



Appeal Decision

Site visit made on 16 October 2024

by D R McCreery MA BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st November 2024

Appeal Ref: APP/G2245/W/24/3350108

Bluebell Cemetery, Old London Road, Halstead, Kent, TN14 7AE

- 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 Paul Duthie (Bluebell Cemetery Ltd) against the decision of Sevenoaks District Council.
 - The application Ref is 24/00230/FUL.
 - The development proposed is the provision of a new exit road and associated cross over onto Old London Road to facilitate smooth egress of mourners' vehicles from the existing visitors' car park.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Applications for planning permission must be determined in accordance with the development plan for the area unless material considerations indicate otherwise. I have considered the development plan as a whole, including the policies of particular relevance to the main issue in the Sevenoaks Core Strategy (Core Strategy) and the Sevenoaks Allocations and Development Management Plan (Development Management Plan). The National Planning Policy Framework (the Framework) is a material consideration.
3. I have considered the appeal on its own merits without regard to any work already carried out that may, or may not, be associated with the proposal.
4. The Appellant submitted two reports at the Appeal stage; [1] an Ecological Impact Assessment dated July 2020 and [2] a Tree and Woodland Condition Survey and Report dated March 2019. While the reports may be associated with another planning application for the site, neither was expressly submitted as part of the current proposal. As such, they were not subject to consideration or consultation at the planning application stage.
5. While the reports do not amend the proposal itself, it is a fundamental principle that Appeals are determined on the same basis as the planning application to which they relate. New technical evidence is therefore only accepted by exception and where prejudice to parties is unlikely to occur.

6. In this case, both reports are of a technical nature and there is a reasonable expectation that specialised input may be required to establish their bearing on the current case (including to assess accordance with relevant standing advice from Natural England). They also relate to matters under dispute, where members of the public have an interest and may expect to have the opportunity to comment further. Considering this matter, acceptance of the reports at the appeal stage risks delaying determination of the appeal and prejudice to other parties. As such, I have not paid regard to the reports.
7. The Appellant makes an unreasonable comparison between the Council's submission of single page plans overlaying where they believe the boundary of the ancient woodland to be and technical reports that are of a more specialist nature.

Main Issue

8. The main issue is the effect of the proposal when regard is paid to habitats and biodiversity.

Reasons

9. The Council's ecological advice refers to potential effects on species, including roosting bats. Their judgement appears to be based at least in part on survey work that is not in evidence at this appeal. However, the Appellant has not provided admissible evidence to counter the judgement of the Council. Taking a precautionary approach to protected species such as bats and paying regard to the grass/woodland nature of the site it is reasonable to expect a project specific assessment of any ecological effects of the proposal in order to establish an up to date baseline, any likely effects and, if necessary, potential for avoidance or mitigation. An assessment would also inform whether Paragraph 186 (a) of the Framework is engaged by virtue of any harm that is categorised as significant.
10. Turning to effects on trees, I have noted that the precise boundary of the Ancient Woodland and the related buffer zone is in dispute. Whichever approach is adopted, the proposal is in sufficient proximity to the woodland to reasonably expect a project specific assessment of any effects upon it. This includes establishing whether loss or deterioration would occur requiring wholly exceptional reasons and a suitable compensation strategy as per paragraph 186(c) of the Framework.
11. As Annexe 2 of the Framework defines Ancient Woodland to include ancient semi-natural woodland, the Appellants distinction between the two is a false one. In any event, as there is an absence of evidence to reach a view on the quality of any woodland affected by the proposal it is appropriate to take a precautionary approach.
12. In these circumstances and taking a precautionary approach in the absence of evidence, accordance with Policy SP11 of the Core Strategy and EN1 of the Development Management Plan cannot be confirmed.
13. Based on the limited evidence provided, the Appellant cannot rely on development authorised by an existing planning permission to justify further development that isn't specifically authorised by that permission. Nor can inferences be drawn from an existing permission about development that may, or may not, be acceptable in the future. Where further development is

proposed it needs to be assessed on its own merits and on a project specific basis, including the need for any mitigation.

14. For the above reasons, and based on the evidence provided, the proposal would not have acceptable effects when regard is paid to habitats and biodiversity. There is conflict with the development plan for the area, specifically Policy SP11 of the Core Strategy and EN1 of the Development Management Plan which requires, amongst other things, the biodiversity of the district to be conserved and opportunities sought for enhancement to ensure no net loss and for proposals affecting a sites existing biodiversity to be designed in a way that avoids or mitigates any potential harm.

Other Matters

15. I have no application for costs. Any concerns about the Council's handling of the planning application are a matter between the Council and the Appellant. They do not change my overall conclusions on the planning merits of the Appeal.
16. I have considered public and other comments received in response to both the application and the appeal, including in support. Comments relating to the main issue have been considered as part of my reasoning above. Other comments do not materially change the overall assessment and outcome of the appeal.

Conclusion

17. There is conflict with the development plan for the area that amounts to conflict with the plan as a whole.
18. The Appellants stated benefits of the separate access, including in health and safety, user experience, and congestion relief terms, are noted. However, they are unevenced and not of an obvious scale attracting any more than limited weight.
19. In these circumstances there are no material considerations (including the Framework) to indicate that a decision should be taken other than in accordance with the development plan.
20. For the above reasons, and having regard to all other matters, the appeal is dismissed.

D R McCreery

INSPECTOR