Leisure development in the Green Belt – not all fun and games?

Two recent planning appeal decisions demonstrate the obstacles that some leisure developments face when trying to gain planning permission in the Green Belt, even though they may be related to already established leisure facilities.

On 11 April 2017 an inspector dismissed an appeal [APP/N1920/W/16/3164487] by Adventure Experience Ltd against the refusal by Hertsmere Borough Council of an application for planning permission for a Sky Trail High ropes adventure course on a site that is part of an area already containing a golf driving range and a dinosaur themed adventure golf facility. The development was to involve a series of steel lattice elements with interconnecting platforms, with a height of about 10 metres and covering a fairly extensive ground area. The structure was also to be surrounded by a new 2.4-metre-high mesh fence. It was acknowledged by the inspector that although there would be views through and between its different parts, these would be interrupted to a substantial degree by a staircase and other elements.

Significantly, he acknowledged that other local planning authorities had found similar proposals not to be inappropriate Green Belt development. Nevertheless, he concluded that this proposal would not preserve the openness of the Green Belt and was therefore excluded from the exception to inappropriate development in the Green Belt in bullet point 2 of paragraph 89 of the National Planning Policy Framework. That paragraph establishes that the construction of new buildings is inappropriate in the Green Belt unless one of a limited number of specific exceptions applies. One of those, bullet point 2, excepts the "*provision of appropriate facilities*

for outdoor sport, outdoor recreation and for cemeteries, as long as it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it".

The inspector concluded that the development would not preserve the openness of the Green Belt and therefore did not fall within the exception. It was therefore inappropriate development which, by definition, is harmful to the Green Belt and should not be approved except in very special circumstances. There were none, so the appeal was dismissed.

The following day an inspector dismissed an appeal [APP/X0360/W/16/3160591] by Hobbs of Henley Limited against a refusal by Wokingham Borough Council of an application for planning permission to install six floating landing stages at a commercial boatyard facility which currently includes a substantial building containing workshops and an area of external hardstanding located on the banks of the River Thames.

There was disagreement between the parties as to whether six floating landing stages in the river for the mooring of up to twelve boats constituted a "building" for the purposes of paragraph 89 of the Framework. The inspector concluded that as a "building" is defined in section 336 of the Town and Country Planning Act 1990 as "*any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building*" and, having regard to the fixed nature of the proposed structures to both the land and river bed, and their substantial dimensions, the proposed landing stages would undoubtedly fall within that definition of a building. As such they would constitute new buildings in the Green Belt.

Despite the appellant arguing that a core part of its business related to recreational boating, the inspector considered that the functions at the facility principally related

to providing boatyard services such as the maintenance, servicing and storage of craft and was more akin to an industrial and/or storage use.

The inspector therefore considered that the proposed development would not constitute the provision of appropriate facilities for outdoor recreation in the sense of paragraph 89 and also could not be considered as an appropriate outdoor recreation use in the context of paragraph 89 given the adverse impact of the proposed six floating landing stages on the openness of the Green Belt. In that regard the inspector noted that the landing stages would sit only 1 metre above water level but that they would be of considerable length (8 metres) protruding perceptibly into the river and would span about two thirds of the total river frontage of the site. The steel piles would protrude about 3.5 metres above the average water level. Overall these would constitute man made incursions into what is otherwise an area of natural appearance.

These two written representations appeals show just how unpredictable the planning system can be in relation to leisure development in the Green Belt. As the inspector in the Hertsmere appeal acknowledged, similar development had been permitted elsewhere in the Green Belt. Furthermore this was an appeal in relation to an existing leisure facility. However he took a different stance. Sometimes, however, such inconsistency can be found within the same planning authority. I acted in an appeal in relation to a proposed tennis court with fencing to be located outside the residential curtilage of a property in the Metropolitan Green Belt where the reason for refusal flew in the face of previous decisions taken by the same authority for near identical facilities. Some might say that the planning system is a form of leisure because there are times when it resembles a lottery!

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May 2017