
Appeal Decision

Hearing held on 22 March 2017

Site visit made on 30 March 2017

by JP Sargent BA(Hons) MA MRTPI

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

Decision date: 24 April 2017

Appeal Ref: APP/F0114/W/16/3153964

Queen Charlton Quarry, Charlton Fields, Lypiatt Lane, Queen Charlton BS14 0QS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant planning permission.
 - The appeal is made by Kelston Sparkes Limited against the decision of Bath & North East Somerset Council.
 - The application Ref 15/03931/FUL, dated 14 July 2015, was refused by notice dated 22 March 2016.
 - The development proposed is re-profiling land for purposes of agricultural improvement.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The appellant contended that the works before me did not require planning permission. This was because they were authorised by the restoration condition on the original permission for mineral extraction on this site. However that is not for me to determine as part of this appeal under section 78 of the Act. Irrespective of my decision it is open for the appellant to submit an application under sections 191 or 192 of the Act (as amended) to clarify this matter.
3. Despite any submissions to the contrary, at the Hearing the appellant confirmed it was not making an application for costs.

Main Issues

4. The main issues in this case are
 - a) the effect of the development on character and appearance of the area;
 - b) its impact on ecology;
 - c) whether it is inappropriate development in this Green Belt location and
 - d) its effect on flooding.

Emerging Policy

5. The Council referred to policies in its emerging *Placemaking Plan*. I am aware that this is at an advanced stage of preparation as Main Modifications are now
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being advertised, and so it could soon supersede the existing *Bath and North East Somerset Local Plan* (the Local Plan). I also note no modifications of substance were proposed by the Inspector to the cited policies and there is therefore a strong likelihood they will be adopted in their current state. Those policies though have not been submitted to me, but the parties accepted they made little change to the approach found in the existing development plan. As such their absence has not prejudiced the position of either side.

Reasons

Character and appearance

6. This appeal site lies near the top of an escarpment, with the land falling away sharply a little to the south, but sloping down more gently to the north. Within this context the topography is gently undulating, and the landscape generally comprises fields interspersed with hedgerows and trees. The site itself is said to have an area in the region of 6ha, and covers 2 fields of poor quality rough grazing, bounded by incomplete hedges and fences. Surfaced roads are on 2 sides, a track is on the third side and a paddock is to the fourth. The main field was quarried to a shallow depth in the mid-20th Century while I understand the smaller field in the north-east corner has never been subject to mineral working.
7. The proposal involves a 'cut and fill' operation to move earth from the higher southern end of the site down to the lower northern end, with the associated importing of a further 48,000cum of soil and subsoil. The net effect of this would be to raise the land by up to 1500mm, although in some places the works would mean the ground would be at the same level as now. Generally speaking the greatest change in land levels would be at the north end while the more limited changes would be to the south.
8. I accept the view of the appellant and the Council that a total depth of 800mm of soil and sub-soil would be needed to bring benefits to the agricultural productivity of the site. Moreover, the size of the site and the undulating nature of the surroundings mean that if suitably graded I see no reason why increasing the land level in places to 1500mm above the existing need necessarily result in a discordant or alien landform.
9. However, I consider the submitted contours show pronounced slopes on the north and west sides. In my opinion they would be sufficiently steep and high to mean they would not accord with the gentle distinctive rolling contours of the landscape. Rather they would be notable and discordant features when seen from the roads and track immediately adjacent.
10. In coming to this view I have noted the mounds of earth to the east of the site, and the reclaimed land to the west. However, to my mind they have not changed the underlying characteristics of the landscape to a material degree and so do not lead me to different findings.
11. Accordingly I conclude the development would detract unacceptably from the character and appearance of the area in conflict with Local Plan Policy NE.1, which requires development to conserve the landscape's local distinctiveness.

Ecology

12. The site forms part of the Wooscombe Complex Site of Nature Conservation Interest (SNCI). The SNCI is identified as supporting a mix of habitats comprising unimproved neutral and calcareous grassland, semi-improved neutral grassland, planted broadleaved woodland, scrub and running water with associated marginal habitats. The appellant has submitted an Ecological Assessment identifying a diverse and relatively extensive range of flora on the site that respect these over-riding characteristics of the SNCI. As such, although only locally designated the evidence before me shows the site has an ecological value and a nature conservation interest.
13. Local Plan Policy NE.9 says development that would directly affect the nature conservation of sites will not be permitted unless compensatory provision of at least equal conservation value is made. Given the status of the site it would be unrealistic to safeguard its ecological value totally, but I consider this nonetheless has to be addressed in an appropriate and proportionate manner.
14. The cut-and-fill operations, together with the importing of earth would destroy much of the habitat now present, and mindful of its designation this would cause unacceptable harm to the ecological value of the site.
15. The appellant's Ecological Assessment recommends that in order to offset the loss of grassland a 5m buffer should be retained around the periphery of the application site that will be managed specifically to ensure its botanical interest¹. It also concludes that following the adoption of the mitigation and recommendations it sets out there are no overriding ecological constraints that would preclude re-instating the site to its original levels. However, no details of the layout or on-going management of the buffer are forthcoming to demonstrate how this would offset the loss of grassland. I note too that I have not been told the site is to be re-instated to its original levels.
16. Moreover, based on my observations the buffer on the western side of the site would comprise primarily hedgerow and associated scrub, rather than the grassland habitat that covers the majority of the site now. The appellant also contended that this western buffer would be untouched throughout the operations, but that is not reflected in the plans that show earthworks and re-contouring close to that boundary.
17. Furthermore, the Ecological Assessment does not address the ecology of the smaller unquarried field in the north-east corner. While that is not to be subject of any re-profiling it is nonetheless to be where material would be stored, facilities for the operatives sited and parking/turning areas located (albeit on decking). There is therefore nothing before me to show the impact of this activity on the ecology of that area.
18. Based on the submissions though it has not been demonstrated that the value of the seed bank in the soil could not be suitably captured.
19. Accordingly I accept that the site is subject of a local wildlife designation only, but the evidence before me shows it is nonetheless of a nature conservation value. To my mind there should therefore be adequate and proportionate

¹ At the hearing the appellant initially said it was to provide a 5m buffer along the western side only, which clearly would fall well short of the recommendations in its own Ecological Assessment. However it later accepted that if necessary the buffer could go round the entire site.

measures to balance any adverse effects the works may cause to nature conservation interests. However, it has not been shown such measures would in fact be in place, and so I conclude the development would adversely affect the ecological significance of the site, in conflict with Local Plan Policy NE.9.

Green Belt

20. The site lies in the Green Belt. The National Planning Policy Framework (the Framework) says such a designation serves 5 purposes, the only one of which that is relevant in this instance is to assist in safeguarding the countryside from encroachment. It adds that inappropriate development is by definition harmful, though exceptions to this are then given in paragraphs 89 and 90. Paragraph 90 states that

'certain ... forms of development [other than those in paragraph 89 of the Framework] are also not inappropriate in Green Belt provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in Green Belt.'

It goes on to list 5 specific forms of development that can be approached in this way. One is *'engineering operations'*, which could be used to describe the works before me. Policy CP8 in the *Bath and North East Somerset Core Strategy* says local policy will be in accordance with this national policy.

21. Despite my findings on the issue of character and appearance, I consider the impact of the works would not be great enough to mean they failed to preserve the openness of the Green Belt and would not conflict with the 5 purposes of including land in the Green Belt. Accordingly I conclude the works before me would not be inappropriate development and so would not conflict with Core Strategy Policy CP8 or the Framework.

Flooding

22. The appellant has submitted a report to address the issue of drainage. Although this identifies no basis for considering flooding would occur as a result of the development, it nonetheless advises that, because of the site's size, a full flood risk assessment (FRA) would be needed to support any planning application for its redevelopment. This reflects advice in both the Framework and the Government's *Planning Practice Guidance*. The report says such an FRA would principally address surface water management issues though should also address the possibility of increasing off-site flood risk. No such FRA has been forthcoming. Rather, the appellant has relied on the submitted report but that, by its own admission, is not comprehensive.
23. Accordingly, the evidence before me does not show that the development would have a satisfactory surface water management or address the possibility of off-site flooding, and so in this regard it would conflict with the Framework.

Other matters

24. Local residents have expressed concern about noise and other disturbance from the works, but to my mind those matters could be controlled to mean they would not be unacceptable. Similarly the scale of the anticipated traffic flows would not compromise highway safety on the surrounding road network.

25. The appellant has suggested conditions could be imposed requiring the re-grading of the northern and western slopes to address the concerns about visual impact, and requiring the regrading of the proposed western buffer to ensure it remained untouched during the development. Such changes though, whether taken individually or together, would be a notable departure from the submitted plans. They could have implications for the distribution of material elsewhere and could involve in making appreciable changes to the development before me. Therefore, to my mind it would not be suitable to impose such conditions. If forming a 5m buffer round the entire site also involved changing the contours a condition to require this would be unacceptable for this same reason.
26. The appellant has said the scheme would have various benefits. Of these I have no evidence to show the scale of fly-tipping and unauthorised encampments on the land. In any event they are primarily related to how the site is managed and there is no certainty they would be addressed if this scheme was permitted. Moreover, in the light of the above there is insufficient evidence to support the contention that the development would be a better response to flooding.
27. I accept that the land could be used more productively as a consequence of the works and the development would reduce the amount of soil and sub-soil going to landfill. I have no grounds though to consider this scheme is the only way such benefits could be delivered and so they do not outweigh the harm I have identified.

Conclusions

28. Accordingly, I conclude the development would adversely affect the character and appearance of the area and it has not been shown that any impact on flooding or ecology could be appropriately and proportionately addressed. While it would not be inappropriate development in the Green Belt and while benefits of the scheme have been noted, these do not outweigh the harm identified. Therefore I conclude it would conflict with the development plan when taken as a whole.

J P Sargent

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr T Mounter	Appellant
Mr A Sparkes	Appellant
Mr D Swann	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Ms L Corner	Ecologist with the Council
Mr C Griggs-Trevarthen	Senior Planning Officer with the Council
Mr C Potterton	Consultant Landscape Architect acting on behalf of the Council

INTERESTED PERSONS:

Mr Morgan	Local resident
Mr D Osborne	Local resident
Mr A Preston	Consultant acting on behalf of Mr Osborne

DOCUMENTS

- 1 *GRE 1: Habitat Plan* by Grassroots Ecology submitted by the Council at the hearing and the appellant subsequently
- 2 Photograph of the site submitted by the Council
- 3 Ordnance Survey map of the site submitted by the Council
- 4 Map of SNCI 1km buffer submitted by the appellant
- 5 Site sections (15 sheets) submitted by Mr Osborne