Appeal Decision

Site visit made on 22 July 2009

by David Baldock **MA DipTP DMS MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

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Decision date:
20 August 2009

Appeal Ref: APP/R1845/C/09/2094006
Land at West Midland Safari Park

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by West Midland Safari Park against an enforcement notice issued by Wyre Forest District Council.
- The Council's reference is 09/0060/ENF.
- The notice was issued on 4th December 2008.
- The breach of planning control as alleged in the notice is without planning permission, the erection of plant and machinery, namely the "Wild Water Rafting" ride and associated pathways and the change of use from a woodland area to use as part of an amusement park.
- The requirements of the notice are:
  Step (1)
  - Dismantle and permanently remove ride structure and associated items including the watchtower, landing station, and associated infrastructure, the electrical housing building and associated cables and components;
  - dismantle and permanently remove the "Wild River Rafting" advertisement structure;
  - remove the gabion baskets from the north, south and east sides on the ride shown with a broken line on Plan numbered 2 attached;
  - demolish the concrete walls
  - remove floodlights and associated poles;
  - remove all gates, fences and other means of enclosure from the land.

  Step (2)
  - Remove all materials resulting from Step 1.

  Step (3)
  - Cover the concrete base by filling the area with topsoil;
  - regrade the land in line with the original contours as indicated on Plan numbered 2 attached;
  - reseed the land and carry out a planting scheme in the hatched area in accordance with the details shown on the Plan numbered 2 attached with a view to returning the area to its condition prior to the unauthorised development taking place.
- The period for compliance with the requirements is by 31st December 2009.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Decision

1. I direct that the enforcement notice be corrected and varied by:

   A. In paragraph 3, the matters which appear to constitute the breach of planning control, deleting "a woodland area" and substituting "use as part of a wild animal safari park".

B. In paragraph 5, what you are required to do:

Deleting Step (3) and substituting:

> Regrade the land by filling with topsoil to accord with the original contours and thereafter seed the land;
>
> Carry out a planting scheme in the hatched area in accordance with the details shown on the attached Plan 2.

Adding Step (4):

> Cease the use of the land as part of an amusement park.

C. Deleting the time for compliance in paragraph 6 and substituting:

> Steps (1), (2) and (4): seven months.
>
> Step (3): nine months.

2. Subject to the correction and variations I dismiss the appeal, uphold the enforcement notice, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary matter

3. An appeal under s78 for the development the subject of the notice was dismissed in June 2008 (APP/R1845/A/08/2065963). I refer to that as the 2008 decision, and as in that decision I use the term "the ride" to identify the appeal development. The description of the site history and appeal development in paragraphs 3-7 broadly corresponds to the current situation and I do not repeat it here.

4. Reading the 2008 decision it is apparent that some of the arguments made in that appeal are not repeated in the evidence I have received. As would be expected, I have started from the evidence submitted to me and derived my conclusions from it. I have not had regard to nor commented upon additional matters which were referred to previously.

Ground (b)

5. The appellant criticises the starting use in the notice allegation on the basis that this should be the use permitted under planning permission BB80/71. That was a permission for a "wild animal safari park" and there is no evidence contradicting that the appeal land is part of the unit of occupation. I therefore agree that the notice should be corrected and this ground succeeds accordingly. It is also necessary to include a requirement to cease the use alleged and I shall vary the notice in this respect if upheld. I am satisfied this would not cause injustice and merely corrects an oversight by the Council without extending the scope of the notice. The operations and use are inextricably connected. The notice plainly sought to secure the permanent removal of the ride, which would not be secure if this related requirement were not included. There are no grounds to pursue the alternative course of action, that is deleting the alleged change of use from the allegation and leaving this to be the subject of subsequent action. A letter to the parties dated 31st July

2009 sought any representations they wished to make on this proposed variation and no adverse comments were received.

Ground (a) and the deemed application

6. The development plan includes the Regional Spatial Strategy (RSS) and the saved policies of the Worcestershire Structure Plan (SP) and of the Wyre Forest District Local Plan (LP).

7. The 2008 decision concluded that this was inappropriate development. This is not now contested by the appellant. The two principal development plan policies (SP Policy D39 and LP Policy GB1) accord with the terms of PPG2. In my view the development is a new building and paragraph 3.4 of PPG2 applies. I do not consider that the use as an amusement park preserves the openness of the Green Belt and avoids conflict with its purposes. Nor is the ride within the scope of "essential facilities for outdoor sport and outdoor recreation". It is not an ancillary building to support a use which is primarily conducted on land that remains open, which is what is envisaged in paragraph 3.5 of PPG2. Thus I concur with the conclusions in the 2008 decision that this is inappropriate development, for similar reasons.

8. PPG2 records that inappropriate development is by definition harmful to the Green Belt and that substantial weight will be given to such harm. This is "policy harm", to which must be added any actual harm. The main issues in the appeal are therefore:

   (a) the effect of the development on the openness and purposes of the Green Belt;

   (b) the effect on the landscape and visual amenity;

   (c) the benefits of the development and other arguments in support;

   (d) 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.

The openness and purposes of the Green Belt

9. The ride is a substantial structure which materially affects openness. Its position in a valley with trees nearby and adjoining what is now lawfully part of the amusement park does not substantially diminish that effect. Openness does not depend upon the degree to which a structure is visible to the public, although in this case the ride is very obvious to users of the Safari Park.

10. In the 2008 decision the Inspector commented that the Safari Park "appears to play a vital role in at least the first three purposes" of the Green Belt in paragraph 1.5 of PPG2 and that the ride conflicts with those purposes in particular because it has encroached upon the countryside. I agree with those views. The site does not adjoin a large built-up area but serves this purpose in broad terms. The site is part of the countryside and in a sensitive location between Bewdley and Kidderminster. The particular characteristics of the site, such as those mentioned in the previous paragraph, do not significantly reduce the substantial additional harm arising from the adverse impact on the purposes of the Green Belt, and from the reduction in openness.

Landscape and visual amenity

11. Within this issue I am concerned with the effect on the visual amenity of the Green Belt, on the landscape of the area which is part of a Landscape Protection Area in the LP, and on the retention of trees as part of the development.

12. On the first two points, the 2008 decision was critical of the development and found a conflict with paragraph 3.15 of PPG2 and with LP Policy LA2. In relation to the visual amenity of the Green Belt, LP Policy GB6 is also relevant.

13. The appellant's case includes the limited visibility of the development, essentially to users of the Safari Park, and its proximity to the amusement park. A condition to require additional landscaping is proposed.

14. The development has resulted in a fundamental change in the appearance of the site. It is difficult to imagine that any possible landscaping would alter that. The appellant has also proposed that a comprehensive management plan for the Safari Park should be produced. Whereas the management of the trees and landscape of the Safari Park is important, I do not believe such a scheme would be a reasonable condition related to this development.

15. I accept that the effects on the landscape and the visual amenity of the Green Belt are local and contained. That limits but does not remove the additional harm in these respects. There is a conflict with the aims of Policy LA2, although this would not be a "significant effect" to the extent that the development would not be permitted for this reason alone. In so far as local community needs and alternative locations should be taken into account, these are part of issue (c).

16. The appeal site and adjoining land is subject to a Tree Preservation Order (TPO), applicable to the area rather than identified individual trees. Structure Plan Policy CTC5 is to retain existing trees of value and encourage their appropriate management. Local Plan Policy D3 is to seek to incorporate existing trees. More specific protection is set out in Policy D4, including the need for a survey and replacements where felling is necessary.

17. In this case the Council sought to prosecute the appellant company in relation to a large number of trees in and around the ride, with most charges being dropped. Matters directly concerned with the TPO are not relevant to this appeal.

18. Nevertheless the evidence I have is that there was no tree survey until the work was completed. The work has resulted in substantial works compromising the root protection area of protected trees. At least one protected tree has been felled as a result of the development. It is plain from the 2008 decision, particularly paragraph 44, that that Inspector was very concerned at the effect the works had had. Ultimately he emphasised the effect on the potential for restoration. I endorse those concerns but take what might be a slightly different view on their relevance.

19. It seems to me unarguable that the relevant development plan policies have been very directly breached. In many circumstances that would be an important material consideration against the grant of planning permission. I

regard the opportunity to overcome the harm by remedial planting as minimal. The only other argument of mitigation is that the damage has now been done and cannot be put right. Certainly on the basis of the requirements of this notice, which allow the large concrete slab that is part of the development to remain, that will be the case. I cannot regard that as the end of the matter. To my mind the conflict with the development plan that has occurred is a consideration that weighs against the development.

Benefits and other arguments in support

20. The appellant's case that planning permission should be granted relies on the policy background in relation to tourist development. Policy PA10 of the RSS is that development plans should support the further development and success of tourism assets, including the Safari Park. There is general support for tourism-related development subject to other planning considerations in SP Policy RST14 and LP Policy TM1. Encouraging tourism and the need to have regard to its economic contribution in preparing development plans is a theme of the Good Practice Guide on Planning for Tourism (GPG). The GPG also seeks to sustain and enhance the natural environment through tourist development.

21. The appellant puts forward a business case in which key components are: this is a competitive industry; the Safari Park provides employment and helps to contain the high level of out-commuting; there is a relatively high reliance on jobs in tourism in the district; the district is in the second quartile (from the bottom) in measures of economic deprivation; only 40% of revenue is from admissions, hence the importance of income from the amusement park in the overall business; as well as direct employment, there is considerable expenditure with local suppliers. I accept these points, which are not disputed by the Council. It is their weight in this particular appeal which is critical.

22. In the 2008 decision the Inspector commented that the evidence of economic and business benefits was far from showing that this should carry significant weight. The appellant has sought to respond to this in the current appeal, although gaps remain. For example, the 2008 decision referred to uncertainty about the actual popularity of the ride and the costs and benefits of re-using land within the permitted amusement area. In my view the evidence in these two respects is limited. The Council has referred to new high attraction rides having been provided within the lawful area and there is little evidence about the contribution of the ride itself. As to the latter, this is relevant in this case although it would also be appropriate to see what is proposed in the context of an overall plan for the business and site. While the policy background encourages support for tourist development, this has to take place in the context of other policy goals and should be achieved within a planned framework. Overall the claimed economic and business benefits and other arguments in support have only limited weight.

23. The appellant has also placed great emphasis on decisions made at other amusement parks, providing an extensive list of planning permissions granted and identifying the support of the Secretary of State, such as by not exercising call-in powers. I have had regard to these but it seems to me they are inevitably of limited help. In almost every case, the amusement park is defined as a major developed site with specific policy provision in the development plan. Although those policies are prepared within the framework

of paragraph C3 of PPG2, decisions in such circumstances cannot be expected to create a precedent for decisions at the appeal site. Furthermore any consideration of impact on the openness, purposes and visual amenity of the Green Belt and of economic benefit will be specific to a particular site and project. In so far as the appellant is claiming that permissions have been granted which go beyond the criteria in the applicable development plan, I do not regard that as an approach I should follow without compelling justification. Notwithstanding these other decisions, my general conclusion on the weight to be given to the benefits of this development is unaffected.

Balancing issue

24. The objections to the development include the harm from inappropriate development in the Green Belt and the additional harm arising under issues (a) and (b). These objections to the development are not outweighed by the arguments in favour so that the appeal on ground (a) fails and planning permission will not be granted on the deemed application.

Ground (f)

25. Under s173(4) the steps required to be taken may seek to restore the land to its condition before the breach took place or to remedy the injury to amenity this has caused.

26. For the most part the Council has sought to achieve restoration but it has opted not to require the removal of the substantial concrete slab which forms the base for the ride, because of the adverse effect it expects these works would have on the adjoining protected trees. The hybrid character of the requirements and the fact that they represent a poor second-best, as compared to full restoration, is relevant to consideration of this ground of appeal.

27. I have concluded that the requirements are mainly satisfactory but that some minor adjustment is appropriate. The appellant's objection to placing soil over the slab is baseless. It will have no effect on the tree roots beneath it nor exacerbate any drainage problems. It will be for the appellant to choose a suitably free-draining soil. If necessary, drainage could be improved by drilling the slab or incorporating a layer of gravel. Although the notice specifies topsoil, this would be a reasonable matter for negotiation which I do not consider it is essential to include in the notice. As a general point, its terms do not prevent the appellant taking sensible measures of land management practice. I am also mindful that the appellant has not suggested any alternative steps which might constitute a more satisfactory outcome – the case is primarily a negative one, criticising any steps in the notice to ameliorate the harm the unauthorised development has caused.

28. The appellant argues that the works required might affect the nearby trees. This is improbable since they are likely to be almost entirely confined to land beneath which there is now a concrete slab. I do accept that the cross-sections in Plan 2 are a poor representation of original levels and imply work on the west side of the site which is in practice not required. The requirements will be amended accordingly.

29. I do not accept the criticism that the re-planting proposals are excessive. These must be judged against the overall effect of the works, including the retained concrete slab. Furthermore the appellant's case has not been substantiated by evidence about the character of the land before the work began. I have also taken account of other matters referred to by the appellant, such as the effect of the use of heavy plant to undertake the work required. As noted in the 2008 decision, obligations remain on the landowner to avoid harm to preserved trees.

30. The appeal on this ground therefore succeeds in part and the requirements will be varied accordingly.

Ground (g)

31. The appellant seeks more time to comply with the notice. I am unimpressed by concerns about the effect on the use of the remainder of the amusement park. This is for the appellant to manage. I accept it would be reasonable to provide slightly more flexibility, in part by distinguishing the remedial landscaping. The appeal succeeds to this extent.

David Baldock

INSPECTOR