



Appeal Decision

Site visit made on 31 October 2024

by C Shearing BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 November 2024

Appeal Ref: APP/F1610/W/24/3340337

Berry Bank, Main Road, Oddington, Gloucestershire GL56 0XW

- 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 Berrybank Park Limited against the decision of Cotswold District Council.
 - The application Ref is 22/04337/FUL.
 - The development proposed is change of use of the land from agricultural to outdoor live performance venue (sui generis), an engineering operation resulting in a sunken amphitheatre, erection of a kitchen pod, installation of a permanent pavilion base, temporary use of part of the site for car parking, laying out of an access track.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development in the header above is taken from the planning application form. I have removed references to the proposal being part retrospective since that is not a description of development, although I observed during my site visit that some of the works have already been carried out.
3. A planning application for other works to the site has also been refused planning permission¹. This included a marquee pavilion, outdoor lighting structures and other 'pod' structures for a temporary period to facilitate outdoor leisure events. Those matters do not form part of the considerations of this appeal, which is limited to the matters set out in the description of development.
4. On 30 July 2024 the Government published a consultation on proposed reforms to the National Planning Policy Framework (the Framework) and other changes to the planning system. Whilst a direction of travel has been outlined within the Written Ministerial Statement, which is a material consideration, the changes to the Framework can only be given limited weight at this stage, given that no final document has been published. In reaching my decision I have therefore had regard to the Framework published in December 2023, and references to the Framework are to this version unless stated otherwise.

¹ Council reference 23/03675/FUL

Main Issues

5. The main issues are the effects of the proposal on i) the Cotswold National Landscape, and; ii) the living conditions of nearby occupants, with particular regard to noise disturbance.

Reasons

Cotswold National Landscape

6. The appeal site lies within the Cotswold National Landscape, formerly known as an Area of Outstanding Natural Beauty (AONB). The Framework states that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs which, among other designations, have the highest status of protection in relation to these issues. Policy EN5 of the Cotswold District Local Plan 2018 (the LP) reiterates these aims and states that the conservation and enhancement of the natural beauty of the landscape, its character and special qualities, will be given great weight.
7. The Council refer to the Landscape Strategy and Guidelines for the Cotswold National Landscape (the LSG), which places the majority of the appeal site and its surroundings in the Pastoral Lowland Vale and Moreton Vale character areas. It describes key features of the landscape as including extensive pastoral vale defined by farmed slopes with flat or gently undulating landform fringed by distinctive shallow slopes. It describes that views are often limited by intervening vegetation and undulating landform, but also with some intermittent open expanse character and expansive views in some areas. The LSG also identifies that development can have potential implications on the landscape, including the loss of characteristic open landscapes, loss of tranquillity and suburbanisation of the agricultural landscape. Policy EN4 of the LP specifically recognises the tranquillity of the countryside as part of the natural and historic landscape.
8. The area surrounding the appeal site encompasses some of these distinctive landscape features. The site adjoins an extensive patchwork of large open fields of grassland and farmland, divided by a network of hedgerows and occasional patches of woodland. While there are clusters of agricultural and commercial buildings across the landscape and the settlement of Oddington lies to the south, the area can be described as having a distinctly rural and agricultural character.
9. The ground levels of the appeal site slope gently downwards to the north and east, giving wide ranging views across the landscape from the highest part of the site. The Council report that the site formerly comprised an open pastoral field with agricultural structures. At the time of my visit the A436 Main Road provided a source of near constant movements and ambient noise, however, there was some sense of tranquillity on the appeal site, particularly on those parts further from the road and the existing buildings. This tranquillity similarly forms part of the way the area is experienced and a part of the area's overall character. Based on the evidence, the site would previously have been one which aligned with and contributed positively to the key characteristics of the landscape character.
10. The development has entailed the excavation of a horse-shoe shaped amphitheatre into the slope of the land, creating a symmetrical and repeated

pattern of terraces into the hillside. Despite being covered with grass, the landform has an engineered appearance and is heavily at odds with the natural and gentle slopes of the site and the wider area, and its harmful effects would be long lasting. The effects of the amphitheatre are apparent from within the site itself and I observed parts of it to be visible from the public footpath on lower ground to the east.

11. There is not substantive evidence relating to the impact of the amphitheatre on wider views across the area. Despite the statement in the Council's officer report regarding visibility, given its location on the slope and the far reaching views that are possible from the site itself, it is very likely that the amphitheatre has visual impacts on the wider landscape and, based on the evidence, it cannot be established that this would not be the case.
12. The kitchen pod has been installed and is a low level structure partially recessed into the slope of the land and comprising elevations of dark green timber cladding. It is visible from the public footpath on the lower ground to the east and in glimpses from the road, however given its design and scale it does not appear at odds with a rural and agricultural setting. The adjacent pavilion base would be level with the ground with little impact on the landscape. Similarly, the parking area would be extensive and cover much of the highest parts of the site, but would only have visual impacts while in use. Nonetheless, when in use, the pavilion base and car parking area would be visible on the hillside and together would substantially detract from the natural landscape character including its tranquillity.
13. The proposal would include additional planting to the site which would assist in softening the appearance of the structures and would likely provide some screening of activity on the site in certain views. However, the semi-circular hedgerow and regular grid pattern of the cherry orchard extension would accentuate the engineered character of the site and it is not apparent from where they take their cues from the surrounding natural landscape.
14. When not in use, the site would retain its tranquil qualities. The proposal would, however, create concentrations of significant activity associated with performances including noise, pedestrian and vehicular movements across much of the site, causing harm to its tranquil character and feelings of remoteness. The largest adjacent building to the west was subject to a certificate of lawfulness confirming a B2 industrial use² and more recently planning permission for a change of use³, which could generate movements and activity. However, there is little evidence to suggest the impacts of this on the tranquillity of the site and that building is positioned close to the road and areas of other activity. While measures are proposed to help control noise levels, notwithstanding the findings below in respect of noise disturbance, those measures would not maintain feelings of tranquillity in the landscape when performances were taking place.
15. Policies EC5 and EC10 of the LP provide support for the diversification of agricultural businesses and tourist and visitor attractions, subject to criteria. In the case of Policy EC5 this includes the requirement that the proposal should contribute positively to the character and appearance of the area. For the reasons set out, this would not be the case here and consequently the

² Council reference 22/01634/CLEUD

³ Council reference 23/03675/FUL

criteria of Policy EC5 would not be met. In turn that policy does not provide support for the proposal.

16. The criteria set out in Policy EC10 include that the proposal should have a functional relationship and special affinity with the historic and natural heritage of the area. The supporting text explains that 'special affinity' is used to protect the character of Cotswold towns and the countryside and explains that A-roads of the District tend to form the main tourist routes. It goes on to state that the nature of the attraction should rely on its location within the Cotswolds. The appeal site is located on an A road and would not harm the setting of any Cotswold town. However, while it may provide a source of local employment, use local suppliers and may be used by some local residents, these do not amount to a functional relationship or special affinity with the historic and natural heritage of the area as set out in the policy. Accordingly, the criteria of Policy EC10 would not be met.
17. Paragraph 88 of the Framework similarly supports a prosperous rural economy, but provides that decisions should enable sustainable rural tourism and leisure developments which respect the character of the countryside. As this has not been found to be the case here, the provisions of paragraph 88 do not weigh in favour of the development.
18. In conclusion on this main issue, for the reasons set out, the proposal would cause harm to the character and appearance of the area and the landscape character of the Cotswold National Landscape/ AONB. The proposal would conflict with policies EN4 and EN5 of the LP which together require regard to be had to the natural landscape and natural beauty of the AONB, and with policies EC5 and EC10 of the LP, summarised above. The proposal would also conflict with the objectives of the Framework relating to AONBs.

Living Conditions

19. A number of sporadically located properties lie close to the appeal site, and the village of Oddington lies further to the south. The proposal has the ability to generate noise disturbance through the outdoor performances with around 50 staff and up to 450 attendees. Evidence provided by third parties suggest that disturbance has occurred from operations on the site in the past.
20. The appellant has provided a Noise Management Plan (the NMP) which details the way in which events would operate and the measures which would be adopted to manage noise impacts. This includes specific speaker sizes and noise monitoring at the site perimeter and nearest houses. It details that ambient noise levels from the closest property were recorded at 72db, rising to 85db with passing traffic on the road, and that sound levels would not exceed 110db LAmax 1 meter from the speakers. The Council's Environmental Health Officer has raised no objection to the measures set out in the NMP.
21. There are some omissions from the report, particularly in terms of methodology and the sensitive receptors to which it refers. Nonetheless, it makes a number of statements about how the use would operate including that noise levels at the nearest property would not exceed 65db LAeq15min between 10:00 and 22:30. The appellant has confirmed they would accept a condition to secure compliance with the NMP. While previous events have caused noise disturbance, the imposition of such a condition would bring future events to a level required to comply with the NMP if the appeal scheme

were otherwise acceptable. There is not substantive evidence to demonstrate harmful effects on the welfare of animals in nearby fields, or that it would amount to unacceptable risk of those adjacent land uses as set out in Policy EN15 of the LP.

22. In conclusion on this main issue, subject to appropriate conditions, the development would be acceptable in terms of its effects on the living conditions of nearby occupants. It would not conflict with Policy EN15 of the LP which relates to public health and amenity, neither do I find conflict with Policy EN2 and the Cotswold Design Guide insofar as it relates to private garden areas. The proposal would comply with the objectives of the Framework relating to healthy living conditions.

Other Matters

23. Despite some aspects not being permanent, the effects of the proposal as a whole on the landscape character would be significant, and some effects long lasting. Accordingly, great weight is given to the harm to the landscape character. The proposal would deliver social and economic benefits through providing a performance venue and employment. It could also support local businesses and provide a facility for use by the local community, reducing their need to travel further afield. Letters in support of the proposal suggest it has provided a valuable and enjoyable facility for people of all ages including families. The appellant asserts that there are not comparable facilities in the District and positive online reviews refer to the site's location in general terms, although there is not substantive evidence relating to local need or the lack of facilities. There may also be ecological benefits, although there is little information in this regard. Based on the evidence and taken together, these matters would not outweigh the harm which would arise from the development.
24. I have considered whether a temporary permission may be suitable, and the Planning Practice Guidance sets out circumstances where this may be appropriate. However, given the harm identified to the landscape character, it would not be appropriate to give a 'trial run' nor is it likely that the circumstances would change in the future. As such a temporary permission would not be suitable here.
25. The Council accept that there would be no impacts on the significance of the Oddington Conservation Area (OCA), which is approximately 40m to the south of the appeal site. Given the distance of the site from the OCA, intervening structures and road and the absence of any significant intervisibility between the site and the OCA, I am satisfied that the proposal would not form a part of its setting within which it is experienced. I am aware of other concerns raised for the development, however I have not considered these further since they would not alter the outcome of the appeal.

Conclusion

26. The proposal would conflict with the development plan and the appeal is dismissed.

C Shearing

INSPECTOR