



Appeal Decision

Site visit made on 16 November 2021

by Alexander O'Doherty LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 January 2022

Appeal Ref: APP/A1910/W/21/3271898

Berry Farm, Upper Bourne End Lane, Hemel Hempstead HP1 2RR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Bourne End Ltd against the decision of Dacorum Borough Council.
 - The application Ref 20/02945/ROC, dated 30 September 2020, was refused by notice dated 26 November 2020.
 - The application sought planning permission for the erection of two polytunnels and barn for the purpose of agriculture without complying with a condition attached to planning permission Appeal Ref: APP/A1910/W/18/3219155 (application Ref 4/02935/17/FUL), dated 6 August 2019.
 - The condition in dispute is No 2 which states that: "The development hereby permitted shall be carried out in accordance with the following approved plans: HHBF 0001 Rev 1; 200-03; BRHH 0223 Rev 1; BRHH 0224 Rev 1; HEMSEC1; BerryTopo/1; site location plan marked "Berry Farm, Upper Bourne End Lane"".
 - The reason given for the condition is: "In the interests of certainty, a condition is necessary requiring the development to be carried out in accordance with the submitted plans".
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Bourne End Ltd against Dacorum Borough Council. This application is the subject of a separate Decision.

Preliminary Matter

3. During the course of the appeal the revised National Planning Policy Framework (the Framework) was published. The main parties were provided with an opportunity to comment and I have taken any made into account. I have had regard to the 2021 version of the Framework in my decision.

Background and Main Issue

4. The appeal scheme concerns a purported minor material amendment to a development that was granted planning permission by a previous appeal¹ through effective variation of condition 2 which refers to the approved plans.

¹ APP/A1910/W/18/3219155

5. The Council also has substantive concerns that the proposed amended scheme would be harmful to the character and appearance of the area and the Green Belt. The principle of the approved scheme in this Green Belt location has been considered via the previous appeal, and under section 73(2) of the 1990 Act, I am only able to consider the question of the conditions subject to which planning permission has been granted. In other words, my assessment in this appeal is not a re-consideration of the case. Accordingly, it is not for this appeal to consider the effect of varying condition No 2 on the character and appearance of the area or the Green Belt. Nor would it be appropriate to assess the proposal against Policy CS5 of the Core Strategy 2006-2031 (adopted 2013).
6. In light of the above, the main issue is whether or not the proposed amended scheme would constitute a minor material amendment to the approved scheme.

Reasons

7. The Planning Practice Guidance (PPG) does not define a 'minor material amendment' but does set out that such is likely to include any amendment where its scale and/or nature results in a development which is not substantially different from the one which has been approved².
8. Appeal Ref APP/A1910/W/18/3219155 granted planning permission for the erection of two polytunnels and a barn for the purpose of agriculture. It also mentions that the approved development incorporates works to provide surfaced internal tracks, a car parking area, surfacing of the existing access track, a perimeter deer-proof fence, raised growing beds, and irrigation tanks.
9. The proposed amendments involve a number of fundamental changes to the layout, compared to the approved scheme. These changes include, amongst others, 2 access tracks within the site rather than 3, a new location for the car park (further from the main access track and gates), and the relocation of a number of irrigation tanks into a more central position within the site. Additionally, a new pump house structure is proposed, and a fairly large area of land, stated to comprise a pig yard, has been excluded from the appeal site.
10. When taken together, these changes would represent a significant departure from the approved scheme. To the extent that, with regard to the PPG, I could not consider them a minor material amendment to the approved scheme.
11. Several potential benefits of the proposed amended scheme have been put forward, including a reduced visual impact on the landscape, a maximisation of growing areas, easier access to the agricultural building and polytunnels, and greater productivity. However, and with my findings in mind, the substance of the appeal proposals would not sit squarely with section 73 of the Act³. Thus, any benefits of the changes, if I were to agree that they were, would carry very limited weight.
12. Reference has also been made to the potential exercise of permitted development rights in relation to hardstanding and internal tracks, but the exercise of these rights would do little to change the total extent of the

² Paragraph 17a-017-20140306

³ Town and Country Planning Act 1990

changes involved when considered as a whole and in the context of the approved scheme. My conclusions therefore remain unchanged.

13. Taking all of the above into account, the condition as it currently stands is appropriate, reasonable and necessary to correctly define the development permitted for clarity and enforcement purposes and should therefore, with the above in mind, remain unaltered.

Conclusion

14. For the reasons given above, the appeal is dismissed.

Alexander O'Doherty

INSPECTOR