within the SINC.
16. The Natural Environment and Rural Communities Act [2006] (NE&RC ACT) includes a duty under s40(1) that every public body must, in exercising its functions, have regard to the purpose of conserving biodiversity. It goes on to state at s40(2) that this duty must have particular regard to the Convention on Biological Diversity and s41(1) requires the SoS to publish a list of the living organisms and types of habitats that are of principal importance for the purpose of conserving biodiversity. These are the current incarnation of what used to be known as priority species and priority habitats, which include badgers.
17. The proposal is supported by an Ecological Appraisal³, a Badger Report⁴ and a Biodiversity Impact Assessment Report⁵ with its associated metric. The Ecological Appraisal demonstrates that key ecological surveys for priority species and habitats were undertaken finding evidence of badger habitat. The Appraisal recommends that if impacts to badger habitat cannot be avoided, a Natural England mitigation licence would be required to undertake the works. It advises that any setts impacted should be informed by an appropriate mitigation strategy, a site wide badger survey of the SINC and a camera trap monitoring exercise undertaken. It recommends that any development should be subject to a Construction Environmental Management Plan (CEMP) to avoid damage to the SINC.
18. The Badger Report found strong evidence of badger habitat within the area. In application of the mitigation hierarchy, the Report determined that suitable mitigation could be secured through the implementation of a CEMP with section 4.5 of the Report providing a list of measures that such a Plan should incorporate to avoid risk to the badger population. Although these details do not show the location of protective fencing during construction works, I am satisfied that such measures could be detailed within the CEMP. Accordingly, the submitted ecological assessments have enabled me to have suitable regard to the affected priority species and habitats in compliance with s40(1) of the NE&RC ACT.
19. The Biodiversity Metric 4.0 Calculation demonstrates that the proposal would cause a loss of 10.46 Habitat units and its replacement with 13.69 units, demonstrating a 30.92% net gain. By virtue of a scheme of the proposed on-site Woodland Management Plan, a biodiversity net gain in habitats could be delivered. This Plan could include the removal of non-native plant species, the planting of native tree and shrub species and outline the proposed enhancements and the areas management. A Landscape Ecological Management and Monitoring Plan could be secured by condition to deliver the

³ Preliminary Ecological Appraisal Report, by Elton Ecology, dated 24 October 2022

⁴ Badger Report, by Elton Ecology, dated 28 September 2023

⁵ Biodiversity Impact Assessment Report, Elton Ecology, dated 28 September 2023

required Biodiversity net gain, had I been minded to allow the appeal. The identified gain would satisfy the requirement of the Framework for development to secure measurable net gains for biodiversity and would meet the London Plan's requirement for development to secure biodiversity net gain.

20. As a result, the proposal would not materially harm the SINC and would achieve biodiversity net gain. Consequently, the proposal would comply with London Plan policy G6 and LP policies DM01 and DM16. These seek, among other matters, for development to retain biodiversity, avoid damaging the significant ecological features of a SINC site and secure net biodiversity gain.

Other considerations

21. The site area was formerly laid out as a tennis court. The Council explains that the former courts appeared in historic maps from 1932 to 1941 but is absent from 1954. The main metal supports for its boundary fencing and the artificially levelled surface indicates the position of the former court. However, mature trees and a build-up of new soil surface demonstrates the former court has been nearly fully subsumed by the adjacent woodland and therefore have been largely blended into the landscape. As a result, the site is deemed to be previously developed land as the court has been abandoned and this therefore affords only limited weight in favour of the proposal.
22. An appeal decision⁶, for an allowed tennis court in the Green Belt, has been submitted by the Appellant. This included consideration as to whether or not the Brentwood Borough Council's Green Belt policy, which required the proposal to be of public benefit, was in conflict with the Framework. The issues relevant to that case are not directly comparable to this appeal and therefore this decision is of minimal weight in support of the scheme.

Whether there would be Very Special Circumstances

23. Paragraphs 152 and 153 of the Framework set out the general presumption against inappropriate development within the Green Belt. They explain that such development should not be approved except in very special circumstances. Very special circumstances to justify inappropriate development will not exist unless the potential harm to the Green Belt, by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
24. I have concluded that the appeal scheme would be inappropriate development that would, by definition, harm the Green Belt. The proposal would also result in harm, albeit moderate, to the character and appearance of the area. Paragraph 153 of the Framework requires substantial weight to be given to any harm to the Green Belt.
25. On the other hand, the other considerations I have identified are of limited to moderate weight in favour of the proposal, including the ability to deliver biodiversity net gain. As such, the harm to the Green Belt is not clearly outweighed by the other considerations identified and therefore the very special circumstances necessary to justify the development do not exist. Accordingly, the proposal fails to adhere to the local and national Green Belt policies I have already outlined.

⁶ Planning Appeal Reference: APP/H1515/A/12/2187437

Conclusion

26. The proposed development would not accord with the development plan or national policy and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal should not succeed.

Ben Plenty

INSPECTOR