



Appeal Decision

Site visit made on 8 October 2019

by Paul Cooper MSc MRTPI

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

Decision date: 1 November 2019

Appeal Ref: APP/B3030/W/19/3232873

Field Reference 7600, off North Scarle Road, Wigsley, Nottinghamshire NG23 7EU

- 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 Dale Hudson (Float Fish Farm) against the decision of Newark & Sherwood District Council.
 - The application Ref 19/00551/FULM, dated 12 March 2019, was refused by notice dated 3 July 2019.
 - The development proposed is creation of a fish farming facility at Wigsley from agricultural land as a farm diversification business.
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Decision

1. The appeal is allowed, and planning permission is granted for the creation of a fish farming facility at Wigsley from agricultural land as a farm diversity business in accordance with the application Ref 19/00551/FULM dated 12 March 2019 subject to the conditions set out in the attached schedule.

Procedural Matter

2. The field reference was modified from the application form to the Decision Notice issued by the Council, and the new reference was used in the appeal form. I have utilised the same reference in the banner heading above. I am satisfied that neither party has been prejudiced by this change, and I will deal with the appeal on that basis.

Main Issues

3. The main issues in this appeal are:
 - The effect of the development on the character and appearance of the area, with particular regard to the impact on highway safety; and
 - The effect of the development on flood risk.

Reasons

Character and appearance

4. The site is located in open countryside, close to Wigsley village, and is set within a relatively flat landscape area. I understand from the evidence in front of me that it originally formed part of a former airfield.
5. From the evidence in front of me, I consider that the Council have concerns in relation to the soil excavations required for the site, and the level of vehicle

- movements during construction related to that issue. There are also concerns regarding the phasing of the site during construction and to the nature of the use post-construction.
6. It would appear that the Appellant has been working with the Council in order to reduce the level of material to be excavated from site, by the re-use of the material on site.
 7. The amount of material to be removed from site has been calculated in conjunction with the Minerals and Waste team from the County Council, who reviewed the information and did not wish to raise an objection with regard to highway safety or capacity, subject to conditions being imposed in respect of vehicle movements.
 8. The Statement of the Appellant also included confirmation of the excavation amounts from a Quantity Surveyor. I find that this information clearly demonstrates that the level of material to be removed from site would not be excessive, and that as a consultee and a Quantity Surveyor are satisfied with the figures concerned, I consider that the information provided is credible, and in the absence of evidence to the contrary, find no reason to doubt it. As a result, I consider that the proposals would not harm the character and appearance of the area, in terms of vehicle movements and impact from site works, and highway safety.
 9. With regard to the phasing of the site, from the evidence in front of me, I am satisfied that the works are carefully planned, and have taken the material movements into consideration when set out, in order to minimise the effect on the character and appearance of the area. This is without a doubt, a scheme that will take a considerable period of time in terms of the period of construction, but I find has been well designed and planned.
 10. In terms of the use of the site post-construction, the Appellant appears to have stated on a number of occasions and confirmed in both the Planning Statement and Appeal Statement of Case that no sports fishing is to take place on site. If the situation was to change in the future, then appropriate discussions could take place.
 11. As a result, on this issue, I find that the proposals are not in conflict with the policies set out in Policies SP3 (Rural Areas), SP7 (Sustainable Transport), CP9 (Sustainable Design), CP10 (Climate Change), CP12 (Biodiversity and Green Infrastructure) and CP13 (Landscape Character) of the Newark & Sherwood Amended Core Strategy (2019) (the CS) and Policies DM5 (Design), DM7 Biodiversity & Green Infrastructure), DM8 (Development in the Open Countryside and DM12 (Presumption in Favour of Sustainable Development) of the Newark & Sherwood Allocations and Development Management DPD (2013) (the DPD), and the case specific aims of the National Planning Policy Framework (the Framework)

Flood Risk

12. From the evidence in front of me, a site-specific Flood Risk Assessment (FRA) has been submitted as part of the scheme, which has identified the site as being located within Flood Zones 2 & 3.
13. Policy CP9 of the CS requires, amongst other matters, development to pro-actively manage surface water. Policy DM5 of the DPD, looks to steer new

development away from the areas at the highest risk of flooding. This is reinforced further by Paragraph 155 of the Framework. In this instance a Sequential Test, as set out in Paragraph 158 of the Framework is required in order to demonstrate that there are no suitably available sites areas with a lower risk of flooding areas.

14. In relation to the Sequential Test, a section of the FRA states that the development is water compatible and is therefore appropriate in Flood Zone 2. As a result, an exception test is not required. Given the size of the site, the list of sites that could potentially meet the criteria is limited, and based on the information in front of me, after contacting land agents and other agencies, only one site could potentially meet the criteria, and this site was within a Nitrate Vulnerable Zone, which is not compatible with the proposed use.
15. I consider that the Appellant has taken all reasonable steps in order to demonstrate that the Sequential Test has been carried out. The nature of the use is compatible within the Flood Zone, and appropriate consultees have not raised objections, subject to safeguarding conditions. Therefore I am satisfied that the development will be safe for its lifespan in terms of flood risk, and would not increase flood risk elsewhere.
16. As a result, on this issue, I find that the proposals are not in conflict with the policies set out in Policies CP9 (Sustainable Design), CP10 (Climate Change), CP12 (Biodiversity and Green Infrastructure) and CP13 (Landscape Character) of the CS and Policies DM5 (Design), DM7 Biodiversity & Green Infrastructure), DM8 (Development in the Open Countryside and DM12 (Presumption in Favour of Sustainable Development) of the DPD, and the flood protection aims of the Framework.

Conditions

17. The Council have suggested a number of conditions, which I have considered accordingly. I have amended some of the wording of those conditions for the purposes of clarity and legibility.
18. In addition to the standard conditions relating to timing of development and compliance with approved plans, conditions relating to materials and landscaping are required to safeguard the character and appearance of the area. Construction times are modified appropriately for the protection of residential amenities.
19. Conditions relating to access and vehicle routing are necessary in the interests of highway safety. Various conditions are included in relation to protected species, and biodiversity, in the interests of protection and long-term preservation.
20. Given the prominence of the flooding issue, a number of conditions are included that relate to flooding protection matters.

Conclusion

21. For the reasons given above, I conclude that the appeal should be allowed.

Paul Cooper

INSPECTOR

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall be begun within three years from the date of this permission.
2. Notwithstanding the Phasing Plan (Drawing Number: DH/408/17 Rev A) submitted 29.11.2018, no development shall be commenced until a detailed phasing plan has been submitted to and approved in writing by the Local Planning Authority. The development thereafter shall be implemented in accordance with the approved phasing plan.
3. The development hereby permitted shall not be carried out except in accordance with the following approved plans:

Drawing Number: DH/400/17 – Location Plan – dated 6 September 2017

Drawing Number: DH/401/17 Rev C – Site Layout dated 12 March 2019

Drawing Number: DH/402/17 – Plan of the Proposed Buildings, dated 5 September 2017;

Drawing Number: DH/403/17 – Cross Sections, dated 8 June 2018

Drawing Number: DH/404/17 – Cross Sections, dated 8 June 2018

Drawing Number: DH/405/17 – Topographical Survey, dated 19 February 2018

Drawing Number: DH/407/17 – Cross Sections, dated 7 June 2018.
4. No part of the development hereby permitted shall commence until details of the vehicle access (to include visibility splays, access widths, drainage, and radii) have first been submitted to and approved in writing by the Local Planning Authority. The approved access shall thereafter be constructed in accordance with the approved details prior to the development being brought into use. The visibility splays shall thereafter be kept free from obstruction for the lifetime of the development.
5. No material shall be removed from any phase of the development until details of construction lorry routing has been first been submitted to and approved in writing by the Local Planning Authority, and such details shall be adhered to during the lifetime of the construction period.
6. There shall be no pruning, the removal of hedgerows, vegetation or trees during the bird breeding season (March to September inclusive) until an ecological survey has first been submitted to and approved in writing by the Local Planning Authority, which should clearly demonstrate that the vegetation to be cleared is not utilised for bird nesting. Should the ecological survey reveal the presence of any nesting species, then no clearance of any vegetation shall take place during the bird nesting season until a methodology for protecting nest sites during the course of the development has been submitted to and approved in writing by the Local Planning Authority. Nest site protection shall thereafter be provided in accordance with the duly approved methodology.

7. The development shall be carried out in accordance with the submitted flood risk assessment (ref GCB/HUDSON dated May 2018 compiled by Geoff Beel Consultancy) and the following mitigation measures it details:

- a) Finished floor levels are set no lower than 6.30m above Ordnance Datum(AOD).
- b) Resilience measures must be utilised to a minimum of 6.60m AOD.

These mitigation measures shall be fully implemented prior to first use. The measures detailed above shall be retained and maintained thereafter throughout the lifetime of the development.

8. No part of the development shall be brought into use until a Flood Warning and Action Plan has been submitted to and approved in writing by the Local Planning Authority. The plan should include provisions for signing up to the Environment Agency's Flood Warning Service for early warning of potential flood events, details of how information would be disseminated and how users of the site would be evacuated.
9. Notwithstanding the Construction Management Plan contained within the Supporting Statement (revised 12 March 2019), construction or development (including excavations) shall only take place between the hours of 0800 Hours to 1800 Hours Monday to Friday inclusive, between 0800 Hours and 1300 Hours on Saturdays and at no time on Sundays or Bank Holidays.
10. No development within each phase of the site shall take place until a Construction Environment Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. This shall include:
 - Details of any lighting required during the construction phases
 - Details of how areas of retained habitats will be demarked on site and safeguarded (with relevant buffer zones) to prevent extracted soil from being stored within these areas
 - Details of the precise areas and their extent of where extracted soil from each phase will be stored so that it is not located on the local wildlife site, SINC or any existing habitat. The development shall thereafter be carried out in full accordance with the approved CEMP.
11. No development shall take place within 5 meters of the bank of the water body/drain to the north of the site until a Water Vole Survey has been carried out by a suitably qualified person or body to establish if water voles and their burrows are present. The Survey and its findings, together with the means of any required mitigation and timings shall be submitted to and approved in writing by the Local Planning Authority prior to any development within 5m of the bank taking place. The mitigation measures approved shall be carried out in accordance with the agreed details and timetable.
12. No development shall commence within any phase until a Reptile Survey has been carried out for that phase by a suitably qualified person or body to establish if reptiles are present. The Survey and its findings together with the means of any required mitigation and timings shall be submitted to and approved in writing by the Local Planning Authority prior to the

commencement of the development within that phase. The mitigation measures approved shall be carried out in accordance with the agreed details and timetable.

13. In the event that Great Crested Newts are found to be present on site, development shall cease immediately and shall not recommence until the mitigation measures set out in the Great Crested Newt Mitigation Report (author: Prime Environment, Project No. 423 V1 October 2018) have been carried out in full on site.
14. No development shall commence within any phase until a Badger Survey has been carried out by a suitably qualified person or body to establish if active badger setts are present on site. The Survey and its findings, together with the means of required mitigation for any development within 25m of proposed works and its timings shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development within that phase. The mitigation measures approved shall be carried out in accordance with the agreed details and timetable.
15. Prior to the development within each phase being first brought into use, an Ecological Enhancement Strategy together with timings for implementation shall be submitted to and approved in writing by the Local Planning Authority. This could include but is not limited to:
 - Creation of vegetated shallows within the ponds where invertebrates and amphibians may be safe from large fish.
 - Light management of areas of the Site to create a mosaic of rough grassland and scrub (in particular in the areas which will be raised to compensate for losses during construction).
 - Seeding and management of areas at the periphery of the site for wild flowers.
 - Selection of native species for all landscape plants.
 - Erection of bird and bat boxes on retained trees and/or ancillary buildings (12 of each). Boxes should include a range of shapes made from long lasting materials (i.e. Woodcrete or Stonecrete). The development shall be carried out in accordance with the timings for implementation.

16. No works or development within each phase that contains retained trees shall take place until an Arboricultural Method Statement and scheme for protection of retained trees/hedgerows identified within the Arboriculture Survey and Impact Assessment, (PRJ423 Rev 1 by Prime Environment) has been agreed in writing with the Local Planning Authority. This scheme shall include:

A plan showing details and positions of the ground protection areas.

Details and position of protection barriers.

Details and position of measures (including sections where necessary) to protect the trees from soil being tipped onto tree roots and working methods to protect the root protection area of any retained tree/hedgerow on or adjacent to the application site.

Details of any special engineering required to accommodate the protection of retained trees/hedgerows (e.g. in connection with foundations, bridging, water features, hard surfacing).

Details of construction and working methods to be employed (such as no-dig type) for the installation of drives and paths within the root protection areas of any retained tree/hedgerow on or adjacent to the application site.

Details of timing for the various phases of works or development in the context of the tree/hedgerow protection measures.

All works/development shall be carried out in full accordance with the approved tree/hedgerow protection scheme. The protection measures shall be retained during the development of the site.

17. No development shall be commenced within any phase until a scheme for the provision, implementation and maintenance of a regulation system for any surface water discharge to the surrounding drains/watercourses has been submitted to and approved by the Local Planning Authority. The development should not increase flood risk to existing properties or put the development at risk of flooding. The scheme should include the following:

Any discharge of surface water from the site should look at infiltration – watercourse – sewer as the priority order for discharge location.

SUDS should be considered where feasible and consideration given to ownership and maintenance of any SUDS proposals for the lifetime of the development.

Any development that proposes to alter an ordinary watercourse in a manner that will have a detrimental effect on the flow of water (eg culverting / pipe crossing) must be discussed with the Flood Risk Management Team at Nottinghamshire County Council.

The maximum discharge rate should not exceed that of a green field site.

The approved scheme shall thereafter be implemented on site to an agreed timescale. All drainage routes through the site should be maintained both during the works on site and after their completion.

18. Prior to the development being first brought into use within each phase, a hard and soft landscape scheme together with an associated management plan including the long-term design objectives, management responsibilities and maintenance schedules for all areas of the site shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall:

Detail the extent of new native planting (to include the proposed species, their numbers, density, disposition and establishment measures)

Be designed having considered all of the sites external ground surfaces, and the treatment proposed for these surfaces (including any materials)

Detail the treatment of site boundaries and/or buffers around water bodies

Detail the maintenance/management regimes

Detail all hard landscaping (which should be permeable where possible) including vehicle parking areas and boundary treatments

Detail minor artefacts and structures for example, any furniture, refuse bins, signage, etc. The scheme shall be implemented on site in accordance with the timetable set out in Condition 19 and shall thereafter be maintained for the lifetime of the development in line with the regime, which shall also be agreed as part of this condition.

19. The soft landscaping for each phase shall be completed during the first planting season following the first occupation/use of the development, or such longer period as may be agreed in writing by the Local Planning Authority. Any trees/shrubs which, within a period of five years of being planted die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless otherwise agreed in writing by the Local Planning Authority. All tree, shrub and hedge planting shall be carried out in accordance with BS 3936 - 1992 Part 1-Nursery Stock-Specifications for Trees and Shrubs and Part 4 1984- Specifications for Forestry Trees ; BS4043-1989 Transplanting Root-balled Trees; BS4428-1989 Code of Practice for General Landscape Operations. The approved hard landscaping scheme shall be completed prior to first occupation or use of that phase unless otherwise agreed in writing by the Local Planning Authority.
20. Notwithstanding any description of materials in the application and the requirements of condition 3 of this permission, no above ground works shall take place until samples or full details of all materials to be used on the external surfaces of the buildings have been submitted to and approved in writing by the Local Planning Authority. Such details shall include the type, colour and texture of the materials. The development shall thereafter be implemented in accordance with the duly approved materials.
21. No excavated materials shall be stored on site for a period of more than 12 months.

END OF SCHEDULE