



Appeal Decision

Hearing Held on 16 December 2020

Site visit made on 17 December 2020

by Rachael Pipkin BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 January 2021

Appeal Ref: APP/G2245/W/19/3243177

Bluebell Cemetery, Watercroft Woods, Old London Road, Badgers Mount TN14 7AE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Bluebell Cemetery Property Ltd against Sevenoaks District Council.
 - The application Ref 19/02317/FUL, is dated 6 August 2019.
 - The development proposed is single storey extension to existing chapel building to provide a crematorium.
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Decision

1. The appeal is allowed and planning permission is granted for single storey extension to existing chapel building to provide a crematorium at Bluebell Cemetery, Watercroft Woods, Old London Road, Badgers Mount TN14 7AE in accordance with the terms of the application Ref 19/02317/FUL, dated 6 August 2019 and subject to the conditions set out in the attached schedule below.

Procedural Matter

2. The appeal was submitted on the basis of the failure of the Council to determine the planning application within the prescribed period. The Council's appeal statement indicated that, had it been in a position to do so, it would have refused the application for three reasons. These were that the proposed development would be inappropriate development in the Green Belt that would harm its openness and that no very special circumstances to justify the proposal had been put forward; the failure to provide an air quality assessment; and failure to demonstrate that the proposed development would not harm an adjacent ancient woodland.
3. During the course of the appeal the appellant submitted additional information relating to air quality and the effect on the adjacent woodland. The Council confirmed that, subject to the imposition of appropriate conditions, this addressed their putative reasons for refusal with regards to air quality and the ancient woodland. I have had regard to this in reaching my decision.

Main Issues

4. The main issues are:

- whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;
- the effect of the proposal on the openness of the Green Belt; and
- if the proposal is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the proposal.

Reasons

5. Bluebell Cemetery is located within the Green Belt, off Old London Road and at the north western edge of the settlement of Badgers Mount. The site is sloping and the chapel is in an elevated position in relation to the road. Watercroft Woods, an ancient woodland, occupies a large part of the wider site also within the appellant's ownership. This encloses the chapel on two sides.
6. Planning permission was granted on appeal¹ on 9 May 1995 for use of land at Watercroft Wood as a cemetery and a chapel. The erection of a crematorium was refused as part of the same appeal on the basis that a need for a crematorium in the area had not been shown. In 2017 a revised scheme for a larger chapel than that originally permitted was approved² by the Council. An amendment to the 2017 permission was approved³ in 2019. Both the cemetery and chapel have been implemented and established as lawful development. The cemetery opened in June 2019.

Inappropriate development

7. The Framework sets out in paragraph 133 that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of the Green Belts are their openness and their permanence. Paragraph 143 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
8. Paragraph 145 sets out that the construction of new buildings is inappropriate within Green Belts subject to a number of exceptions, which includes c) the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building. In addition, criterion b) sets out the provision of appropriate facilities in connection with the use of land or a change of use, which includes for cemeteries and burial grounds, as long as they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.
9. Policy GB8 of the Sevenoaks District Council Allocations and Development Management Plan 2015 (ADMP) permits the limited extension to non-residential buildings in the Green Belt provided the existing building is lawful and

¹ APP/G2245/A/94/237563, APP/G2245/A/94/237564, APP/G2245/A/94/239281

² 16/03186/FUL

³ 18/03929/MMA

permanent in nature; and the design and volume of the proposed extension would be proportional and subservient to the original building and would not materially harm the openness of the Green Belt through excessive scale, bulk or visual intrusion. This policy predates the Framework, although it was adopted under the 2012 Framework and the provisions of paragraph 89, which are carried forward into the current paragraph 145. Notwithstanding that this policy was found sound, the approach set out is more restrictive than that of the Framework in requiring an additional test of openness for an extension that would be a proportionate addition to the original building. It is therefore inconsistent with the Framework in this regard and I therefore give this aspect of the policy lesser weight.

10. Neither the Framework nor the development plan define 'disproportionate'. However, the Council's Supplementary Planning Document: Development in the Green Belt 2015 sets out that in the case of commercial buildings, a general floorspace increase allowance would not be appropriate or workable for an extension and that instead the Council will adopt a design based approach to assess proposals against the impact that they would have on Green Belt openness. It explains that volume, scale and bulk of an extension should not result in a large, bulky or intrusive building which would adversely impact on the character of the countryside or the openness of the Green Belt.
11. Whilst there is some disagreement from third parties with regard to what the 'original building' would be, it was confirmed at the hearing that the only building constructed on the site was that approved in 2019 and that there have been no other extensions to the chapel. Whilst I appreciate that the 'as built' approved chapel may be larger than that originally granted permission in 1995, the chapel on site is nevertheless the original building for the purposes of paragraph 145.
12. The appeal scheme would extend the existing chapel. It would extend less than half the length of the original building although it would be slightly wider. It would have a flat roof which would be lower in height than the apex of the chapel roof which has a mono-pitched form sloping from the rear to the front. The chimney would be the only part of the proposed building that would extend above the height of the original building and this would only be slightly taller and would take a modest form. The extension is indicated to represent a 37 per cent increase in floorspace.
13. The proposed extension would increase the floor area of the chapel by approximately a third. Whilst a sizeable extension, it would not be overly large in the context of the original building nor would it be a bulky addition. On that basis, it would not be a disproportionate addition to the building. It would therefore be not inappropriate development under the provisions of paragraph 145 c). This finding accords with the views of both main parties.
14. It was argued that paragraph 145 is only concerned with the construction of new buildings and that where a change of use is permitted, the sub-paragraphs are explicit as in the case of criteria 145 b). However, paragraph 145 d) in relation to replacement buildings specifies that the replacement building must be in the same use. Paragraph 145 c) does not make any reference to use.
15. My attention has been drawn to various caselaw to support the views of both parties. The Council seeks to rely on the *Timmins v Gedling Borough Council*

*judgment*⁴ as a reason why paragraph 145 c) does not embrace a material change of use of buildings, noting that the inclusion of the words 'or a change of use' in paragraph 145 b) were introduced after that judgment and only to that particular criterion of paragraph 145 to explicitly allow material changes of use.

16. I have also been referred to *R (Peel Land & Property Investments Ltd) v Hyndburn Borough Council*⁵ in relation to the operation of section 75(3) of the Town and Country Planning Act 1990 where it was held, in the circumstances of that case, that planning permission for alterations to an existing building were not granted for a material change of use but for building works only. However, the Peel Land case was concerned with the subdivision and alterations of existing retail units that were subject to an existing legal agreement restricting the goods that could be sold and therefore its use. The appeal proposal differs from this in a number of ways, but notably in that the appeal proposal is explicit in seeking an extension to provide a crematorium.
17. I have also been referred to *Bromley LBC v SSCLG judgment*⁶, in regards to the application of what would now be paragraph 145 g) of the Framework, where it was held that the fact that permission for a new building may also involve a material change of use does not mean that it ceases to be inappropriate development. Whilst I note the Council's position that it would not be common sense to allow a building to be extended and for its use to change. I am also mindful of the judgment in the Bromley case that it is unnecessary to gloss the what is now paragraph 145 exceptions.
18. However, more fundamentally none of the cases to which I have been referred directly relate to paragraph 145 c) or its predecessor, paragraph 89 c), in the 2012 Framework. I acknowledge the policy objective of the Framework in respect of Green Belt which seeks to prevent urban sprawl or encroachment into the countryside. In the absence of any specification of the use under paragraph 145 c) which I must apply in accordance with the specific objectives of the policy and within its own terms, I conclude that the proposed extension, irrespective of its use, would, due to its not being disproportionate, be not inappropriate development.
19. As the effect of the development on openness is not expressly stated as a determinative factor in gauging inappropriateness under paragraph 145 c), there is no requirement to assess the impact of the development on the openness of the Green Belt. In coming to this view I have taken into account the judgment in the *Lee Valley Regional Park Authority, R (on the application of) v Epping Forest District Council & another*⁷ endorsing the conclusion that "once a particular development is found to be, in principle, appropriate, the question of the impact of the building on openness is no longer an issue."
20. The Council contends that since the extension would accommodate a change of use, the proposal should be considered additionally under paragraph 146 of the Framework. This paragraph confirms that certain other forms of development are also not inappropriate in the Green Belt provided that they preserve its openness and do not conflict with the purposes of including land within it. This

⁴ R (Timmins) v Gedling Borough Council [2015] PTSR 837

⁵ R (Peel Land & Property Investments Ltd) v Hyndburn Borough Council [2013] EWCA Civ 1680

⁶ Bromley LBC v SSCLG [2016] EWHC 595

⁷ Lee Valley Regional Park Authority, R (on the application of) v Epping Forest District Council & Anor (Rev 1) [2016] EWCA Civ 404

- includes, under criterion e) material changes in the use of land (such as changes of use from outdoor sport or recreation, or for cemeteries and burial grounds).
21. The existing use of the site is as a cemetery and chapel where funeral services, including cremation services, are held. Under current arrangements, where a cremation is required, following the service the coffin is removed from the site by a private ambulance for cremation off-site after which the ashes are returned to the site. Under the proposal, cremations would take place on site within the proposed extension.
 22. A crematorium, in providing an incineration process, whilst related to, would be materially different from both the chapel and cemetery use on the site. Nevertheless, in view of my findings above, it seems to me that to apply paragraph 146 considerations would introduce an additional test of inappropriateness to a development that has already been assessed and found to be not inappropriate.
 23. Even if I am wrong and the scheme should be considered under paragraph 146, since there are already cremation services held on the site, albeit with the cremation itself being carried out off-site, other than the extension, there are no external or physical changes being made to the site. The same access roads and car parking as currently exists on site would be used. The proposed development would not result in a more intensive use of the site in terms of visitor numbers or numbers of services to that which could currently take place. Furthermore, since the appellant agreed at the hearing that he would accept a condition restricting cremations on site to those associated with a service held at the site, there would be limited perceived change to the site. It seems to me that the only perceptible external difference would be the chimney.
 24. A crematorium as an incinerator would introduce an industrial type process. However, this would all be contained within the proposed extension with only the chimney providing any indication of this activity on the site. The chimney, due to its diminutive size, as part of the proposed extension is not disproportionate, and the emissions from the chimney are regulated and have been found to not cause harm to the area. Furthermore, whilst there may be some servicing associated with the use which may generate some additional vehicle movements on the site, no substantive evidence has been put to me that this would be significantly over and above what occurs on site now. I am therefore not persuaded that the proposed use would not meet the requirements of paragraph 146(e).
 25. I appreciate that in the *R (Boot) v Elmbridge Borough Council judgment*⁸ it was judged that a finding of a 'limited adverse impact on openness' would mean that openness was not 'preserved'. However, for the reasons I have set out, I consider the extension which is not disproportionate nor any use of that extension would not harm openness.
 26. My attention has been drawn to a recent appeal decision at land adjacent to New Inns Lane, Rubery, Bromsgrove⁹ where the Inspector proceeded on the basis that the introduction of a crematorium would be inappropriate

⁸ R (Boot) v Elmbridge Borough Council [2017] 2 P & CR 6

⁹ APP/P1805/W/18/3211026

development in the Green Belt. However, in that appeal, the Inspector determined that the proposal would involve the construction of a new building within the Green Belt rather than an extension to an existing one and, under paragraph 145 of the Framework would fall be considered as a new building under criteria d) which specifies that the building must be in the same use. It is therefore not directly comparable to the scheme before me. I also note that the scheme was only considered in terms of paragraph 145 and the use was not considered in terms of paragraph 146.

27. Consequently, I find that the proposed development would be not inappropriate development within the Green Belt. The proposal would comply with Policy GB8 of the ADMP and paragraph 145 of the Framework which seeks to protect the Green Belt from inappropriate development. As the proposal complies with these policies an assessment on the effect on openness and whether very special circumstances apply is not required.

Other Matters

28. The reduction in the ancient woodland has been raised as a concern by a number of consultees. However, the proposed development is indicated to be positioned between the chapel and an earth bank which form the edge of the raised woodland area. The appellant's Arboricultural Impact Assessment report indicates that no trees would be removed to facilitate the construction of the proposed extension. It sets out that tree protection measures should be put in place to protect the trees during construction works and this could be secured by a condition. Other concerns regarding the potential unauthorised felling of trees and laying of new pathways within the woodland are outside the scope of this appeal.
29. A number of local residents have raised concerns about parking along Old London Road in association with both the existing site and commuter parking for users of Knockhult Station approximately half a mile from the site. Commuter parking is outside the scope of the appeal before me.
30. The level of on-site parking has also been queried as to whether this would be sufficient. However, the appellant has confirmed that both burial and cremation services would be restricted to one service an hour to provide adequate time for attendees to arrive and depart again without overlap with other services. The Council has accepted this operational arrangement and I have no reason to disagree. A condition could be imposed to secure this. Even though cremation services are indicated to be more popular than burial services, the number of services that could take place per day would be restricted and there should therefore be no significant increase in congestion arising from this use.
31. The crematorium would be accessed by the existing vehicular access to the cemetery. I have no substantive evidence that this entrance would provide insufficient visibility for vehicles entering and exiting the site along Old London Road.
32. Both main parties have confirmed that the crematorium would be constructed further than 183 metres (200 yards) from any dwellinghouse in accordance with the Cremation Act 1902.
33. I note local concerns about changes that have occurred on the site through subsequent planning permissions and that this represents 'planning creep'.

However, I must assess the scheme before me on its own individual planning merits which I have done.

34. Air quality concerns were raised both by the Council and consultees. During the course of the appeal the appellant has submitted an air quality assessment that has addressed the Council's concerns about emissions and pollution which would be harmful to the ecology and the adjacent ancient woodland. I have no substantive evidence to dispute this conclusion. Concerns have also been raised about smoke being visible from the chimney. However, emissions from the chimney would be controlled through other regulation and I have no substantive evidence that amounts of smoke would be significant.
35. There is an extant planning permission for a crematorium at another site, Oak Tree Farm, just over a mile south of the appeal site. The need for a second crematorium has been raised by a number of interested parties. However, it is not the role of the planning system to restrict competition between different commercial interests.
36. The crematorium would be positioned behind the existing chapel and, with the exception of the chimney which would rise a short distance above the existing chapel ridgeline, would not be widely visible from nearby properties including Nesbit House care home.
37. Additional concerns have been raised about light pollution, however, there is no evidence to suggest that this would be any greater light than currently arises from the existing buildings on the site. However, a condition to control any additional external lighting would address this.
38. Concerns have been raised that the appellant's statement of case has not fully addressed letters of objection to the proposed development. However, I am satisfied that I have enough information to assess the proposal. In any case, this is largely a procedural matter and not directly relevant to the planning merits of the proposal.

Conditions

39. The Council has suggested a number of conditions that were discussed and agreed at the Hearing in addition to conditions referred to above. I have considered these against guidance in the Framework and Planning Practice Guidance. In the interests of precision and clarity I have undertaken some minor editing and rationalisation where necessary.
40. A condition specifying plans is necessary to provide certainty. In the interests of character and appearance, a condition requiring materials to match the existing building is necessary. I have imposed a condition requiring adherence to the air quality assessment as this is necessary in the interests of maintaining air quality during both the construction and operational phases of the development.
41. In the interests of protecting the amenities of local residents, a condition restricting construction hours is necessary.
42. Pre-commencement conditions requiring details of a retaining structure, tree protection and a management plan for the ancient woodland are necessary in order to protect the surrounding area, ancient woodland, landscaping and planting from damage during construction. I have also included within these a

- requirement for replacement planting and landscaping to ensure the proper establishment of planting and its retention once the development is operational to safeguard the appearance of the area.
43. I have also imposed a pre-commencement condition requiring a badger survey and details of mitigation to be approved in the interests of ecology. A condition requiring enhancement of biodiversity is necessary to comply with policy requiring a net gain in biodiversity.
44. In order to ensure a satisfactory appearance and to conserve ecology, a condition to require details of any external lighting is reasonable and necessary.
45. I have imposed a condition requiring the retention of the existing vehicle access and parking areas in the interests of highway safety. I have also imposed a condition restricting the number of services taking place to avoid overlap and on street parking and subsequent highway safety concerns.
46. It has been suggested by some consultees that if the appeal were to be allowed, the hours of operation of the site for cremation services should be limited to weekdays only and that the Gardens of Remembrance hours of opening should be restricted to 0900 to 1700 hours, seven days a week. Any restrictions on the hours of the Gardens of Remembrance would be beyond the scope of this permission. A condition restricting the hours of operation of the crematorium is necessary to protect the amenity of the area. However, I have no substantive evidence as to why services should not be held on Saturday mornings and on that basis, it would be unreasonable to restrict this.

Conclusion

47. For the reasons set out above, I conclude the appeal should be allowed and planning permission granted.

Rachael Pipkin

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 3917_PL_09, 3917_PL_10, 3917_PL_11, 3917_PL_12, 3917_PL_13 Revision B, 3917_PL_14 Revision B and 8015 TS 0001 P1.
- 3) The external surfaces of the development hereby permitted shall be constructed in materials to match the existing building as shown on approved plan no. 3917_PL_14 Revision B.
- 4) The development shall be carried out wholly in accordance with the Air Quality Assessment (June 2020) and operated in accordance with that thereafter.
- 5) Construction work shall take place only between the hours of 0730 and 1830 on Mondays and Fridays and 0800 and 1300 on Saturdays, and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 6) No development shall be carried out on the land until full details of the retaining structure to be erected to support the adjacent bank to the extension hereby approved have been submitted to and approved by the local planning authority. The retaining structure shall be erected prior to the commencement of the construction of the extension and shall be maintained thereafter.
- 7) No development shall take place until a scheme of landscaping has been submitted to and approved in writing by the local planning authority. This shall include details of any existing trees or shrubs to be retained, measures for their protection in the course of development and a programme of implementation of those measures. All approved planting shall be carried out in the first planting season following the first use of the crematorium. Any trees or plants which die, are removed or become seriously damaged or diseased within 5 years from the completion of the development shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
- 8) No development shall be carried out on the land until a management plan for the adjacent ancient woodland, to control the activity arising specifically from this development, has been submitted to and approved in writing by the local planning authority. The management plan shall be adhered to at all times.
- 9) No more than 3 months prior to the commencement of development, a walk over badger survey shall be completed and the results, along with details of any necessary mitigation measures, shall be submitted to and approved in writing by the local planning authority. All works and measures shall proceed in accordance with the approved details.
- 10) Within six months of works commencing, details of how the development will enhance biodiversity will be submitted to and approved in writing by the local planning authority. These shall include the installation of bird/bat boxes and

planting of native species. The approved details shall be implemented in accordance with the approved details and thereafter retained.

- 11) Details of any external lighting shall be submitted to and approved in writing by the local planning authority prior to its installation. The works shall be carried out in accordance with the approved details and retained as such thereafter.
- 12) The vehicular access and parking spaces as shown on approved plan no: 3917_PL_10 shall be retained and no development shall be carried out to preclude access to both.
- 13) The cremation and burial services taking place at the site shall only be held at one hour intervals with no two services taking place in the same hour slot.
- 14) The cremation services shall only take place between the hours of 0900 to 1700 hours Mondays to Fridays and 0900 to 1200 hours on Saturdays and not at all on Sundays or Public Holidays.
- 15) The crematorium hereby permitted shall only be operated in association with funeral services held on the site and shall not provide cremation facilities or services to external operators.

End of Schedule of Conditions

APPEARANCES

FOR THE APPELLANT:

Mr John Escott Planning Consultant

Mr Jonathon Clay Of Counsel

FOR THE COUNCIL:

Mr Mike Holmes Principal Planning Officer

Ms Ruchi Parekh Of Counsel

INTERESTED PERSONS:

Councillor John Grint District Councillor

Councillor Jean Peel Councillor, Halstead Parish Council