



Appeal Decision

Site visit made on 20 October 2020

by **K A Taylor MSC URP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 15 December 2020

Appeal Ref: **APP/F4410/W/20/3249098**

Barnburgh Fishing Lakes, Ludwell Hill, Barnburgh, Doncaster DN5 7EE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Barnburgh Fishery against the decision of Doncaster Metropolitan Borough Council.
 - The application Ref 20/00004/FUL, dated 30 December 2019, was refused by notice dated 10 February 2020.
 - The application sought planning permission for '*retrospective application for erection of extension to existing garage to form a larger ancillary building (15.75m x 15.55m overall) and new drainage system in support of Barnburgh Lakes Fishery*' without complying with a condition attached to planning permission Ref 13/01192/FUL, dated 2 October 2013.
 - The condition in dispute is No 06 which states that: '*The planning permission hereby granted and use of the ancillary building shall be exercised solely for the benefit of Barnburgh Lakes Fisheries anglers only and shall at no time serve the general public*'.
 - The reason given for the condition is: '*To restrict the use to the needs of the fisheries only in the interests of protection of highway safety and the Green Belt*'.
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Decision

1. The appeal is dismissed.

Background and Main Issues

2. The appeal building is located within the Green Belt. It was granted planning permission¹ in 2013 as part of an extension to an existing garage to form a larger ancillary building at the fishery. This permission restricts the use of the building to ancillary purposes, which is in use as a café/restaurant, known as 'Bullrush Bistro' for use by the anglers and at no time to serve the general public. The building also includes shelter and toilet facilities for fishery customers.
3. The appellant now wishes to vary condition 06 of this permission to include the use of the café/restaurant by family members of the anglers whilst using the fishery. This would mean removing condition 06 and replacing with '*The planning permission hereby granted and use of the ancillary building shall be exercised solely for the benefit of Barnburgh Lakes Fisheries anglers and their families only and shall at no time serve the general public*' to enable the café/restaurant to trade.

¹ 13/01192/FUL

4. The Council's main argument is that currently the café/restaurant with the restrictive condition supports the appropriate leisure use of the existing sport and outdoor recreation undertaken on the wider site. If the condition was varied to allow non-anglers to utilise the ancillary building then this would constitute inappropriate development in the Green Belt; as the café/restaurant would become independent from the fishery and not serve the same purpose.
5. In regard to protecting highway safety this was included as a reason for the condition on the original permission. However, the Council in their evidence state that the variation of the condition would not result in a significant increase in the number of cars. As such, highway safety is not in dispute.
6. Having regard to the background to the application and to the imposition of the condition, the main issues are:
 - Whether the condition is reasonable and necessary to ensure that the development is not inappropriate development in the Green Belt having regard to the National Planning Policy Framework, (the Framework) and any relevant development plan policies;
 - If the proposal is inappropriate development, would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

Reasons

Whether inappropriate development in the Green Belt

7. Paragraph 55 of the Framework states that planning conditions should only be imposed where they are necessary, relevant to planning and the development to be permitted, enforceable, precise and reasonable in all other respects.
8. Paragraph 145 of the Framework sets out that the construction of new buildings in the Green Belt should be regarded as inappropriate development, unless it meets one or more of a list of exceptions. These include (b) the provision of appropriate facilities (in connection with the existing use of the land or a change of use) for outdoor sport and outdoor recreation; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.
9. Paragraph 143 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
10. Saved Policy ENV3 of the Doncaster Unitary Development Plan 1998, Saved 2007 (UDP) does not permit development within the Green Belt, except in very special circumstances and for purposes including (b) outdoor sport and outdoor recreation including essential facilities for such development, subject to limitations within Policy ENV7. Saved Policy ENV7 sets out the criteria for essential facilities and only permits where the development is genuinely required, and the development preserves the openness of the Green Belt.
11. Policy CS3 of the Doncaster Council Core Strategy 2011-2018, 2012 (CS) sets out the countryside will be protected and enhanced, and has regard to the general extent of the Green Belt and advises the key considerations for land

- within this area are that national policy will be applied, including a presumption against inappropriate development other than in very special circumstances.
12. Whilst Saved Policies ENV3 and ENV7 of the UDP and CS Policy CS3 clearly pre-date the Framework (2019), I consider that in seeking to control development in the Green Belt and the exceptions, they are broadly consistent with paragraphs 143 and 145 of the Framework.
 13. Accordingly, in light of the above, I am satisfied that the original permission for the use of the ancillary building was granted as an exception for provision of appropriate facilities for outdoor sport/outdoor recreation being in connection with the existing use of the land as a fishery. This was supported at that time by Saved Policies ENV3 and ENV7 of the UDP and CS Policy CS3, which concern the protection of the Green Belt.
 14. Therefore, it is apparent from the original permission that the building, in use as a café/restaurant was approved subject to the condition that the building was only used for purposes ancillary to the use of the fisheries and in particular those anglers using the facility, as set out in Condition 06. This was considered necessary to ensure that the development met the requirements of relevant policies in the development plan and the Framework with regard to essential facilities for outdoor sport / recreation in the Green Belt.
 15. As set out in the Planning Practice Guidance (PPG)², planning permission usually runs with the land and it is rarely appropriate to provide otherwise. There may be exceptional occasions where development that would not normally be permitted may be justified on planning grounds because of who would benefit from the permission, including limiting benefits to a particular class of people. In this case, the benefits of the use of the ancillary building as a café/restaurant would benefit the anglers at the fishery. As such, the original condition was reasonable and necessary to restrict the use to the anglers of the fishery and to avoid the use of the café/restaurant being a standalone development and resulting in inappropriate development within the Green Belt.
 16. The appellant contends that the variation of the condition would only restrict the use of the café/restaurant to both the anglers and their family members. However, I have been provided with limited evidence of how this could actually function and be controlled, including whether they would attend the premises for the full duration of time the angler was fishing on the site or would they potentially come and go to the site and use the café/restaurant as and when they required. As such, there would be no guarantee that family members would necessarily travel to the fishery with the angler.
 17. Furthermore, I have been provided with limited evidence on how the café/restaurant at the fishery is run, including opening / closing times, use of the building for fishing events or tournaments and cannot be therefore certain of the likely intensification of use for the building. Neither, have I seen any evidence to suggest there would be any mechanisms in place that could be classed as being reasonable to ensure that customers of the facility were family members of the anglers, and in my opinion, this would become a tedious task for staff of the café/restaurant to check.

² Planning Policy Guidance (PPG): Paragraph: 015 Reference ID: 21a-015-20140306 Revision date: 06 03 2014

18. Moreover, I am not satisfied that 'family members' could be defined for the purposes of the suggested condition as the potential interpretation has a much broader definition to many, including whether members are immediate or part of a wider extended family. As such, the proposed variation of the condition would not meet the six tests as it would be difficult for the condition to be precise or enforceable to ensure that the café/restaurant remained as ancillary to its primary use as appropriate facilities for the fishery within the Green Belt.
19. As set out in paragraph 133 of the Framework, the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, the essential characteristics thereof being its openness and permanence. The physical presence of built forms, including its purpose and locational context and changes to the land may affect openness, which can also have spatial and or/visual implications.
20. Although there would be no physical works to the building, the variation of the condition would result in a building that would, in part, be unrelated to the purpose of the fishery and utilised by a wide range of other visiting members of the public. This would intensify the comings and goings not associated with the outdoor sport/recreation of the building and the land. The effect of replacing the disputed condition with that suggested would be to alter the building from its current role as a 'not inappropriate' development in the Green Belt, to being an inappropriate development. This is because the justification for the building would cease to be encompassed by the exception in paragraph 145 of the Framework.
21. Accordingly, I have had regard to the PPG³ and given that the condition mitigates the adverse effects of the development within the Green Belt. I conclude that the condition limiting the ancillary building to the use of the anglers is reasonable and necessary in the interests of protecting the Green Belt. The development without the disputed condition would be inappropriate if this were to be varied to include family members. As such, I consider that the condition imposed by the Council in relation to the restrictive use of the café/restaurant is reasonable in all other aspects and would ensure compliance with Saved Policy ENV3 of the UDP and Policy CS3 of the CS.
22. If the condition were to be varied, it would also result in a development that would not meet any exception set out in the Framework, with reference to paragraphs 145(b), and would constitute inappropriate development in the Green Belt and would be harmful by definition.

Other Considerations

23. The appellant has provided details that the fishery is a small family business including its turnover and viability, albeit limited. This appears to indicate that the fishery business including the café/restaurant generates a profit, but that it does not make any profit from the café as this is generated from the fishery element and it is subservient financially to the main fishery leisure function. I accept there would be some economic benefit in regard to jobs.
24. However, I have no substantive evidence that the wider use of the café/restaurant to a wider range of customers would support the principal

³ Paragraph: 001 Reference ID: 21a-001-20140306 Revision date: 06 03 2014

fishery business or have any material impact on employment. As such, I can afford little weight to any perceived benefit of the proposal in that respect.

25. I understand that the main users of the facility, that being the anglers, have requested they would like to bring members of their families along to be able to use the café/restaurant while they are fishing. Although, this would be a benefit for the anglers, it does not outweigh the harm to the Green Belt.
26. I also acknowledge the Council's concerns regarding ongoing activities at the fishery and there is some doubt over the current use of the café/restaurant. However, these matters would need to be dealt with separately by the Council who have the necessary enforcement powers. In any event, the appeal is determined on its individual merits and on the basis of the evidence before me.

Planning Balance and Conclusion

27. The appeal scheme is inappropriate development in the Green Belt. This is harmful by definition. This harm renders the appeal scheme contrary to the aims of both the policies of the development plan, as I have identified them, and the relevant sections of the Framework.
28. Against this, the other considerations that have been advanced are not sufficient, either individually or cumulatively, to clearly outweigh the substantial weight to be given to the harm to the Green Belt I have identified. Consequently, the very special circumstances necessary to justify the development do not exist.
29. The variation of the condition would be contrary to the development plan and the Framework, taken as a whole. There are no other material considerations that would indicate that the appeal proposal should be determined other than in accordance with the development plan.
30. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

K A Taylor

INSPECTOR