



Appeal Decision

Site Visit made on 18 May 2021

by Paul Martinson BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 June 2021

Appeal Ref: APP/R2520/W/21/3269185

Land north of Boston Road, Heckington, Sleaford NG34 9JF

- 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 NJA Property Management Limited and RJW Property Management Limited against the decision of North Kesteven District Council.
 - The application Ref 20/0753/FUL, dated 15 June 2020, was refused by notice dated 8 October 2020.
 - The development proposed is erection of 4 no. dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal site forms part of the application site of planning permission 17/1776/FUL for 107 dwellings, granted in 2018 pursuant to outline permissions ('the 2018 site'). The implementation of that permission is well underway. The appeal site is located in the north eastern corner of the 2018 site to the east of a turning head and north of an attenuation basin which forms part of the surface water drainage system for the approved scheme. The 2018 permission was subject to a condition (condition 10), which sought the submission, agreement and implementation of a landscape and ecological management plan ('LEMP') as a means of securing biodiversity enhancement in accordance with policy LP21 of the Central Lincolnshire Local Plan ('CLLP') (adopted 2017). The condition identified the area to which the LEMP should relate as "the area of public open space and adjacent pond and also the attenuation basin and land adjacent to the north and south".
3. Details pursuant to condition 10 consisting of a Landscape Management Plan prepared by ENGIE arboricultural consultancy and a Biodiversity Enhancement Plan prepared by CGC Ecology were approved by the Council on 31 May 2019.

Main Issue

4. The main issue is the effect of the proposed development on biodiversity.

Reasons

5. The appeal proposal would involve the construction of four dwellings positioned to the north of a new access road that would lie immediately to the north of the attenuation basin. The existing hedgerow would form the rear boundaries of the gardens of these dwellings. The attenuation basin has already been constructed and the sloping banks are grassed, however the appeal site itself is vacant, consisting primarily of exposed earth.

6. The Council contend that the appeal site forms part of the area identified in condition 10 and is thus covered by the LEMP for biodiversity enhancement as it is adjacent land to the north of the attenuation basin. The appellant disputes this and considers that the wording of the condition is such that "land adjacent to the north and south" consists solely of the banks of the attenuation basin.
7. The banks are clearly a fundamental part of the attenuation basin and integral to its function in holding surface water arising from the development. I am therefore not convinced by the appellant's argument given that the banks form part of the attenuation basin rather than lying adjacent to it. Furthermore, the proposed site layout plan (C234-05 Rev. Q) of the appeal proposal shows a fence positioned at the top of the bank with the annotation: "post and rail fencing to perimeter of attenuation basin". This reinforces my reasoning above.
8. Turning to the requirements of condition 10 of the 2018 permission with regard to the appeal site, I note that whilst the appeal site is not expressly identified as biodiversity enhancement on some of the approved plans, the plan forming part of the approved Landscape Management Plan classifies the appeal site as a 'key area' for landscape management. The document goes on to highlight the management scheme for this area.
9. Furthermore, paragraph 4.1 of the Biodiversity Enhancement Plan states that "the area around the attenuation basin must be seeded with an appropriate wildflower mix..." with details of maintenance included at 4.7 of the Landscape Management Plan. When considered alongside condition 10, and taking into account my above reasoning, I am satisfied that the appeal site may reasonably be described as land "around the attenuation basin" and is thus subject to the requirements at 4.1 and 4.7.
10. As established above, the provision of biodiversity enhancement was a factor in ensuring that the development proposed via the permission would have had an acceptable effect on ecology in line with policies L1 and LP21 of the CLLP. These policies seek to ensure opportunities are taken to retain, protect and enhance biodiversity features proportionate to their scale and deliver a net gain in biodiversity. I note that this enhancement also has potential to contribute to the green infrastructure networks supported by policy LP20. Indeed, the delegated report for 17/1776/FUL highlights the loss of grassland habitats and notes that providing adequate attention is given to options for ecological enhancement these losses could be acceptable. The report goes on to emphasise potential for enhancement by provision of native species rich grassland around the attenuation basin.
11. The approved Biodiversity Enhancement Plan includes a number of objectives including increasing habitat provision for invertebrate species, amphibians, maintaining foraging and commuting opportunities for bats, and providing features to protect and safeguard local hedgehog populations. With regard to the appeal site, some of these objectives are proposed to be met through the seeding of the land with a wildflower mix referred to above, creating a grassland habitat.
12. Based on the above assessment, the area of grassland habitat capable of being provided would be radically reduced were the appeal proposal to be constructed. Whilst I note that the appellant is proposing to plant an additional length of hedgerow as part of the proposal, I have been provided with no

other mitigation to offset the loss of the grassland habitat or any details of any alternative ecological enhancement.

13. Furthermore, I have no evidence that the additional hedge would be in any way equivalent in terms of biodiversity to wildflower grassland identified by the Council and the appellant's Biodiversity Enhancement Plan. There is, for example, no quantification of the effect of the proposal with reference to relevant biodiversity metrics. As such the construction of 4 dwellings, with its access and associated hardsurfacing in place of grassland habitat would prevent the provision of the approved biodiversity enhancement resulting, in all likelihood, in an adverse effect on biodiversity.
14. I note the appellant's concerns that condition 10 of 17/1776/FUL is not sufficiently precise. However, I am dealing with an appeal in respect of a refused planning permission rather than an appeal against condition. In any event I have reasoned above that, on a plain reading, the intent of condition 10 and its application is clear insofar as circumstances relevant to this case are concerned.
15. For the above reasons I conclude that the proposal would have an unacceptable effect on biodiversity and would fail to deliver a biodiversity net gain in conflict with the relevant provisions of policies LP1, LP20 and LP21 of the Central Lincolnshire Local Plan. The proposal would also conflict with paragraphs 118 and 170 of the National Planning Policy Framework ('Framework') which guides that planning decisions should minimise impacts on and provide net gains for biodiversity, and recognise that some undeveloped land can perform many functions, including for wildlife.

Other Matters

16. The appellant has put forward a number of benefits in support of their proposal. I agree that there would be a small benefit from the provision of the additional dwellings that would make a positive, albeit comparatively limited, contribution to the housing supply. Economic benefits would also arise from the construction and occupation of the new houses. Furthermore, noting that it is the appellant's intention to enter into a legal obligation to this effect, the development of a further affordable dwelling would also amount to a benefit. Nonetheless for the reasons outlined above, these comparatively minor benefits would not outweigh the harm that would arise. Neither the support for new housing or development with positive outcomes in the development plan or the Framework is unconditional.

Conclusion

17. For the above reasons, and having taken account of all other matters raised, the proposed development conflicts with the development plan taken as a whole and with the approach in the Framework. I therefore conclude that the appeal should be dismissed.

Paul Martinson

INSPECTOR