

Appeal Decision

Site visit made on 7 November 2016

by Caroline Mulloy BSc (Hons) DipTP MRTPI

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

Decision date: 14th November 2016

Appeal Ref: APP/X1355/W/16/3156530

Land north of Armstrong House, Abbey Road, Abbeywoods Business Park, Pity Me, Durham DH1 5JZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Andrew Johnson, Vertu Motors Plc against the decision of Durham County Council.
 - The application Ref DM/16/01387/FPA, dated 25 April 2016, was refused by notice dated 26 July 2016.
 - The development proposed is change of use to vehicle storage compound (in association with car showroom to the west).
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this case is the effect of the proposal on ecology.

Reasons

3. The appeal site is situated within the designated Abbeywoods Business Park between Abbey Road and the Arnison Retail Centre. It forms a landscaped open area within the industrial estate.
 4. It is proposed to change the use of the land to a vehicle storage compound including the layout of parking areas and additional fencing in order to serve as an overspill car park for the nearby car dealership. The appellant considers the proposal would reduce congestion within the site and on the adjacent highway.
 5. The Council are concerned that the proposal would destroy a sizeable area of semi-improved neutral grassland and that no mitigation is proposed. It acknowledges that the appeal site is not irreplaceable habitat but it considers that the proposal should provide mitigation in accordance with Policy E16 of the City of Durham Local Plan (Local Plan) (2004).
 6. Policy E16 states that the Council will protect and enhance the nature conservation assets of the District by requiring development proposals where appropriate, outside sites specifically protected for their nature conservation importance to: identify any significant nature conservation interest that may exist on or adjacent to the site by submitting surveys of wildlife habitats, protected species and features of ecological interest; as far as possible avoid any unacceptable harm to nature conservation interests as a result of the
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- development; and provide mitigation measures to minimise unacceptable adverse effects on identified nature conservation interests that cannot be avoided. It also requires compensation measures to offset any harm to identified nature conservation interests which cannot be completely avoided or mitigated.
7. Paragraph 016 (Reference ID:8-016-20140612) of the Planning Practice Guidance states that local planning authorities should only require ecological surveys where clearly justified, for example if they consider that there is a reasonable likelihood of a protected species being present and affected by development. Assessments should be proportionate to the nature and scale of development proposed and the likely impact on biodiversity.
 8. The Council requested a Phase 1 Habitat Survey at the pre-application stage on the basis that the site was part of a larger area of grassland which had been undeveloped for many decades and consequently, the site could contain Biodiversity Action Plan Priority Species or Habitats. Given the nature of the appeal site I consider that the request for a Phase 1 Habitat Survey was a reasonable one. There is no limit in respect of the size of land for habitat surveys.
 9. The Council's Senior Ecologist visited the site and found several plant species on site which were indicative of Early Successional Brownfield Land classification, a Priority Habitat in the Durham Biodiversity Action Plan. These species include Common Birds-foot Trefoil, Common Centaury, Early Purple Orchid and Yellow-Wort.
 10. The Durham Biodiversity Action Plan (BAP) sets a target to maintain the overall area of Early Successional Brownfield Land. Consequently, the Council considers that the complete removal of an area of Priority Habitat is significant and should provide mitigation. Paragraph 84 of Circular 6/2005¹ states that the potential effects of a development on habitats or species listed as priorities in the UK Biodiversity Action Plan (BAP) and by Local Biodiversity Partnerships are capable of being a material consideration in the making of planning decisions.
 11. The Phase 1 Habitat Survey (the Survey) submitted with the application identified seven habitat types including semi-improved neutral grassland, marshy grassland, introduced shrub, scrub, scattered trees, standing water and fence. It identified semi-improved neutral grassland as the dominant habitat at the site although the clay soils add an element of water logging which creates small patches of marshy grassland. Silver birch is colonising the south east corner of the plot although the trees are small and recently established. The Survey found no rare or unusual habitats. I note that the soft landscaped area in the south-east corner of the site has been omitted from the development area out of recognition of its amenity value.
 12. The Survey acknowledges that it was constrained by the time of year and that several plants components are likely to have been missed, although it states that this would not affect the classification of habitat types. As it was undertaken at a sub-optimal survey time it undermines the reliability of the survey which is best undertaken in April to September. The species referred to

¹ Circular 06/05: Biodiversity and Geological Conservation-Statutory Obligations and their Impact within the Planning System. DCLG 2005

by the Council's ecologist are not referred in the Survey which is likely due to the time of year which it was undertaken. The appellant has not provided any justification as to why the Survey was undertaken at a sub-optimal time of year. This limits the weight which I can attach to the Survey in my Decision.

13. Paragraph 109 of the National Planning Policy Framework (the Framework) states that the planning system should contribute to and enhance the natural and local environment by amongst other things minimising impacts on biodiversity and providing net gains in biodiversity where possible. Paragraph 118 states that when determining applications, local planning authorities should aim to conserve and enhance biodiversity. If significant harm resulting from a development cannot be avoided, adequately mitigated, or compensated for, then planning permission should be refused.
14. The Council suggested that the loss of habitat could be mitigated by the provision of off-site compensatory habitat within the local area whereby an area of open space in the Pity Me area could be over-seeded with wildflowers to provide both ecological and community benefit. It was considered that a sum of £5000 would enable an area of land of similar size to be acquired, prepared and maintained which would at least equal the current situation. This could be secured through a section 106 obligation.
15. Due to the unreliability of the Survey, there is insufficient evidence before me to assess whether the proposal would cause harm to the ecology of the site. Under these circumstances, I am unable to determine whether the Council's request for a contribution towards compensatory off-site habitat meets the tests set out in paragraph 204 of the Framework and Regulations 122 and 123 of the Community Infrastructure Levy Regulations (2010).
16. Attention is drawn to a planning application which was approved in 2001 for the erection of a two-storey office building on the appeal site. No details have been provided of the application and it pre-dates the Framework and the current development plan which limits the weight which I can attach to it in my Decision.
17. Whilst there would be some benefits of the proposal in terms of providing additional off-street parking, these benefits would not outweigh the potential harm arising from the proposal.
18. I, therefore, conclude that there is insufficient evidence to determine whether the proposal would cause harm to the ecology of the site and hence whether off-site mitigation would be required. The proposal is, therefore, contrary to saved Policy E14 of the Local Plan which seeks to protect trees and hedgerows when considering development proposals. Conflict also arises with saved Policy E17 of the Local Plan and paragraphs 109 and 118 of the Framework.

Conclusion

19. For the reasons stated above and taking all other considerations into account I consider that the appeal should be dismissed.

Caroline Mulloy

Inspector