



Appeal Decision

Hearing held on 9 July 2019

Site visit made on 9 July 2019

by Alison Partington BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th July 2019

Appeal Ref: APP/R0660/W/19/3220282 Coole Acres, Coole Lane, Newhall CW5 8AY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Brian Reilly against the decision of Cheshire East Council.
 - The application Ref 18/2051N dated 25 April 2018, was refused by a notice dated 26 July 2018.
 - The application sought planning permission for the change of use from agriculture to fish rearing and angling centre and formation of ponds and lakes, erection of buildings (including temporary dwelling) and provision of access and parking without complying with conditions attached to planning permission 09/0819N dated 11 March 2010.
 - The conditions in dispute are Nos 18 and 29 which state that:
Condition 18: "The temporary agricultural workers dwelling and business facility hereby permitted is acceptable for a temporary period only. It shall be removed and the site returned to its former condition (grass) on or before 22nd February 2013 unless in the meantime a further application has been submitted to and approved by the Local Planning Authority. The land shall be restored in accordance with a scheme of work submitted to and approved by the Local Planning Authority."
Condition 29: "The development hereby approved shall be carried out in total accordance with the following approved plans numbered:
1910/4 received by the Local Planning Authority on 30th December 2009
09/0819N-1 received by the Local Planning Authority on 30th December 2009
1910/5 received by the Local Planning Authority on 3rd April 2009
0309/CA03 received by the Local Planning Authority on 3rd April 2009
1910/2 received by the Local Planning Authority on 3rd April 2009
0309/CA02 received by the Local Planning Authority on 3rd April 2009
1910/5 received by the Local Planning Authority on 3rd April 2009
1910/6 received by the Local Planning Authority on 3rd April 2009
1910/7 received by the Local Planning Authority on 3rd April 2009
0309/CA01 received by the Local Planning Authority on 3rd April 2009
1910/9 received by the Local Planning Authority on 3rd April 2009"
 - The reasons given for the conditions are:
Condition 18: "To enable continued control and appraisal of the development proposed having regard to the particular circumstances and nature of the proposal and in accordance with Policies NE.2 (Open Countryside) and RES.5 (Housing in the Open Countryside) of the Borough of Crewe and Nantwich Replacement Local Plan 2011 and PPS7 (Sustainable Development in Rural Areas)."
Condition 29: "For the avoidance of doubt and to specify the plans to which the permission / consent relates and in accordance with Policy BE.2 (Design Standards) of the Borough of Crewe and Nantwich Replacement Local Plan 2011."
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Decision

1. The appeal is allowed and planning permission is granted in part for the change of use from agriculture to fish rearing and angling centre and formation of ponds and lakes, erection of buildings (including temporary dwelling) and provision of access and parking at Coole Acres, Coole Lane, Newhall CW5 8AY in accordance with the application Ref 18/2051N made on the 25 April 2018 without complying with conditions Nos 18 (insofar as it relates to the business facility) and 29 set out in planning permission Ref 09/0819N granted on 11 March 2010 by the Cheshire East Council, but otherwise subject to the conditions set out in Annex A.
2. The appeal is dismissed insofar as it relates to condition 18 and the temporary dwelling.

Application for Costs

3. An application for costs was made by Mr Brian Reilly against Cheshire East Council. This application is the subject of a separate Decision.

Background and Main Issue

4. Permission was granted in 2010 for the change of use of the appeal site to a fish rearing and angling centre, subject to various conditions. The permission has been implemented and has been operational for a number of years. The application which is the subject of this appeal relates to two of the conditions on the original application.
5. Firstly, as the layout of the site was not in accordance with the approved site layout plan, it seeks to alter the list of plans in condition 29 so the "as built" site layout plan is listed. The Council have indicated that the variations in the layout are all minor in nature and have raised no objection to this. At the hearing the appellant also highlighted that the original list of plans in this condition also included a plan that had been provided for indicative purposes only showing the type of mobile dwelling that may be constructed. He therefore requested this be removed too, and the Council raised no concern with this either.
6. Secondly, the application seeks the removal of condition 18 to enable the permanent retention of the mobile structures used for the dwelling and the business facility. There is no dispute between the parties regarding the permanent retention of the business facility which provides a variety of services and facilities for anglers.
7. Nothing I have seen or read leads me to come to a different conclusion with regard to condition 29 or the part of condition 18 related to the retention of the business facility. In the light of this the only area of dispute relates to the retention of the temporary structure used as a dwelling by the appellant as the manager of the facility.
8. Therefore, the main issue in the appeal is whether, having regard to the development plan and the *National Planning Policy Framework* (the Framework), which seek to avoid isolated new homes in the countryside, there is an essential need for a dwelling to accommodate a rural worker.

Reasons

9. The appeal site is located in the open countryside. In order to protect the countryside from urbanising development Policy PG6 of the *Cheshire East Local Plan Strategy 2010 – 2030 (adopted July 2017)* (CELP) seeks to restrict the types of developments that can take place outside settlement boundaries. Policy RES.5 of the *Crewe and Nantwich Replacement Local Plan 2011 (adopted February 2005)* (CNLP) states that new housing in the open countryside will be restricted to that required by rural workers and sets out the criteria for assessing such housing.
10. Similarly, paragraph 79 of the Framework indicates that isolated new homes in the countryside should be avoided. However, it states that one of the few special circumstances for permitting such homes is to meet an essential need for a rural worker to live permanently at, or near, their place of work in the countryside. This is the only circumstance which is argued in this case.
11. The appellant has argued that the dwelling, which is a large timber mobile home, is essential for the operation of the business. The fishing enterprise consists of two elements. The first consists of the 3 fishing lakes, 2 of which are used only during the daytime and the other which operates 24 hours a day and where anglers may come for several days at a time. Each lake has 11 / 12 pegs and the facility attracts around 3000 visits a year.
12. The second element is fish rearing. Originally this consisted mainly of rearing small fish to fingerling stage in tanks in the hatchery building. However, it was explained that for a variety of reasons this ceased to be profitable and so this element now consists of taking small fish bred in the main fishing lakes and rearing them to a large size more quickly in the 10 rearing ponds.
13. Whilst the main fishing lakes require routine management and maintenance, it is the fish rearing element that requires more work on a day by day basis. At the hearing it was acknowledged that the current fish rearing process requires less intensive management than when raising small fish to the fingerling stage. At present, it is necessary to feed the fish once a day and to carry out a visual inspection of the fish / ponds 2 or 3 times a day. If the visual inspection raises any concerns further action / monitoring maybe required to address issues such as water quality. However, all of the work outlined to me could be completed during normal working hours and I was not made aware of any routine checks being undertaken during the night. Thus none of these activities require a day and night presence on the site.
14. The appellant indicated that in order to increase stock levels in the rearing ponds aerators would be required. Whilst automated monitoring of oxygen levels can take place, action to rectify any failure in the aerators is needed in a very short period of time to prevent the loss of fish, and the consequential significant financial impact on the business. It was suggested that living off site, even if only 3 miles away, would not enable the necessary swift action to take place.
15. However, at present this equipment does not exist and such monitoring is not required. Whilst I appreciate the appellant's reluctance to make what would be a significant outlay, without the certainty of being able to live on the site, I have not been provided with any business plan showing the likely costs and potential returns of any such expansion of the fish rearing element. Nor is

- there any guarantee that this investment / growth would take place should the appeal be allowed.
16. The problem that cormorants can cause was highlighted by the appellant and it was stated that this is predominantly an issue in winter around dawn when they feed. Given that dawn in winter is not an unreasonable time of the day, it would be feasible for a person living off site to be there by dawn. In addition, due to their size measures such as netting could be used on the rearing ponds.
 17. The appellant also highlighted the desirability of living on site for security reasons and it was stated that before he lived on the site, the site suffered a number of thefts, but none since then. I accept that the site is in a relatively isolated location, on a quiet country road, and that the theft of valuable fish stock in particular, could have a serious financial implication for the business.
 18. At present, the perimeter of the site is secured by fencing and gates are located at the entrance to the site, as well as to the fishing lakes and the rearing ponds. All of these appeared capable of being locked. Whilst I accept that responsibility for security should not rest on anglers, the semi-regular presence of anglers on the site at night, particularly in the summer months, in my opinion must also act as a deterrent.
 19. The appellant indicated that CCTV had been investigated and may be installed but the employment of a security guard would be prohibitively expensive. However, no costings for either of these were provided. Although I accept that a permanent human presence on the site may be the best form of deterrent, the use of CCTV would assist site security further, and overall I am not persuaded that the need to provide security is sufficient to justify the need for a permanent presence on the site.
 20. It was also argued by the appellant that an on-site presence is needed to provide an adequate duty of care for those using the site. Whilst I note the insurance implications of not having a permanent presence on the site, I was not made aware that there is any legal requirement for this to be the case, even if anglers are present overnight. Moreover, the appellant's evidence did not provide any indication that the manager had ever been required to deal with any such "out of hours" emergencies. If considered necessary, an emergency contact number could also be provided. As such, I am not satisfied that this demonstrates a need for a permanent presence either.
 21. The appellant has submitted a variety of financial information to show that the business is financially sound, and some limited updated data for 2018 was provided at the hearing. I am satisfied that these show that the business has been profitable for at least the last 4 years. Moreover, whilst I note the specific way the appellant chooses to take his income from the business, the level of profitability would be sufficient to pay more than the minimum agricultural wage should the appellant require this.
 22. Notwithstanding the fact that I consider the business to be financially sound, while I accept that having a permanent presence on the site would be both desirable and more convenient, I am not satisfied that the operational needs have established an essential need for this. Accordingly, the proposal would be contrary to Policy PG6 of the CELP, Policy RES.5 of the CNLP and paragraph 79 of the Framework outlined above.

23. As I have found that there is no essential need for a worker to live on or near the site, I have not considered whether there is suitable alternative accommodation in the vicinity.

Conclusion and Conditions

24. As outlined above, I consider that the alterations to the site layout made during the construction process and the permanent retention of the business facility on the site are acceptable. Therefore, I conclude that the appeal should partly succeed in relation to condition 29 and that part of condition 18 related to the business facility. Consequently, I will grant a new planning permission which substitutes the disputed conditions with ones that reflect the revised plans, and that removes the temporary permission for the business facility. I will dismiss the appeal related to that part of condition 18 related to the temporary dwelling.
25. The *Planning Practice Guidance* makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. The Council's list of suggested conditions has removed all those that have already been discharged and has updated others to take account of the fact that the scheme has been implemented. These were discussed and agreed at the hearing as being the ones that remain relevant. However, as the essential need for the dwelling has not been demonstrated I have not included the conditions limiting the occupancy of the dwelling and removing permitted development rights, but have added a condition to ensure the removal of the existing temporary dwelling on the site.

Alison Partington

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Rex Brockway	Planning Consultant
Dr Bruno Broughton	Fisheries Management Consultant
Brian Reilly	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Daniel Evans	Principal Planning Officer, Cheshire East Council
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DOCUMENTS SUBMITTED AT THE HEARING

1. Application for a full award of costs submitted by the appellant
2. Response to additional matters raised by the LPA in its 'statement of case' submitted by the appellant.
3. Analysis of Profits vs Agriculture Wage/Minimum Wage submitted by the appellant.
4. Response to the appellant's application for costs submitted by the local planning authority.

Annex A

Conditions

1. No development involving the use of the polytunnels shall take place until samples of the materials to be used in the construction of external surfaces of the polytunnels hereby permitted have been submitted to, and approved in writing by, the Local Planning Authority. Development shall be carried out in accordance with the approved details.
2. The approved access visibility splays of 2.4 metres by 120 metres (measured down the centre line of the access road and the nearside channel line of existing highway) to each side of the point of access shall be kept clear of any object, vegetation or other obstruction of a height exceeding 1.0m above the level of the adjacent carriageway.
3. Any gate, bollard, chain or other means of obstruction across the approved access shall be positioned at least 10.5 metres from the back edge of Coole Lane and shall be constructed to open into the site only.
4. Any mobile mechanical plant (such as generators, pumps, etc) located on the site shall not be audible at the façade of the nearest noise sensitive premises.
5. Within 12 months of the date of this decision the existing temporary dwelling on the site shall be removed and the site returned to its former condition (grass).
6. The development hereby approved shall be carried out in total accordance with the following approved plans numbered;

P0002/1910/16 received by the Local Planning Authority on 25th April 2018
1910/5 received by the Local Planning Authority on 3rd April 2009
0309/CA03 received by the Local Planning Authority on 3rd April 2009
1910/2 received by the Local Planning Authority on 3rd April 2009
0309/CA02 received by the Local Planning Authority on 3rd April 2009
1910/5 received by the Local Planning Authority on 3rd April 2009
1910/6 received by the Local Planning Authority on 3rd April 2009
1910/7 received by the Local Planning Authority on 3rd April 2009
0309/CA01 received by the Local Planning Authority on 3rd April 2009
1910/9 received by the Local Planning Authority on 3rd April 2009.