
Appeal Decision

Site visit made on 14 January 2020

by Roy Curnow MA BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th February 2020

Appeal Ref: APP/F9498/C/19/3225006

Land at Upcott Farm, Upcott Lane, Winsford, Somerset TA24 7HW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Steve Ellam of The Mells Park Trust against an enforcement notice ('the notice') issued by Exmoor National Park Authority (NPA).
 - The enforcement notice, numbered ENF/0067/18, was issued on 7 February 2019.
 - The breach of planning control as alleged in the notice is within the last four years and without planning permission, the creation of a track and parking/turning area on the Land. See Appendix A to the notice.
 - The requirements of the notice are: (a) Permanently remove from the Land all stone and any other material used for the construction of the track; (b) Reinstatement the levels of the land with soil so that the reinstated land is level with the adjoining land on either side of the removed track; and (c) Reseed the land and return the land to agricultural grassland.
 - The period for compliance with the requirements is 6 months after this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
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Decision.

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the creation of a track and parking/turning area on land at Upcott Farm, Upcott Lane, Winsford, Somerset TA24 7HW as shown on the plan attached to the notice, and subject to the following condition:
 - 1) The track and parking/turning area hereby permitted shall be removed from the land, together with all materials arising from this, and the land restored to its condition before the breach took place within 6 months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 3 months of the date of this decision a scheme showing a method statement for lowering the level of the track to match the existing adjoining natural ground levels, where the track coincides with the land within the functional floodplain shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 6 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within

the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Ground (a) appeal

Main Issue

2. The main issue in the appeal is the effect of the development on the character and appearance of the area, having regard to the statutory purpose¹ of the National Park to conserve and enhance the natural beauty, wildlife and cultural heritage of the area, and to promote opportunities for the understanding and enjoyment of the special qualities of National Parks by the public.

Reasons

3. Upcott Farm lies in the open countryside on land that is considerably higher than that on which the track and hardstanding have been created adjacent to the River Quarme. They lie a little under 400 metres to the north east of the farm buildings. The track is estimated to be some 370m in length and runs in a north-south direction from Upcott Lane. It and the parking/turning area have been constructed of earth, road planings and hardcore with a non-slip wearing course.
4. The development lies within the Exmoor National Park. Therefore, following the terms of paragraph 172 of the National Planning Policy Framework, (the Framework), the highest status of protection in relation to landscape and scenic beauty and great weight is to be afforded to conserving their landscape and scenic beauty.
5. The appeal parties agree the site lies in Landscape Character Type G, 'Incised Wooded River'. The key features of the locality includes relatively narrow valleys with steeply sloping sides and open floors.
6. For the most part, the track has been created towards the lower part of the land, close to the River Quarme. Its width is largely commensurate with that of a gateway from Upcott Lane to which the Council granted permission to be widened to allow modern farm machinery to access and egress the land. The track allows machinery to run across the land without cutting it up when wet. Photographs that have been submitted show the visual harm and difficulties to farming that previously arose in those circumstances.

¹ 10 Section 11A(2) of the National Parks and Access to the Countryside Act 1949 (as amended).

7. The track leads to the area of parking/turning area, which provides a firm base for the siting of up to four ring feeders for livestock. This has been formed in a position that is accessible from other parts of the farm. The track extends a short distance beyond this, allowing a firm access for machinery and livestock to an adjacent, lower field. In the light of this, I find that the development is reasonably necessary for agricultural purposes.
8. Photographs show that when the track and parking/turning area were put in, they had a stark appearance resulting in a harmful visual effect on the character and appearance of the area. However, with the passing of time grass has grown along its flanks and centre of the track and the parking/turning area has similarly greened. The result of this is that their appearance has softened considerably. Their size, nature, siting and form are logical in terms of the agricultural use of the land and respond well to the topography of the land. Although the land is otherwise undeveloped, the scale and agricultural appearance of the track and parking/turning area are such that they do not appear as prominent, incongruous or harmful features in the landscape. Rather, they sit comfortably within this attractive setting.
9. For the above reasons, I find that the development, is reasonably necessary for agriculture. Further, I find that it is informed by and complements the distinctive character of the NP and LCTG in accordance with Exmoor National Park Local Plan 2011-2031, July 2017, (LP) Policy CE-S1. It reflects local character and does not have a harmful effect on this or the appearance of the area in accordance with the terms included within LP Policies GP1, CE-D1, CE-S6 and SE-S4 and the landscape beauty of the area would be conserved in line with the Framework.

Other matters

10. The evidence shows that part of the track lies within Flood Zone 3, where there is a high probability of flooding, and partly within the functional flood plain of the River Exe. The latter is defined in the Planning Practice Guidance (PPG)² as land where water has to flow or be stored in times of flood.
11. The PPG classifies developments and land in terms of their flood risk vulnerability³. Agricultural land and buildings are described as 'less vulnerable', which Table 3 in the PPG⁴ sets out should not be permitted in the functional flood plain.
12. The Framework sets out a risk-based approach to be taken to development proposals within areas susceptible to flooding. Given the siting of the development within Flood Zone 3, in addition to an assessment of flood risk, it should be subject to a sequential test and an exception test. None of these have been carried out.
13. Notwithstanding this, the Environment Agency has no objection to the development on flood-related grounds, subject to the use of a condition that would ensure that the level of that section of the track within the functional flood plain would be lowered to the same level as that of the ground level of the floodplain. The NPA has suggested a condition, based on the EA's comment, in its list of conditions to be applied if the appeal is allowed. In the

² Paragraph: 065 Reference ID: 7-065-20140306. Revision date: 06 03 2014

³ Paragraph: 066 Reference ID: 7-066-20140306. Revision date: 06 03 2014

⁴ Paragraph: 067 Reference ID: 7-067-20140306. Revision date: 06 03 2014

light of the above, I find that the lack of Flood Risk Assessment, sequential and exceptions tests is not fatal to the appeal and that a condition of the type proposed is justified.

14. The notice alleges conflict with LP Policy CE-S3, which relates to biodiversity and green infrastructure. However, as there is no reference to this harm in the NPA's submissions and that its Wildlife Conservation Officer had no ecological concerns, I have no evidence to find that the development would conflict with this policy.
15. I am told that the site lies within a post-medieval water meadow, identified on the Historic Environment Record. I have not, however, been provided with any further information in this regard. As this has not been countered by the appellant, I take it to be the case. As such, it should be treated as a non-designated heritage asset, which should be protected from harm. As none is referenced in the notice, nor has the NPA identified any in its statement, I have no reason to find otherwise.

Conditions

16. The NPA has suggested two conditions, should the appeal be allowed. I agree that a condition relating to changing the level of those parts of the track within the floodplain to match those of the adjoining land, referred to above, is necessary. However, as the development has already been undertaken, the proposed condition lacks precision and is unreasonable to the appellant.
17. The purpose of the condition I have attached in this regard is to require the appellant to comply with a strict timetable for dealing with changing the level of the track within the floodplain, which needs to be addressed in order to make the development acceptable. The condition is drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matter because the development has already taken place. The condition therefore provides for the loss of the effective benefit of the grant of planning permission where the detailed matters in question are not submitted for approval during the time set by the condition, approved (either by the local planning authority ("LPA") or by the Secretary of State on appeal), and then implemented in accordance with an approved timetable. Should the requirements of the condition not be met in line with the strict timetable, then the planning permission falls away.
18. The condition proposed to remove permitted development rights⁵ that allow for the maintenance or improvement of a private way. These statutory rights are conveyed by Parliament and, as such, I give them significant weight. The NPA has given very broad and non-specific reasoning for the use of the condition. I do not find this to be persuasive and, therefore, I am not attaching this condition.

⁵ Under Class E of Part 9 of Schedule 2 to the Town & Country Planning (General Permitted Development) Order 2015 (as amended)

Conclusion

19. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the development as described in the notice.

Roy Curnow

INSPECTOR