

Appeal Decision

Site visit made on 6 August 2024

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th August 2024

Appeal Ref: APP/D1265/W/23/3334017

Plot 76, Avon Castle Estate, Ringwood BH24 2BP

- 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 Mr M Alkabani against the decision of Dorset Council.
 - The application Ref is P/FUL/2023/01968.
 - The development proposed is change of use from agricultural/forestry land to mixed use comprising recreation and leisure use for 110 days per year and all year round forestry maintenance; erection of 1.5m high timber gate on west frontage of plot to form new vehicular access.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have used the description of the development given on the appeal form, rather than that on the application form, as it describes the proposal more accurately.
3. The application form indicates that the work or change of use has already started, so I am dealing with the appeal retrospectively. However, the gates that were in position at the time of my visit differ in design to those shown on the submitted plans. I have determined the appeal on the basis of the submitted drawings.
4. The parties dispute whether the fence that has been constructed parallel to Hurn Road is permitted development. However, the fence is not part of the proposal before me, so this is not a matter that I have considered under this appeal.

Main Issues

5. The main issues are:
 - a) Whether the proposal is inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and development plan policy;
 - b) The effect of the development on the openness of the Green Belt;

- c) The effect of the development on the character and appearance of the area;
- d) The effect of the development on biodiversity; and,
- e) 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.

Reasons

Whether the development is inappropriate

6. It is not disputed that the site lies in the Green Belt. Paragraph 154 of the Framework states that the construction of new buildings is inappropriate in the Green Belt subject to specified exceptions. The Glossary in the Framework does not define "building", but section 336 of the Town and Country Planning Act 1990 defines a building as "any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building". Applying this definition, the gates constitute a building. Gates do not appear in the list of specified exceptions at paragraph 154.
7. Paragraph 154d) says that the replacement of a building is not inappropriate, provided the new building is in the same use and not materially larger than the one it replaces. There is no evidence before me to indicate that the proposed gates replace any previous gates of a similar scale. They are not, therefore, exempt under the terms of paragraph 154d). Policy KS3 of the Christchurch and East Dorset Local Plan Part 1 – Core Strategy adopted April 2014 (the Local Plan) does not deal with gates in the Green Belt any differently. Consequently, the gates constitute inappropriate development.
8. Paragraph 155e) of the Framework identifies that material changes in the use of land (such as for outdoor recreation) are not inappropriate in the Green Belt, provided they preserve its openness and do not conflict with the purposes of including land within it. The proposed use of the land for recreation and leisure falls within this category, so my conclusion on whether this aspect of the proposal is inappropriate must include consideration of the effect it has on openness and on the purposes of the Green Belt.
9. Whilst the proposal is only for change of use of the land, I saw that this use currently involves the placement of various items on the site, including children's swings, a basketball hoop, a picnic table, and an area of decking with a swinging seat. These result in a minor loss of spatial openness, but they are also readily visible from the public domain over the low boundary fence. Consequently, the visual impact on openness is more significant. What would otherwise be an undeveloped area of open woodland has the appearance of being a domesticated garden, intruding into its natural surroundings. This would also conflict with one of the five Green Belt purposes identified at paragraph 143 of the Framework, which is to assist in safeguarding the countryside from encroachment.
10. I am mindful that these items are moveable, however it is unlikely that they would be transported to and from the site on each of the 110 days for which permission is sought. Furthermore, although the items are currently confined

to the southwest corner of the land, the appeal site covers a much larger area. Consequently, if the appeal were allowed, there would be scope for a much wider spread of moveable domestic paraphernalia, resulting in further encroachment into the countryside, and increased harm to the openness of the Green Belt.

11. As the proposed use would not preserve openness, and would conflict with one of the Green Belt purposes, it would be inappropriate development under the terms of paragraph 155.
12. Both elements of the proposal would, therefore, be inappropriate development. Paragraph 152 of the Framework says that inappropriate development is, by definition, harmful to the Green Belt. In accordance with paragraph 153, this is a matter to which I attach substantial weight.

The effect of the development on openness

13. I have already concluded above that the proposed use would result in spatial and visual harm to the openness of the Green Belt. The proposed gates would be 1.5 metres high, almost 3 metres wide, and of solid construction. Consequently, they would interrupt views through the woodland from the public domain. I am mindful that gates 1 metre high could be erected as permitted development, so the increased height would have a limited impact. Nevertheless, they would result in a reduction in the extent to which the wooded site would be visible, resulting in modest harm to openness in comparison with the fallback position. Paragraph 153 of the Framework says that substantial weight should be given to any harm to the Green Belt.

Character and appearance

14. The appeal site lies to the east of Hurn Road, in a predominantly rural area. The road is lined on both sides by woodland, with trees closely enclosing the carriageway on both sides. Whilst there are other fences and gates along parts of this stretch of road, they generally enclose the residential properties or tourist sites that punctuate the much larger area of woodland. For the most part, however, the land to either side of the road is unenclosed, with open views of the woodland on both sides.
15. The proposed use would alter the character of a significant portion of this open woodland. The introduction of domestic paraphernalia associated with the use is already evident in views over the boundary fence, and has resulted in this part of the site having the appearance of a domestic garden. This is not compatible with the surrounding woodland, and is harmful to the natural appearance of the area. If I were to allow the appeal, the impact could extend over the rest of the appeal site, resulting in further harm to the essentially rural character of the area.
16. It has been put to me that the use would help to preserve the natural appearance of the site, as it would enable the maintenance of the trees. However, there is no evidence to suggest that the woodland would fall into a state of decline without the associated recreation and leisure use. Indeed, this does not seem to be the case for the surrounding woodland, which appears to be appropriately managed without such uses. I am not therefore persuaded

that the harm resulting from the use would be outweighed by any attendant benefits to the management of the woodland.

17. Although set back from the road, the proposed gates would be clearly visible from public views. They would be an incongruously domestic feature at the entrance to an area of natural woodland. The existing gates are dark-stained, and the gates shown on the submitted drawings could be similarly treated. However, whilst this would reduce their visual impact to some extent, they would still have a suburban character that would be out of keeping with, and harmful to, the natural surroundings of the site.
18. I am mindful that gates of a reduced height could be installed as permitted development. However, the additional height proposed would result in them being a more strident feature in the street scene than this fallback position. Consequently, they would have a more harmful impact on the rural character of the area.
19. I therefore conclude on this issue that the development would be harmful to the character and appearance of the area. As a result, it would conflict with Policies HE2 and HE3 of the Local Plan and Saved Policy DES11 of the East Dorset Local Plan (January 2002), which require development to be compatible with its surroundings and to protect and enhance the landscape character of the area.

Biodiversity

20. As the site forms part of a larger area of woodland it has the potential to support a range of species. In these circumstances, Policy ME1 of the Local Plan requires that it should be demonstrated that the development would not have adverse impacts. To determine the likelihood of such impacts the Policy requires the submission of an assessment of effects based on a proportionate ecological survey. In this case, the only ecological information submitted with the application was the Council's Biodiversity Checklist. However, this Checklist identifies that it is only for use on sites of less than 0.1 Hectares. Furthermore, it indicates that where the site contains mature trees or small areas of woodland, a Preliminary Ecological Appraisal is required. Although the completed Checklist indicates that these features are not present on the site, the evidence indicates that they are.
21. It is contended that, as the proposal does not involve any operational development, there would be no likely harm to biodiversity. However, the recreational and leisure use of the site could result in disturbance of any priority species that may be present. In the absence of any survey work I cannot discount this possibility.
22. I therefore conclude on this issue that insufficient evidence has been provided to demonstrate that the use would not have adverse impacts on biodiversity on the site. The proposal would therefore be contrary to Policy ME1 of the Local Plan.

Other considerations

23. It is contended that the proposed use would allow the appellant and his family, who live in an urban area, to enjoy the natural environment and improve their wellbeing. However, I have little evidence to indicate that

alternative areas of natural public space are not available close to the appellant's residence that could fulfil a similar role without harm to the Green Belt. I therefore only afford limited weight to this benefit.

24. It is stated that the gates are needed for security reasons. However, the existing fence that has been constructed to either side is considerably lower, so it allows views into the site and could be easily scaled. It is therefore unclear to me how the installation of higher gates would improve site security. Consequently, this is a matter to which I afford very limited weight.

Other Matters

25. My attention is drawn to an appeal decision¹ within the same local authority area. That appeal related to an enforcement notice alleging the material change of use of woodland to a mixed use of land for forestry and commercial woodcraft activities including the erection of buildings and structures. The appeal was successful to the extent that the retention of an open fronted store and compost toilet was permitted. The Inspector considered they were reasonably necessary for forestry purposes, so were not inappropriate development. In the case before me, I have concluded that the development would be inappropriate. Consequently, the cited appeal decision is of limited relevance.

Green Belt Balance

26. I have concluded that the proposal is inappropriate development which, by definition, is harmful to the Green Belt. I have also concluded that the proposal would result in harm to the openness of the Green Belt and would conflict with one of the Green Belt purposes. In addition, I have found that there would be harm to the character and appearance of the area, and that insufficient evidence has been submitted to discount harm to biodiversity.
27. Paragraphs 152 and 153 of the Framework require substantial weight to be given to any harm to the Green Belt, and state that inappropriate development should not be approved except in very special circumstances. Very special circumstances 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.
28. The other considerations referred to by the appellant only carry limited weight in favour of the proposal. As a result, the harm to the Green Belt, and the other harm, is not clearly outweighed by other considerations. Consequently, the very special circumstances necessary to justify the development do not exist.

Conclusion

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

Nick Davies

INSPECTOR

¹ Appeal Decision APP/D1265/C/20/3263942