



Appeal Decision

Site Visit made on 28 April 2021

by Rory MacLeod BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 May 2021

Appeal Ref: APP/R0335/W/20/3262270

Land at rear of White House Farm, North Street, Winkfield, SL4 4TE

- 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 outline planning permission
 - The appeal is made by Mr Brian Hunter against Bracknell Forest Borough Council.
 - The application Ref 20/00019/OUT, is dated 11 February 2020.
 - The development proposed is change of use from B8 (storage) to C3 (residential). Proposed erection of two bungalows with accommodation in the roof voids and associated parking after demolition of existing storage building facilities.
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Decision

1. The appeal is dismissed.

Applications for costs

2. Applications for an award of costs have been made by both the appellant and the Council. These are the subject of separate Decisions.

Preliminary Matters

3. The application is in outline form; appearance, layout and scale are to be determined at this stage with access and landscaping as reserved matters.
4. The site is currently lawfully used for storage, mainly in shipping containers. The Council indicates that the replacement of all structures on site by the proposed two bungalows would satisfy Green Belt policy considerations. Their sole reason for contesting the appeal relates to the absence of an Ecological Impact Assessment and Survey to allow the proposal's impact on biodiversity to be identified and mitigated if necessary. The appellant is willing to provide this concurrently with the approval of reserved matters but questions its necessity in relation to consideration of the outline planning application.

Main Issue

5. The main issue therefore is whether it is necessary and reasonable for an Ecological Impact Assessment and Survey to be prepared and submitted at the outline planning permission stage.

Reasons

6. The site is presently laid out in accordance with the submitted 'existing' site plan with rows of containers to its northern and southern sides and a yard in-between for vehicles to access the units. It is predominantly hard surfaced. But there are soft surfaces within the site area comprising a raised bund to the eastern and southern boundaries and an area to the side of storage unit 8.

Stored materials piled near to the eastern boundary have become overgrown. There is open ground to the south and east of the site and several ponds in the immediately surrounding area. The site does not give the impression of having a strong or significant biodiversity interest, but without a more detailed survey and assessment, it is not possible to be certain on this.

7. Paragraph 43 of the National Planning Policy Framework (the Framework) states, "*The right information is crucial to good decision-making, particularly where formal assessments are required*". It states "*particularly*", not "*only*", indicating an element of discretion on small sites where a formal assessment is not required. The proposal does not necessitate an Environmental Impact Assessment or similar formal assessment, but additional information may be required if the Council deems this necessary. Planning Practice Guidance (PPG) states, "*As with other supporting information, local planning authorities should require ecological surveys only where clearly justified. Assessments should be proportionate to the nature and scale of the development proposed and the likely impact on biodiversity.*¹". It is a matter of judgement on a case by case basis therefore whether such a survey is warranted at all or is necessary, even at outline planning permission stage. But the Council should have a sound basis when considering such surveys to be justified.
8. The Council's Biodiversity Officer comments that the site is within 150 metres of six ponds with potential to support great crested newts and within an area with records of protected species such as reptiles and badgers. The officer's comment about the felling of trees would appear to be incorrect. Nonetheless, the protection and enhancement of biodiversity is an important objective in national and local planning policies. Paragraph 170 of the Framework states that planning decisions should contribute to and enhance the natural and local environment by "*d) minimising impacts on and providing net gains for biodiversity*". The suspicion that protected species on or adjacent to the site could be impacted by the proposal is a significant consideration. The Framework at Paragraph 175 affirms that "*if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused*".
9. An Ecological Impact Assessment and Survey may or may not reveal the presence of protected species, but if it did, it would be important to plan for mitigation or compensation as part of the principle of developing the site. Such measures if possible and appropriate could be compromised if the siting of the buildings and layout of the site has been fixed by a grant of outline planning permission beforehand. In the light of the Council's information on the local presence of protected species it is therefore appropriate in this instance that the investigation of this issue takes place at the outline stage as part of the assessment of the acceptability of the principle of the development.
10. In the absence of relevant biodiversity information there is the possibility that protected species could be harmed or appropriate mitigation measures not taken. In which case the proposal would be contrary to Saved Policy EN1 of the Bracknell Forest Borough Local Plan (2002) and Policies CS1 and CS7 of the Core Strategy Development Plan Document (2008) which collectively seek to protect and enhance biodiversity interests.

¹ Planning Practice Guidance 018 Reference ID: 8-018-20190721

11. The appellant argues that requiring the provision of a biodiversity survey and report following granting of outline planning permission would allow a three year period to prepare the information. This could be planned for and budgeted along with other necessary work, such as a contamination report, concurrently with the reserved matters stage. It would also avoid the risk of the information becoming out of date and having to be repeated through the passage of time if there is a delay in implementation.
12. Such an approach may be possible on some sites. It is a matter of planning judgement. In this instance, although this is an active brownfield site with no ecological designation, the presence of protected species in the vicinity is a significant consideration. An assessment "*proportionate to the nature and scale of the development proposed and the likely impact on biodiversity*" is warranted at the outline stage to determine which species, if any, are present, which parts of the site are sensitive to this and what measures should be taken. As the layout of the site could be affected by the need for measures arising from this information, the optimum time for assimilation of findings is at the outline planning permission stage.
13. The Council has suggested planning conditions in the event that the appeal is allowed; this is in accordance with normal appeal processes. The appellant indicates willingness to comply with these at reserved matters stage as a way forward. Furthermore, that if it would not be possible to commence the development as a result of difficulties in discharging conditions relating to ecological matters, that the risk would remain with the developer. But there would also be a risk for the Council in not being able to promote optimum mitigation measures arising from an ecological survey and assessment if matters agreed at the outline planning permission stage would compromise those measures.
14. The appellant has referred to a dialogue with the Council on other outline applications to establish consistency in the Council's approach, and has contrasted the large scale and differing circumstances to the current appeal proposals. Nonetheless, it is a matter of planning judgement to ascertain the need for this information at this site at the outline planning stage.

Conclusion

15. My conclusion having regard to the circumstances of the site and development is that it is necessary and reasonable for an Ecological Impact Assessment and Survey to be prepared and submitted at the outline planning permission stage as part of establishing the principle of developing the site. For the reasons given above the appeal should therefore be dismissed.

Rory MacLeod

INSPECTOR