



Appeal Decision

Site visit made on 2 October 2019

by S Thomas BSc (hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th May 2020

Appeal Ref: APP/J0405/W/19/3232782

Land Adjacent to Dairy Farm, High Street, Cublington LU7 0LQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Hannington against Buckinghamshire Council – Aylesbury Area.
 - The application Ref 19/00332/APP, is dated 28 January 2019.
 - The development proposed is described as construction x 1 4-bed residential dwelling and all ancillary works.
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Decision

1. The appeal is allowed and planning permission is granted for construction x 1 4-bed residential dwelling and all ancillary works at Land Adjacent to Dairy Farm, High Street, Cublington LU7 0LQ in accordance with the terms of the application Ref 19/00332/APP, dated 28 January 2019, subject to the conditions set out in the Schedule to this decision.

Application for costs

2. An application for costs was made by Mr P Hannington against Buckinghamshire Council - Aylesbury Area. This application will be the subject of a separate Decision.

Procedural Matters

3. On the 1st April 2020 Aylesbury Vale District Council was merged with other local planning authorities into a new Unitary authority named Buckinghamshire Council. From this date Aylesbury Vale District Council is now called Buckinghamshire Council-Aylesbury area. This has been updated in the banner heading above.
4. Whilst the Council did not determine the application within the prescribed period, it has subsequently identified its main concerns to be the disturbance to Great Crested Newts (GCN) being considered to be sufficient to be in breach of the law protecting the species.
5. During the course of the appeal the appellant has sought to address the Council's concerns on the impact of the proposal on GCN. In the absence of a detailed survey accompanying the planning application to determine the presence or otherwise of GCN, the appellant has sought to progress this

scheme through the South Midlands Great Crested Newt District Licensing Scheme.

6. This is an alternative route to secure compensation for potential impacts to GCN. Accordingly, the appellant applied to Nature Space (who are the named delivery partner for District Licenses on behalf of Natural England) through the commission of a District License Report to demonstrate how the proposed development could be dealt with under the District License Scheme. Following discussion between the parties this report was submitted following the site visit. The Council has had the opportunity to comment on its findings and have confirmed that should planning permission be granted subject to the imposition of specified conditions they would authorise the proposed development to use the District License. This has informed my decision on the appeal.

Main Issue

7. The main issue is the effect of the proposed development on ecology with particular regard to Great Crested Newts.

Reasons

8. The site is an undeveloped parcel of land with hedgerow bordering High Street and is disturbed ground supporting weed vegetation and scattered mature and semi mature trees. I observed the site is damp underfoot and with the presence of vegetation and materials lying around the site including a dead tree and corrugated sheeting offers potential refuge for species.
9. The Preliminary Ecological Assessment (2019) reported that whilst the regularly mown grassland and disturbed ground provided poor habitat for reptiles and amphibians, materials present on site including a dead tree and corrugated sheeting could provide refuge for any species present. Due to records of GCN from the various ponds in the area including the nearby village pond the report identifies there is a risk that GCN could be harmed during construction. Thus, in the absence of a Protected Species Survey to determine otherwise, there is a reasonable prospect that GCN could be present on the site.
10. Paragraph 99 of Circular 06/2005 states that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development is established before planning permission is granted. The reason for this is to ensure that all relevant material considerations are addressed in making the decision. Further, in line with the advice in Circular 06/2005 surveys should only be required by condition in exceptional circumstances.
11. Paragraphs 175 of the National Planning Policy Framework (the Framework) advises that if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less than harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.
12. Developments that would result in a breach of protection afforded to European Protected Species (EPS) require a derogation licence, to avoid an offence under the Conservation of Species and Habitats Regulations 2010 (the Regulations). There is no requirement for an EPS derogation license to be provided prior to the grant of planning permission, but the decision taker must be assured that

there would be a reasonable prospect of the license being granted, having regard to the requirements of the Habitats Directive.

13. The Report¹ submitted as part of the appeal process confirms the development could be dealt with under the District Licence Scheme which is administered by the Council. The report assesses the site and determines that the site would be at the lower end of value to Great Crested Newts (GCN) in the wider landscape and accordingly would not require in situ mitigation. However, the assessment calculates the likelihood of the presence of GCN at the site. A score of 1 means GCN presence is highly likely and risk of harm is high and a score of 0 means there is likely an absence of GCN and low risk of harm. The site scores 0.74 and the report states that planning conditions are required within the red zone (of which the site is located) where Great Crested Newts are present, and the risk of harm is probable.
14. The report identifies an appropriate compensation payment to mitigate harm which would be used to fund the management of compensatory habitats for GCN conservation across the area. Consequently, securing this approach, together with appropriate planning conditions to secure the incorporation of the ecological mitigation measures identified in Section 6 of the Preliminary Ecological Assessment, would to my mind ensure satisfactory mitigation and biodiversity enhancements take place to ensure biodiversity net gain benefits are achieved in line with the objectives of the Framework.
15. On the basis of this report which concludes the proposal could be dealt with through the District License and subsequent comments of the Council providing a Draft Authorisation form should permission be granted I am satisfied there is a likely prospect of a License being issued by the Council for this scheme. Thus, I am satisfied that the 3 tests in Circular 06/2005 would not be infringed.
16. For the reasons outlined above, I conclude the proposal would not have an adverse effect on protected species with particular regard to Great Crested Newts. Thus, given I have concluded that adequate compensation measures for Great Crested Newts can be achieved, and through conditions which would secure the net biodiversity improvements, the proposal would not be in conflict with Paragraphs 170 and 175 of the Framework.

Other Matters

17. The site is located within the Cublington Conservation Area. As such I have had regard to the duty under Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing its character or appearance.
18. Cublington is a quiet attractive village with High Street forming the main route through it. The tree cover and hedgerows contribute to the verdancy of the area giving it a pleasant charm and appearance. There is a mixture of both modern and historic properties fronting High Street, with a varied pattern in terms of the relationship with the road. The dwelling has sought to incorporate design cues of nearby historic development and given the varied form of development the proposal and layout would not detract from the character of the area. It is acknowledged that the hedgerow and existing tree cover contribute to the character of the Conservation Area, however whilst trees

¹ District License Report by Nature Space Partnership dated 2nd October 2019

would be lost particularly the Black Pine, the site and its surroundings still contain significant tree cover and thus would still retain its verdant character. Further, whilst acknowledging trees will take time to establish, I consider on balance through the imposition of a condition to secure replacement tree planting to the rear of the site will be acceptable mitigation for the loss of the existing trees on site.

19. I also recognise the existing hedgerow to the front of the site contributes to the verdant character in this location. The site layout plan indicates that the existing hedge to the front of the site would only require trimming back to enable visibility. However, the highway authority has stated this will likely require removal. From what I saw at my site visit, I am minded to agree with that view. However, I am satisfied that acceptable mitigation for this could be secured through replacement planting by means of a suitably worded condition.
20. The existing tree, referred to as T6 within the evidence, makes a significant contribution to the local landscape. Its retention is shown on the submitted plans within the appellants tree report. A grant of permission could be conditional on the approval of this plan (along with others). Whilst the tree would cast some shade over parts of the site for some of the day, it would not result in unacceptable effects on the living conditions of the dwellings future occupiers. Therefore, I am satisfied that there would be no long term effects on tree T6.
21. Consequently, taking all of this into account with the dwelling's acceptable design, the proposal would preserve the character of the CA.
22. Section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special regard to be had to the desirability of preserving a Listed Building or its setting or any features of special architectural or historic interest which it possesses. The appeal site forms part of the curtilage of Dairy Farm a Grade II Listed Building. Dairy Farmhouse dates back to 1800 and is designated for the architectural interest of the farmhouse. The farmhouse and adjacent barns and courtyard to the east of the Listed Building and views through to the farm beyond forms the prominent viewpoint of how the Listed Building is experienced from the street scene. This would not be adversely affected by the proposal. Given the proposed dwelling would be sited approximately 17m to the west of the farmhouse, the existing polytunnel present in this gap, and the fact it would still retain the backdrop views to vegetation beyond I do not find the proposed would adversely affect the setting of the Listed Building. Thus, it would preserve the significance of this designated heritage asset.

Conditions

23. I have considered the Council's suggested conditions in light of the Framework and Planning Practice Guidance (PPG) and have imposed standard conditions relating to the commencement of development, and a condition specifying the relevant drawings in the interests of certainty.
24. In the interests of ensuring the satisfactory appearance of the development I have imposed conditions to require the submission of details of materials to external surfaces, details of proposed boundary treatments and details of soft landscaping including the proposed replacement hedgerow and replacement tree planting. I have also imposed a condition to require the submission of the

finished floor levels albeit I have not imposed this in pre commencement form having regard to the PPG which advises the need to limit pre commencement conditions.

25. In the interests of highway safety, I have imposed conditions to secure visibility splays, the provision of parking and turning areas and the site access. However, in relation to the latter, I have amended this as the original wording was neither clear nor precise. The 'Buckinghamshire County Council's guide note Private Vehicular Access within Highway Limits 2013 is not before me and therefore the appellant will need to submit the specification for approval. I have not imposed the Councils suggested condition on the restriction in height on enclosures along the site frontage as this is covered within the condition on visibility splays.
26. In the interests of biodiversity, I have imposed a condition to secure the necessary biodiversity enhancements. In the interests of protected species, I have imposed the necessary conditions required in order for the development to be authorised a licence under the District License scheme.

Conclusion

27. For the reasons above, the appeal should succeed, and planning permission is granted.

S Thomas

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Planning Drawing No PL-01 Revision G, Visibility Splay Plan, Tree Constraints and Protection Plan contained in Appendix 3B of the Tree Survey Report Pre Development (Rev May 2019).
- 3) The development shall be constructed in accordance with the full details of the finished levels, above ordnance datum, of the ground floor of the proposed building, in relation to existing ground levels that shall first have been submitted to and approved in writing by the local planning authority.
- 4) No development above slab floor level shall take place until a sample panel of the materials to be used in the construction of the external surfaces shall have been prepared on site for inspection and approved in writing by the local planning authority. The development shall be constructed in accordance with the approved sample, which shall not be removed from the site until completion of the development.
- 5) No Development above slab level shall take place on the dwelling hereby permitted until details of all screen and boundary walls, fences and any other means of enclosure, have been submitted to and approved in writing

by the Local Planning Authority. The development shall thereafter only be carried out in accordance with the approved details and the dwelling hereby approved shall not be occupied until the details have been fully implemented.

- 6) No development above slab floor level shall take place until details of soft landscape works (to include replacement hedge and tree planting) have been submitted to and approved in writing by the local planning authority. The landscaping works shall be carried out in accordance with the approved details before any part of the development is first occupied.

Details of soft landscape works shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); positions of all trees and hedgerows to be planted, schedules of plants noting species, plant supply sizes and proposed numbers/densities where appropriate.

- 7) The dwelling shall not be occupied until minimum visibility splays of 43m from 2.4m back from the edge of the carriageway from both sides of the existing access onto High Street shall be provided in accordance with the approved plans and the visibility splays shall be kept clear from any obstruction between 0.6m and 2.0m above ground level. The visibility splays shall be retained thereafter.
- 8) The dwelling shall not be occupied until the means of access shall have been constructed in accordance with the approved plans and to a specification submitted to and agreed in writing by the local planning authority. The access shall be retained thereafter.
- 9) The dwelling shall not be occupied until space has been laid out within the site in accordance with the approved plans for cars to be parked and for vehicles to turn so that they may enter and leave the site in a forward gear. That space shall thereafter be kept available at all times for those purposes.
- 10) The development shall be implemented in accordance with the agreed recommendations and mitigation measures set out in the Preliminary Ecological Assessment (January 2019). Following completion of the mitigation works and prior to occupation of the development a written statement shall be submitted to the Local Planning Authority specifying the measures that have been implemented.
- 11) The development hereby permitted shall be carried out in accordance with the Council's organisational licence (WML-OR22) and with the proposals detailed on plan 'Cublington impacts plan' dated 26th September 2019.
- 12) No development shall take place (including ground investigations, site preparatory works and ground clearance), until a certificate from the Delivery Partner(as set out in the District Licence WML-OR22), confirming that all necessary measures in regard to great crested newt compensation have been appropriately dealt with, has been submitted to and approved by the local planning authority and the local authority has provided authorisation for the development to proceed under the district newt licence.
- 13) All site works must be carried out in accordance with best practise guidance (GCN Mitigation Principles, as set out in the District license WML-OR22) and using reasonable avoidance measures. In addition:

- (i) Works which will affect likely newt hibernacula may only be undertaken during the active period for amphibians.
- (ii) Capture methods must be used at suitable habitat features prior to ground clearance or removal of such features (i.e. hand/destructive/night searches), which may include the use of temporary amphibian fencing, to prevent newts moving onto a development site from adjacent suitable habitat, installed for the period of the development (and removed upon completion of the development).