

APPEAL DECISION

Landscaping Mounding of the 9-Hole Course at Keele Golf Centre, Keele Road, Keele, Mr Nick Worrall

Application Number: 11/00257/FUL

Recommendation: Approval

Decision: Refused on 26 August 2011 further to Committee resolution of 23 August 2011

Appeal Decision: Dismissed following a hearing

Date of Appeal Decision: 19 September 2012

At the hearing, the Council submitted a draft Section 106 agreement between the Council, the appellant and the appellant's lender to secure the satisfactory completion of the development. Following the close of the Hearing, the appellant and the Council were given the opportunity to submit a completed agreement generally in the form of the draft document submitted to the Hearing. No such agreement was submitted and the appeal was considered on the basis that no such agreement was in place.

Having been advised that refusal reasons 1 and 2 (concerning the safety and enjoyment of users of the public rights of way and harm to residential amenity due to additional heavy goods vehicle traffic) were not an issue the Inspector considered that the main issues in this case were:

- whether the proposal would constitute inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework;
- the effect of the restored proposal on the character and appearance of the surrounding area;
- whether the extent of the landscape mounding with inert waste material would be reasonable and necessary and whether the amount of material to be deposited would be the minimum necessary for the intended purpose;
- whether an appropriate mechanism would exist to secure the restoration of the site; and
- if the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

In dismissing the appeal, the Inspector made the following comments:

Inappropriate Development

- The contours of the proposed landscape mounding would render the site less developable.
- The 9 hole course is underused at the present time and the proposal, by improving the playing experience on the course, would help to utilise this spare capacity and increase the use of the clubhouse and potentially the 18 hole course. This increased activity would therefore improve the viability and future security of the golf centre operation, and this would also render the site less developable.
- The fact that the site would be less developable would assist in checking the unrestricted sprawl of large built up areas of this part of Staffordshire; help to prevent neighbouring towns from merging; and assist in safeguarding the countryside from encroachment. The proposal would therefore accord with these three purposes of the Green Belt as set out in the National Planning Policy Framework (NPPF). The other two purposes are not relevant.
- The mounding would materially and identifiably raise the contours of the site and therefore would not preserve the openness of the Green Belt in this area even though, on average over the area of the site, the raising would be somewhat limited. Notwithstanding that the proposal would not conflict with the purposes of including land in the Green Belt, the Inspector concluded that it would constitute inappropriate development in the Green Belt and that this harm to the Green Belt attracted substantial weight in the decision.

Character and Appearance

- The appeal is situated within one of the Council's Landscape Maintenance Areas, is readily visible from the north but other views are significantly restricted by woodland and hedgerows.
- The mounds in the upper parts of the course would be much larger in area than those further down the slope of the ridge. Their contours however would be similar to those which currently exist and, when landscaped, they would appear as natural features. They therefore would not erode the landscape character of the area and would conserve the quality of the character of the landscape in accordance with the Regional Strategy Policy QE6. The Inspector noted the Government's intention to revoke Regional Strategies but considered that this intention could only be given limited weight in this appeal.
- The absence of harm from these larger and more prominent upper mounding areas would however be fundamentally dependent on all of them being satisfactorily landscaped. Should this not be the case they would be readily visible in views from the north and would have a harmful effect on the character and appearance of the surrounding area, and this would be sufficient reason to dismiss the appeal. Measures would therefore be required to secure the restoration.
- The mounded areas in the lower parts of the site would incorporate steep slopes and somewhat unnatural contours. The mounds would however be functionally and visually integrated with the golf centre, and would be similar to those generally found around bunkers and greens. The landscape change would not be out of character with these parts of the site.
- In views from Keele Road and the Keele Historic Parks and Gardens registered parkland the mounding would be hardly visible.
- The overall magnitude of change to this area would be medium, notwithstanding the significant change on the lower parts of the site, and the landscape character impact on the area would then be slight adverse.
- The visual impact from Silverdale Country Park would be slight adverse.
- The conclusion is that the restored proposal would not have a harmful effect on the character and appearance of the surrounding area.

Mounding Extent and Amount of Material to be Deposited

- The extent of mounding in close proximity to the fairways and greens, together with the use of inert waste, would be necessary and reasonable to improve the playing experience on the course.
- The mounding beyond the fairways and greens would not be strictly necessary to create the valleys and bowls but would be necessary in landscape terms to blend in with the rising hillside towards the road, and this would avoid somewhat unnatural mounds in the more prominent upper parts of the site.
- Inert waste would also be a self funding economical, sustainable and appropriate material to use for the mounding.
- The mounding as a whole would represent the minimum necessary for the intended purpose in accordance with policies in the Waste Local Plan and the emerging Waste Core Strategy.
- There is no evidence to support the contention that other golf courses have been ruined by similar landfill activities. Indeed, the appellant has suggested a phased approach to avoid excessive disturbance at any one time, and it would not be in the appellant's interests to ruin its asset. Furthermore, to prevent harm to the character and appearance of the surrounding area, it would be necessary to ensure that the mounding in the upper parts of the site was restored whatever circumstances arose. The risk of the course being ruined would therefore be no reason to dismiss the appeal.
- A cut and fill operation as an alternative would be more disruptive and there is nothing to suggest that a better option exists other than that proposed.

Restoration Mechanism

- In the absence of a Section 106 agreement or any other measures to satisfactorily secure restoration, there is no mechanism in place to secure the restoration of the more sensitive upper parts of the site and this would conflict with Core Strategy Policy CSP10.

Other Considerations

- The improved use of the 9 hole course would enhance the beneficial use of this area of Green Belt in terms of opportunities for outdoor sport and recreation. Access to high quality opportunities for sport and recreation can make an important contribution to the health and well being of communities. The proposal would also improve the quality of the 9 hole course and the accessibility of golf as an outdoor sport and recreation activity. These matters attract very considerable weight in favour of the proposal.
- The increased activity would bring some economic growth to this rural area, in a sustainable location near to centres of population. Moreover, the proposal would address the three dimensions to sustainable development by supporting growth in an economic role, supporting healthy communities in a social role and minimising waste in an environmental role. These matters also attract very considerable weight in favour of the proposal.

Conclusion

- Although the completed proposal was found by the Inspector to be acceptable in terms of the character and appearance of the surrounding area and the use of inert waste, this would not clearly outweigh the harm to the Green Belt and the harm from the absence of a secure restoration mechanism.

Costs Application by Mr Nick Worrall, Keele Golf Centre in Relation to the Above Appeal Proceedings

- The appellant made an application for a full award of costs claiming that the Council behaved unreasonably as the Council's committee minute concerning the planning application did not set out any justification as to why the officer's recommendation for approval was not accepted. In addition without any prior warning following the submission of the appeal the Council indicated that it would not be submitting evidence in support of its refusal reasons 1 and 2. In relation to refusal reason 3, the minutes of the Council's committee meeting which determined the application did not give any quantified reasons for this element of the refusal, which represented a departure from the officer's recommendation.
- Circular 03/2009 advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
- The Council did not provide any substantiation in respect of refusal reasons 1 and 2 in conflict with the Circular and this represents unreasonable behaviour. Moreover, the Council had relied on reasons for refusal which added to development costs without good reason also in conflict with the Circular.
- The Council did however provide a reasonable body of evidence in support of refusal reason 3 which represented adequate substantiation and was not an example of unreasonable behaviour.
- While applicant has incurred the expense of preparing, submitting and conducting the appeal in relation to refusal reasons 1 and 2 and that the Council's behaviour was unreasonable, the Council did however advise the applicant of its decision not to defend these reasons, and the unnecessary expense was limited.
- A partial award of costs was justified.

Officer's Comments

Whilst the appeal was dismissed the Inspector did not agree with the reason that the Council defended in its evidence i.e. that the development involved excessive mounding and the creation of artificial incongruous looking landscape elements which would be harmful to the character and appearance of this landscape. Should the application be resubmitted the Council would be considered to have acted unreasonably if it refused the application for any other reasons than the absence of an appropriate restoration mechanism.

Although the costs application was for a full award of costs, it was successfully resisted on the grounds that the evidence put forward by the Council in relation to the third reason for refusal, which involved the expense of appointing landscape consultants, was sufficient. However, a partial award of costs was made against the Council on the grounds that no evidence was offered by the Council to substantiate reasons 1 and 2.

In refusing a scheme, the Council must be capable of producing substantive evidence to support its decision and any harm must be clearly and specifically identified. In this case it was not possible to provide substantive evidence to support reasons 1 and 2. Whilst a report was brought to Committee and it was agreed that reasons 1 and 2 would effectively be withdrawn, this did not, and could not, take place before the appeal was lodged at a time when the appellant had already undertaken work. The effective withdrawal of the reasons therefore only limited the costs awarded. This highlights the importance, where possible, of discussing any concerns about a proposal with Officers in advance of the Committee meeting as this provides the opportunity for more detailed advice to be sought research undertaken to enable more informed advice to be given at the meeting.

Recommendation

That the officer's comments and decisions be noted.