
Appeal Decision

Site visit made on 13 March 2017

by R C Kirby BA(Hons) DipTP MRTPI

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

Decision date: 11th September 2017

Appeal Ref: APP/D0840/W/16/3159836 Scarcewater Tip, St Stephen, Cornwall

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Jim Wood, REG Windpower Ltd against the decision of Cornwall Council.
 - The application Ref PA15/00613, dated 19 January 2015, was refused by notice dated 6 June 2016.
 - The application sought planning permission for the proposed construction of a surface tip for the disposal of china clay wastes arising from Melbur and Virginia Pits with associated developments and progressive restoration and landscaping without complying with conditions attached to planning permission Ref CC/R/03/00808; CC/CK/CC15/0310/03/B [R27(13)], dated 15 July 2003.
 - The conditions in dispute are Nos 3 and 29 which state that:
 - *3. This planning permission shall only relate to the site edged red on Drawing No. SCR 2-2 hereafter referred to as the site and the development hereby permitted shall only be carried out within the site in accordance with the details set out in the submitted application form dated 3/2/03, applicant's Environmental Statement (Revised Scheme dated February 2003) and submitted plans with particular reference to Drawing Nos. SCR 2-1, 2-2, 3-1, 3-2, 3-3, 3-4, 3-5, 3-6, 3-7, 3-8, 3-9 and 3-10 (i.e. the tip development/restoration plans), except as where modified by other conditions below or as may otherwise be agreed in writing by the MPA.*
 - *29. Unless otherwise agreed in writing with the MPA, the site shall be progressively restored to amenity/agricultural use, namely heathland, pasture, woodland and grass/scrub hydroseeding as shown on Drawing No. SCR 3-10 and detailed in the Environmental Statement, in accordance with a detailed planting schedule and within a timescale to be agreed in writing with the MPA. Restoration, planting and seeding shall take place in the first available season following the staged achievement of the final contours of the tip and the operators shall submit to the MPA for written approval an annual restoration monitoring report in accordance with details to be agreed in writing by the MPA to demonstrate compliance with this condition. Within five years of planting, any trees, shrubs or other plants that die, become diseased, removed or damaged, shall be replaced in the first available planting season with others of a similar size, and species in accordance with the details of the approved scheme unless otherwise agreed in writing with the MPA.*
 - The reasons given for the conditions are:
 - *3. To control the duration and extent of the development in accordance with the advice in Circular No. 11/95.*
 - *29. To achieve a satisfactory restoration and aftercare of the approved development.*
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Decision

1. The appeal is dismissed.

Procedural Matter

2. During the course of the appeal the Cornwall Local Plan Strategic Policies 2010-2030 (CLP) was adopted by the Council. Both parties were provided with the opportunity to comment on this matter and I have taken the comments received into account in my consideration of this appeal.

Background and Main Issue

3. Planning permission was granted in July 2003 for the construction of a surface tip for the disposal of china clay wastes along with a restoration and landscaping scheme. The appellant submitted a proposal for 3 wind turbines and ancillary development which would be sited upon part of the tip, known as Scarcewater Tip¹. The new wind turbines would impact on the phased tipping and restoration scheme of this site. The appellant is therefore seeking to amend the approved phased tipping and restoration scheme in a way that would allow the development of the site with the proposed wind turbines and ancillary development.
4. The changes to the approved restoration and landscaping scheme include amendments to the phased sequence of tipping to allow for the acceleration of tipping at and around the location of the proposed wind turbine site; amendments to the location and orientation of Cornish style hedges, to avoid potential conflict of bats and birds with the new wind turbines; changing the proportions of the proposed restoration land uses on the site and revisions to the route of proposed public footpaths across the site to avoid them passing under the blades of the proposed turbines. The permissive routes would remain as approved.
5. The Council refused the application on the basis that insufficient information had been submitted for it to assess the impact of the proposal on protected species. Accordingly the main issue in this case is whether the changes to the approved restoration and landscaping scheme are acceptable, having particular regard to biodiversity, including protected species.

Reasons

6. The Council did not refer to any development plan policies within its decision notice. However, both main parties have made reference to the policies of the CLP they consider are relevant to the appeal proposal.
7. Policy 1 of the CLP applies a presumption in favour of sustainable development. The policy states that when considering whether a development proposal is sustainable or not, account will be taken of its location, layout, design and use against the three pillars of economic development, social development and environmental protection and improvement. Amongst other matters CLP Policy 2 requires development proposals to provide environmental and social benefit, including the protection, conservation and enhancement of the natural environment and biodiversity. The policy also states that solutions should be provided to current and future issues including creating landscapes and

¹ Application Ref PA15/00511 and Appeal Ref APP/D0840/W/16/3158674

biodiversity and geodiversity assets that are resilient and sensitively accommodate investment and growth within Cornwall's unique landscape. Policy 23 of the CLP has similar protection and enhancement objectives in relation to the natural environment.

8. Policy 12 of the CLP requires development proposals to take into account a number of matters including the effect upon the character of the area. For larger development it is expected that a balance is achieved between private, semi-private and public open space. In respect of biodiversity, CLP Policy 23 requires that all development must take account of the importance of habitats and designated sites, and that opportunity for the creation of a local and county-wide biodiversity network of wildlife corridors is provided. In terms of protected species adverse impacts should be avoided wherever possible unless certain circumstances are satisfied. Where adverse impacts are unavoidable they must be adequately and proportionately mitigated. If full mitigation cannot be provided, compensation will be required as a last resort.
9. Policy 25 of the CLP requires the protection and enhancement of the existing green infrastructure network in Cornwall. This infrastructure is recognised for its importance to recreation, leisure, community use, townscape, landscape quality and visual amenity. Development should restore or enhance connectivity for nature and people through the site and link to adjacent sites or green routes.
10. The National Planning Policy Framework (the Framework) requires the planning system to contribute to and enhance the natural and local environment by, amongst other matters, minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the government's commitment to halt the overall decline in biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures (paragraph 109). Paragraph 118 states that when determining planning applications, local planning authorities should aim to conserve and enhance biodiversity by applying a number of principles including refusing planning permission for development that would result in the loss or deterioration of irreplaceable habitats. Legislation relevant to this issue includes the Wildlife and Countryside Act 1981, the Countryside and Rights of Way Act 2000 and the Natural Environment and Rural Communities Act 2006.
11. The Council has previously found the restoration of the site and landscaping to be acceptable. The proposal would not result in loss of the contribution the restored site would make to the green infrastructure in the area and in this regard the proposal would accord with the aims of CLP Policy 25. There would also be likely opportunities to support biodiversity on the site with new landscaping and land uses. However, whilst noting the appellant's assertion that the Council had ecological survey information before it when it considered the planning application, the subject of this appeal, it is clear from the representations made that this information was submitted in respect of another planning application upon the site for 3 wind turbines and associated development, and not for the appeal proposal.
12. The Framework is quite clear at paragraph 121 that planning policies and decisions should ensure that the site is suitable for its new use taking account a number of factors including the impact on the natural environment arising from remediation, and that adequate site investigation information, prepared by a

competent person is presented. In this case, the necessary information to demonstrate the proposal's impact on the natural environment and protected species was not submitted in respect of the proposal before me.

13. If I were to consider the information submitted with the appeal contained within the Environmental Statement and supporting documentation², as suggested by the appellant, then it would deprive those who should have been consulted on the change the opportunity of such consultation. This would conflict with the principles established by the Courts in *Wheatcroft*³. It is not acceptable for me to rely on information submitted in respect of a different proposal on the same site in this case. I have therefore considered the appeal proposal on the same basis as the Council.
14. I therefore conclude that on the basis of the evidence before me, I am not satisfied that the proposal would protect, conserve and enhance biodiversity interests and protected species upon the site. In reaching this conclusion I have had regard to the comments of the Council's Ecology Officer and Natural England. The proposal would result in conflict with the aims of CLP Policies 1, 2, 12 and 23 and national planning policy relating to the natural environment.

Conclusion

15. For the above reasons, and having regard to all other matters raised, the appeal is dismissed.

R C Kirby

INSPECTOR

² Report on the Habitats and Protected Species at Scarcewater Tip, Grampound Road, Truro with reference to the proposal to amend conditions 3 and 29 of the agreed restoration scheme (September 2016)

³ *Bernard Wheatcroft Ltd v SSE & Harborough DC* [1982] P&CR 233
