The Planning Inspectorate

Appeal Decision

Site visit made on 2 April 2024

by Elaine Moulton BA (Hons) BPl MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th May 2024

Appeal Ref: APP/M1005/W/23/3329038
Area to west of Shipley Lake, Shipley Lakeside development site, former American Adventure Theme Park DE75 7JL

- 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 A Barnfield of Waystone Developments Ltd against the decision of Amber Valley Borough Council.
- The application Ref is AVA/2022/1007.
- The development proposed is engineering operations associated with the creation of a widened valley, layout of Phase 3 Access Road, and reconfigured development platform (Plot D) and batters as a revised earthworks scheme to that previously approved under Planning Ref: AVA/2015/0403.

Decision

1. The appeal is allowed and planning permission is granted for engineering operations associated with the creation of a widened valley, layout of Phase 3 Access Road, and reconfigured development platform (Plot D) and batters as a revised earthworks scheme to that previously approved under Planning Ref: AVA/2015/0403 at area to west of Shipley Lake, Shipley Lakeside development site, former American Adventure Theme Park DE75 7JL in accordance with the terms of the application, Ref AVA/2022/1007, subject to the conditions in the attached schedule.

Background and Preliminary Matters

2. The appeal site forms part of a wider area of land within the Green Belt which is allocated as a major development site under Policy EN3 of the Amber Valley Borough Local Plan (LP), and benefits from outline planning permission for a mixed-use development. The parameters plan, that was approved as part of the permission, allocates leisure uses on Plot D. Residential development on several plots is either under construction or completed following approval of reserved matters.

3. The outline planning permission included works to open up a culverted watercourse between Shipley Lake and two upstream reservoirs, Osbornes Pond and Coppice Lake. The appeal seeks approval for engineering operations to create a wider channel for that watercourse and for the raising of Plot D using the excavated materials.

4. The creation of the widened channel and reconfigured development platform had been carried out at the time of my visit. I have, therefore, dealt with the appeal on the basis that planning permission for those elements of the development is being sought retrospectively.

5. Since the determination of the planning application, the Government has published a revised National Planning Policy Framework (the Framework). Where reference is made in this decision to paragraph numbers, they are taken from the latest version.

Main Issue

6. The main issue in the appeal is whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies.

Reasons

7. The appeal site is located within the Green Belt. The Framework establishes that development in the Green Belt is inappropriate other than for specified exceptions that are set out in paragraphs 154 and 155. At paragraph 155, certain forms of development are identified as not inappropriate provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it. One such exception, 155(b), is engineering operations.

8. I agree with the parties that LP Policy EN2, relating to development in the Green Belt, is not fully consistent with the Framework as it does not include engineering operations as an exception. Accordingly, I have relied upon the Framework in assessing whether the development would be inappropriate within the Green Belt.

9. The evidence before me suggests that prior to the granting of the outline planning permission the wider site comprised undulating terrain. Whilst it is apparent that the overall development site has been extensively remodelled to form development platforms, the undulating landform has, nonetheless, been broadly retained.

10. The importation of the excavated materials has raised the level of Plot D above that previously approved. However, Plot D and its access road remains at a lower level than the adjoining Shipley Country Park (the Park) and lower than the highest level within the wider site. In this context, the change in land levels would not be significant. Even when viewed from the nearest development platforms and from within the Park, the changes in level from that approved would not be marked.

11. I acknowledge that the development site is not unchanged in its appearance and any buildings constructed upon it would be at a higher ground level than anticipated when outline planning permission was granted. Even so, the differences would not be to the extent where the openness of the Green Belt would not be preserved, or a conflict with the purposes of including land within it would arise.

12. In addition, there is nothing before me that would suggest that the proposals would conflict with the requirements of LP Policy EN3.

13. I therefore conclude that the proposal is not inappropriate development in the Green Belt and would accord with the Framework in this regard.

Other Matters

14. The Council and interested parties have raised concerns that the works to widen the channel between Shipleys Lake and the reservoirs are not justified. However, clear reasoning for such works to mitigate risks of flooding to residents, and associated danger to life, is set out in the supporting documents and within the Technical Letter of Support for the appeal provided on behalf of Derbyshire County Council. In the absence of compelling technical evidence to the contrary, I am satisfied that such works are essential to the safety of the public.

15. An incursion into the Park is proposed that would result in the temporary closure and realignment of a section of Nutbrook Trail, that forms part of the Sustrans 67 cycleway. However, such works would be minor in extent and the required closure would be for a very short period. Consequently, the enjoyment of the users of the Park and the trail/cycleway, and the heritage value of the Park, would not be materially diminished. Furthermore, whilst Nutbrook Trail would be closer to a bridleway in its proposed position, there is nothing before me to suggest that this would be unsafe to the users of such routes.

16. The proposals would result in the loss of shrubs, several small trees and semi-improved neutral grassland, and concern has been expressed about the potential effects of this on wildlife. However, there is no substantive evidence before me that demonstrates that any such effects could not be appropriately addressed through landscaping and habitat mitigation.

17. The appeal proposal would result in a reduction in the size of Plot D from that approved in the outline planning permission. Thus, it is reasonable to conclude that the amount of development would be reduced and would not lead to additional strain on public services.

18. I consider that the appeal scheme is acceptable, for the reasons set out above, and no compelling evidence before me to demonstrate that it would set a precedent that would lead to harmful developments on other sites.

19. Several other concerns have been raised by interested parties which includes that the proposal would lead to an increase in noise and pollution within the Park, result in overshadowing of existing properties and that the stability of the land makes it unsuitable for development. The Council has not indicated that it shares any of these concerns and I have not been presented with any substantive evidence that would lead me to conclude otherwise.

20. The potential for the applicant to make a profit from the proposal is not a material consideration to which I can attach significant weight in making my decision. Furthermore, whether or not the upkeep of the proposed works on Council owned land would place an additional financial burden upon it is a matter that does not relate to the planning merits of the appeal proposal. As such, it falls outside of the remit of this decision.

21. Overall, I am satisfied that the matters I have referred to in this section would not result in a level of harm which would justify dismissal of the appeal.

Conditions

22. The Council has suggested several conditions, within the officer report to the Planning Board, which I have considered against the Framework and Planning

Practice Guidance. As a result, I have made some amendments for clarity and consistency and to avoid duplication, but without changing the substance of any particular condition.

23. I have not included the standard commencement condition as the development has already begun and, therefore, planning permission is, in part, granted on a retrospective basis. However, as the proposed development has not been completed it is appropriate to attach a condition specifying that the development is carried out in accordance with the approved plans.

24. Conditions relating to surface water drainage are necessary to ensure the site is suitably and correctly drained to prevent flooding. As permission is being granted retrospectively in part, and it is not possible to use a negatively worded condition to secure the approval and implementation of the outstanding matters before the development takes place, I have included a strict timetable for compliance where appropriate. The conditions will ensure that the development can be enforced against if the requirements are not met.

25. I have considered it necessary to attach a condition to secure additional landscape and habitat mitigation and enhancement for the reason I have set out above and to assist in the assimilation of the development into the environment. I have also included a condition requiring tree protection measures to be implemented to safeguard all trees that are not identified to be removed.

26. To ensure the safety of users of the Nutbrook Trail and that reinstatement works are acceptable, a condition has been included requiring approval and implementation of details of works to be undertaken.

27. To prevent potential contamination and minimise risks for future occupiers, a condition is required to ensure the appropriate handling of excavated materials.

28. The Council has also set out several informative notes. However, such notes would have no legal effect, and I have not, therefore, included them in the decision. Nonetheless, the appellant has had sight of the report and should, therefore, be aware of the contents of them.

Conclusion

29. For the reasons given above, having regard to the development plan as a whole and all relevant material considerations, I conclude that the appeal should be allowed.

Elaine Moulton

INSPECTOR

Schedule of Conditions

1) The development hereby permitted shall be carried out in accordance with the following approved plans:

SL-D-EOW-PL-01 Rev D;
SL-CV-P-01 Rev A;
4487-L-08J Landscape & Habitat Plan;
4487-L-11J Landscape & Habitat Plan;
4487-L-15J Landscape & Habitat Plan;
SHLK-AEC-XX-XX-DR-CR-00201 -P1 Plot D Highway General Arrangement;
SHLK-AEC-XX-XX-DR-CE-00202 - P1 Plot D Earthworks Layout;
SHLK-AEC-XX-XX-DR-CE-00203 - P1 Plot D Highway Longitudinal Section;
SHLK-AEC-XX-XX-DR-CE-00204 - P1 Typical Earthworks Section Sheet 1;
SHLK-AEC-XX-XX-DR-CE-00205 - P1 Typical Earthworks Section Sheet 2;
New Road Way D – New Footpath Plan Alignment – Rev A;
SHLK-AEC-XX-XX-DR-CE-00560 - P1 Plot D Drainage Strategy;
SL-S-DVRS-01 Rev B.

2) Notwithstanding the submitted information, unless within 3 months of the date of this permission a detailed design and associated management and maintenance plan of the surface water drainage for the site, in accordance with the principles outlined within:
a) Flood Risk Assessment Addendum (Project No. 60587023, dated October 2022) including any subsequent amendments or updates to those documents as approved by the Flood Risk Management Team; and
b) DEFRA's Non-statutory technical standards for sustainable drainage systems (March 2015).

is submitted to the local planning authority for approval, and unless the plan is implemented within 3 months of that approval, all material that has been brought onto Plot D shall be removed until such time as a plan is approved and implemented.

If no plan in accordance with this condition is approved within 8 months of the date of this decision, all material that has been brought onto Plot D shall be removed until such time as a plan is approved and implemented.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

3) Notwithstanding the submitted information, unless within 3 months of the date of this permission a detailed assessment to demonstrate that the proposed destination for surface water, which shall accord with the Drainage Strategy set out in paragraph 56 of the Planning Practice Guidance (reference ID: 7-056-20220825), is submitted to the local planning authority for approval, and unless all works within the approved assessment are implemented within 3 months of that approval, all material that has been brought onto Plot D shall be removed until such time as the detailed assessment is approved and implemented.

If no assessment in accordance with this condition is approved within 8 months of the date of this decision, all material that has been brought onto Plot D shall be removed until such time as a plan is approved and implemented.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

4) Notwithstanding the submitted information, unless within 3 months of the date of this permission details indicating how additional surface water run-off from the site will be avoided during construction, which may require the provision of collection, balancing and/or settlement systems for these flows, is submitted to the local planning authority for approval, and unless any approved details are implemented within 3 months of that approval , all material that has been brought onto Plot D shall be removed until such time the details are approved and implemented.

If no details in accordance with this condition are approved within 8 months of the date of this decision, all material that has been brought onto Plot D shall be removed until such time as a plan is approved and implemented.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

5) Prior to first occupation of the development hereby permitted, a verification report carried out by a qualified drainage engineer, shall be submitted to and approved in writing by the local planning authority. The verification report shall demonstrate that the drainage system has been constructed as per the agreed scheme pursuant to conditions 2 and 3, or detail any minor variation, provide the details of any management company, and include the national grid reference of any key drainage element (surface water attenuation devices/areas, flow restriction devices and outfalls).

6) Prior to first occupation of the development hereby permitted, an updated Landscape and Habitat Scheme incorporating additional mitigation and enhancement, shall be submitted to and approved in writing by the local planning authority. Such a scheme shall provide precise details, including density and tree planting, hedgerows and details of standard general-purpose meadows and grass mix. The development shall thereafter be carried out in accordance with the approved details.

7) Prior to any further development, retained trees including those which are located outside of the site boundary and may be impacted, shall be protected from damage and soil compaction during works in accordance with BS5837:2012 (Trees in relation to design, demolition and construction – Recommendations).

8) Notwithstanding the submitted information, prior to commencement of any construction/reinstatement works in association with Nutbrook Trail, details of

the alignment and construction of Nutbrook Trail shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details.

9) All excavated materials shall be handled in accordance with the approved Reclamation Strategy (Project No: 60469159, dated February 2019).