



Appeal Decision

Site visit made on 21 February 2022

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 21 July 2022

Appeal Ref: APP/F2605/W/21/3280426

Part of Anglian Water Drilling Unit Site, Abbey Road, Old Buckenham, NR17 1PZ

- 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 Hickman and Smith Architects against the decision of Breckland Council.
 - The application Ref: 3PL/2021/0091/F, dated 8 December 2020, was refused by notice dated 10 May 2021.
 - The development proposed is the erection of a 24.46m high radar tower and associated comms cabin (portakabin).
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a 24.46m high radar tower and associated comms cabin (portakabin) at part of Anglian Water Drilling Unit Site, Abbey Road, Old Buckenham, NR17 1PZ in accordance with the terms of the application, Ref: 3PL/2021/0091/F, dated 8 December 2020, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: A-EL-001; 7197-010 Rev PL-4; 7197-011 Rev PL-4; 7197-002 Rev PL-4; 7197-020 Rev PL-4 and in accordance with the materials specified on the planning application form and/or the approved plans.
 - 3) The development hereby permitted shall be carried out in accordance with Mitigation General Principles at Section 7 of the Wild Frontier Ecology, Ecological Assessment Report dated May 2019, updated January 2021, Addendum added in July 2021.
 - 4) The ecological enhancement works shall be carried out in accordance with the Ecological Management Plan (EMP) of Wild Frontier Ecology dated July 2021 before any part of the development is brought into use. The completed scheme shall be managed and maintained in accordance with the scheme of management and maintenance set out within the Management Schedule of the EMP.
 - 5) Noise from the development measured as an LAEQ (or equivalent continuous sound level) shall not exceed 5dBA over the background noise level measured as an LA90 (level exceeded 90% of the time) on the

boundary with the nearest affected residential properties. The LA90 and LAEQ shall be measured using the principles contained in BS 4142:2014+A1:2019 and shall be measured over 1 hour between the hours of 7am and 7pm and over 15 minute periods between the hours of 7pm and 7am. All measurements to be taken with a sound level meter of IEC 651 Type 1, or BS EN 61672 Class 1, standard (or the equivalent relevant UK adopted standard in force at the time of the measurements) set to measure using a fast time weighted response. This should be calibrated in accordance with the procedure specified in BS 4142: 2014 (or the equivalent relevant UK adopted standard in force at the time of the measurements).

Main Issues

2. The main issues are:-

- i) whether the proposal would provide adequate living conditions for the occupiers of neighbouring properties at Waterworks House with regards to outlook and noise; and
- ii) the effect of the proposal on protected species, namely bats.

Reasons

Living conditions – Noise

- 3. The appeal site is located within a predominantly rural area with large open fields surrounding it and the A11 Attleborough bypass and Old Buckenham Airfield at some distance beyond. It lies within a water treatment compound which shares a common boundary with Waterworks House, a detached two-storey dwelling. Consequently, the appeal proposal would be in close proximity to noise sensitive receptors at Waterworks House.
- 4. Policy COM03 of the Breckland Local Plan (2019) seeks to resist development which would cause an unacceptable effect on the residential amenity of neighbouring occupiers with particular regard to, among other things, noise. This policy concurs with the aims of the National Planning Policy Framework (the Framework) which requires development to achieve a good standard of amenity for all existing and future users. Exposure to noise can cause annoyance and sleep disturbance which could affect quality of life and can cause impacts on health.
- 5. Whilst rural areas generally have a relatively low level of background noise and therefore may be subject to more disturbance from intrusive noise, BS 4142:2014+A1:2019 advises that a difference of around +5 dB is likely to be an indication of an adverse impact, and that a difference of around +10 dB or more is likely to be an indication of a significant adverse impact, depending on the circumstances. In general, background noise levels exceeded by more than 5dB may cause disturbance at noise sensitive receptors.
- 6. To consider the effect of the proposed development the appellant has undertaken background noise monitoring to establish the working noise criteria for both day and night time periods. The specific noise level of the proposed development was calculated with regards to a similar radar installation. The results and conclusions are presented within a Noise Impact Assessment (NIA) which was subsequently updated as part of this appeal.

7. The NIA has determined the effect of the expected change in the acoustic environment arising from the proposed development. During the daytime, the noise emitted from the proposed installation is assessed to have a negligible noise impact and be inaudible over the existing noise climate which is said to be largely influenced by traffic and noise from the water treatment site.
8. In terms of the night time noise climate, the criteria is assessed to be met albeit by a fine margin. Based upon the observed measurements, there would be occasions when the criteria may be exceeded, with such instances likely to be in the region of 1Db. However, in my view, a 1 dB change in level is very small and would not be likely to be noticed.
9. By reason of the type of development, the source of noise is likely to be generated by movement of the radar. Repetition of 20-minute scanning cycles would produce two different noise levels during an upper and lower scan of the surrounding area. Whilst the activity of the radar would operate continuously over each 24-hour period, the emanating noise would be a constant and steady state rather than impulsive and therefore, it will not result in sudden and sharp fluctuations in sound level and would be easier to ignore than impulsive disturbances to the noise climate.
10. Additionally, during occurrences whereby the specific noise level of the proposal exceeds background noise levels, such measurements have been calculated at the shared boundary between Waterworks House and the Anglian Water site. These instances are likely to be infrequent and mostly occurring during night time hours when people are more likely to be sleeping within the dwelling rather than utilising external areas of the garden. Even during the summer months when windows are likely to be open for the purposes of ventilation and cooling, after applying an 'open window attention' figure of -10dB, the internal noise level would be in the region of 14dB. The submitted evidence demonstrates that it would be difficult to distinguish the noise of the appeal proposal from the background noise.
11. In this instance, I am satisfied that an appropriately worded planning condition would be capable of properly ensuring that noise generated by the development be restricted to a level that would ensure the living conditions of neighbouring occupiers would not be unduly harmed. There is some dispute between the parties concerning the wording of such a condition, primarily concerning the maximum level of noise that should not be exceeded beyond the background level. A restriction set to a level of 3dB above background noise, as suggested by the Council, would be likely to compromise the efficient operation of the proposal and its ability to predict flood forecasting.
12. However, importantly, having regard to the character and nature of the noise, its likely frequency, duration, time of occurrence, together with the advice contained within BS 4142:2014+A1:2019 concerning assessment of the impacts, a difference of around +5dB above background noise would be likely to indicate an adverse impact. As such, restricting the level of noise to no more than +5dB would ensure that impacts would be kept to an acceptable level such that the living conditions of neighbouring occupiers would not be unduly compromised.
13. Overall, on the basis of the evidence before me, I conclude that the noise impact of the proposed development would be at an acceptable level such that it would not result in significant harm to the living conditions of neighbouring

occupiers with regards to noise and disturbance and the proposal would not conflict with LP Policy COM03, the requirements of which are set out above.

Living Conditions – Outlook

14. The proposed development would introduce a radar tower that would stand at a height of some 24.46 metres. By reason of its height and bulbous form, in some views from habitable rooms within the rear of the adjacent dwelling and from within its garden, the proposed development would be readily visible and prominent and change the view to one where the radar tower, or large parts of it, would be a considerable part of their outlook.
15. However, a considerable change to the outlook of neighbouring occupants is not necessarily a harmful one. In this instance, views of the proposal from habitable rooms within Waterworks House would be at an oblique angle rather than being in a direct line of sight. Taken together with the separation distance of approximately 100 metres and the proposed infrastructure being set within a background of existing built infrastructure at the Anglian Water site and views of the broad sweep of the landscape, I find that the appeal scheme would not appear so overwhelming, dominant or unattractive so as to cause the property to be an unattractive place to live. On balance, I do not consider that the outlook of the property would result in significant harm to the living conditions of the occupants of Waterworks House.

Living conditions- conclusion

16. Overall, I find that the appeal scheme would provide adequate living conditions for the occupants of Waterworks House with regard to their outlook and impacts from noise. It would therefore accord with Policy COM03 of the Breckland Local Plan (2019)(LP) insofar as this policy requires development to give consideration to amenity impact issues and is prohibitive of development that has an unacceptable effect on residential amenity of neighbouring occupants.

Protected species

17. The application was accompanied by an Ecological Assessment Report¹ (the ER) prepared in accordance with British Standard 42020:2013 for Biodiversity. It was informed by field surveys of habitats and protected species and concluded that, in respect of bats, the site contained no potential bat roosting features within it and as such there would be no impact to roosting bats as a consequence of the appeal scheme. Taking a precautionary approach, the ER specified a minor negative impact to foraging bats would be possible.
18. The Council's reason for refusal indicated that insufficient information to undertake a full assessment of the environmental impact of the development with particular regard to Barbastelle bats had been provided.
19. Further to the application and forming part of this appeal the appellant commissioned the collection of data to inform the range of bat species in and around the site and to refine the speculation in relation to their activity. The data was collated using a static detector method in accordance with Bat Conservation Trust Guidance. Surveys were undertaken during the Spring and Summer seasons. Although no further survey was undertaken in the Autumn

¹ Wild Frontier Ecology, Ecological Assessment Report, May 2019, Updated January 2021

season, I find that these surveys provide a reasonably consistent picture of the extent of activity of those bat species likely to be impacted by the appeal scheme.

20. The results of the additional surveys are detailed within an Addendum to the ER, dated July 2021. Several species of bat were recorded during the surveys: common pipistrelle, soprano pipistrelle, noctule and Myotis species. There were no registrations of Barbastelle bats recorded on either occasion.
21. Notwithstanding that there may be other areas within the wider locality that are frequented more often by bat species, by reason of the low levels of recorded bat activity at the appeal site and the timings of the first recorded registrations, I accept that this provides cogent support for there being no significant bat roosts within or in close proximity to the site. Given the low number of registrations of bats taken together with the low ecological value of the site, the existing human activity and noise generated by the use of the wider Anglian Water site, I consider this provides convincing evidence that the appeal site is used for the purposes of commuting rather than it being utilised principally for foraging.
22. Given the extent of the surveys undertaken by the appellant, I find that sufficient information has been submitted in order to fully address the environmental impact of the development on protected species, namely bats, including the Barbastelle bat species. Moreover, the submitted evidence demonstrates that the proposed development will not present a significant impediment to bat movement including their foraging habits. Taking a precautionary approach, any harm to bats as a consequence of operation of the proposed development would likely be at a negligible level. During construction, impacts to nesting birds, bats, great crested newts and priority species can be reduced to a neutral level if best practice construction measures are followed.
23. The Framework requires planning decisions to contribute to and enhance the natural and local environment by minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures. The appeal scheme proposes a number of measures, as detailed within the submitted Ecological Management Plan (the EMP), including the planting of climbing plants on the proposed boundary fencing of the appeal site to encourage pollinating insects, the enhancement of an existing pond to attract transitory small mammals and the installation of a number of bird nesting boxes. These enhancements are capable of being secured by a planning condition requiring their implementation and proper maintenance as specified within the EMP, and overall, there would result in a minor positive impact to biodiversity.
24. Accordingly, when looked at in the round with the proposed mitigation measures, the effect of the proposed development would be adequately mitigated such that the appeal scheme would minimise impacts on, and provide some limited net gains for biodiversity. This would accord with LP Policy ENV02 insofar as it requires development to safeguard biodiversity through a stepped approach to ensure avoidance of harm, mitigation, compensation and the delivery of a net gain for biodiversity. In addition, it would comply with the principles for protecting and enhancing habitats and biodiversity as set out within the Framework.

Other Matters

25. My attention is drawn to a summary of findings for the Norfolk Bat Survey. Whilst it is put to me that the survey was conducted using British Ornithology equipment and properly analysed by an expert, there is little information provided to corroborate this nor any detail about the methodology that was used. As such, I attribute it only limited weight in my overall consideration of this matter. Reference is also made to the effect of electromagnetic radiation on bats. I note there has been little in-depth study on this point but in any event given the findings of the ER with particular regard to the low number of registrations recorded, I am not satisfied on the basis of the evidence before me that there would be significant harm to arise in this regard.
26. Reference has been made to nearby heritage assets. I am required to have regard to heritage assets in accordance with the statutory duty under Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990. The Grade I listed churches of All Saints at Old Buckenham, St Martin at New Buckenham and All Saints at Besthorpe, together with a number of scheduled monuments, including Buckenham Priory and Castle Site, Grade I listed Buckenham Castle, Bunn's Bank Linear earthwork and the Grade II* listed Abbey Farmhouse and others identified within the appellant's submitted Landscape and Visual Impact Assessment are situated within some 3km of the proposed development.
27. The Grade I listed churches primarily draw their significance from their architectural interest and their historical significance as a place central to the local community and the scheduled monuments derive their significance from their surviving condition, the rarity of their earthworks and standing remains together with their high potential to contain important buried archaeological remains pertaining to their construction and use.
28. By reason of the height of the proposed development there would be a measure of change to the wider setting of these heritage assets. However, given the distances involved between these heritage assets and the appeal site together with intervening vegetation and to a lesser extent, the existing built form, the appeal proposal will not appear prominent within the wider setting and as such I consider that the harm identified would be 'less than substantial harm' upon the settings of these heritage assets.
29. Accordingly, paragraph 202 of the Framework provides for a balancing exercise to be undertaken between "less than substantial harm" to the designated heritage asset and the public benefits of the proposal.
30. A number of public benefits would be generated as a result of the appeal scheme which will allow the collection and distribution of accurate weather data for the East Anglia region and improve the adequacy of the current radar network and its quality and extent of coverage offered. In particular, there would be improvements to the short-term local forecasts for precipitation, improved predictability of flood events and issue of warnings to help reduce the risk to property and life. In addition, it would assist the emergency services response in event of a flood event. Furthermore, the appeal scheme would enable improved accuracy of predicting snow and high impact summer storms. Data will help to maintain and balance the sewerage system and reduce outfall into the ocean and protect bathing water quality. Similarly, improved data would help to inform agricultural businesses about planting, harvest and

applying treatments to land. Information concerning heavy rain and windshear will assist local aviation forecasts and better aid pilots when landing and taking off within the region.

31. Accordingly, I consider that there would be significant public benefits likely to arise as a consequence of the appeal scheme. These would outweigh the harm to the heritage assets and the appeal scheme would accord with the aims of the Framework to conserve and enhance the historic environment.
32. I have had regard to the comments of objection of numerous interested parties, several of which raise matters pertaining to the main issues above. In addition, my attention has been drawn to the visual impact of the proposal within the wider environment together with its impact on tourism. However, having had regard to the evidence before me and based upon my observations at the site visit, I concur with the Council's view that there will not be an unacceptable impact in this regard and the scheme will not unduly dominate the rural character of this part of Norfolk.
33. My attention is also drawn to concerns about traffic and highway safety. However, there is no evidence before me that the appeal scheme would be likely to generate a significant volume of traffic that would compromise highway safety. The Highway Authority were consulted on the appeal proposal and raised no objection. On the basis of the evidence, I see no reason to take a different view.
34. Similarly, notwithstanding the presence of the nearby airfield, the submitted Aviation Safeguarding Assessment and Report demonstrates that the proposed development lies outside of the lateral confines of the closest runways and the Obstacle Limitation Surfaces. The risks associated with the introduction of the proposed development are considered 'As Low As Reasonably Practicably'. The Civil Aviation Authority and Buckenham Aviation Centre Ltd were consulted on the proposal and have raised no objection. Moreover, I note that the height of the proposed radar tower has been reduced to overcome safety concerns and there is no substantive evidence before me that supports the assertion that the appeal scheme would harmfully compromise air safety.
35. A lattice type structure would mostly allow for sunlight to pass through the framework of the structure and whilst there would be some resultant shadowing to the front driveway area of Waterworks House, this will be limited. The supporting evidence confirms that no shadow cast from the proposed development will obstruct the property at any point. Therefore, I am not persuaded that any unacceptable harm will result from the loss of daylight or sunlight.
36. It has been put to me that there are alternative locations for the proposed development. A number of sites were considered by the appellant for the appeal proposal, with five sites being shortlisted for potential selection and the appeal site being judged as the most preferable site. Little information has been provided about the location and circumstances of any other sites. Old Buckenham Airfield was discounted as a less preferable site. In addition, it is my task to consider the planning merits of the particular appeal scheme before me. In general, land may be developed in any way which is acceptable for planning purposes and therefore planning law does not require me to consider whether the proposed development would be more appropriately located at an alternative site.

37. It is suggested that the appeal scheme will negatively impact property prices in the locality. However, planning is concerned with land use in the public interest and therefore the protection of purely private interests such as the impact of a development on the value of neighbouring properties is not a material consideration in the determination of this appeal.
38. The effect of electromagnetic radiation on the health of nearby residents has been raised as a concern of the appeal scheme. Whilst removal of a radar tower in Cambridge is cited, there is little information concerning the circumstances of this. Moreover, the appellant's evidence demonstrates that, save for the region within the radome, there are no hazards associated with exposure to either microwave signals or X-radiation. On the basis of the evidence before me, I see no reason to take a different view.

Conditions

39. A draft list of conditions was provided by the Council. I have considered these against the advice in the Framework and Planning Practice Guidance. As a result, I have amended some of them for consistency or clarity, revised others and where some have been omitted, I have replaced these to satisfy the advice of the aforementioned guidance.
40. In addition to the standard time condition relating to the commencement of development, a condition specifying the plans and materials is necessary as it provides clarity and ensures the appearance of the development will safeguard the character and appearance of the area.
41. A condition requiring the development to be carried out in accordance with the mitigation general principles of the ER and the implementation of ecological enhancements specified within the submitted EMP is necessary to safeguard biodiversity. I have omitted to impose the Council's suggested condition for biodiversity. The appellant's submitted surveys and EMP have, in my view, adequately addressed the issues and their implementation and adherence to management and maintenance as defined within the EMP are necessary for the protection of biodiversity. To require the duplication of information already forming part of this appeal is unreasonable in my view. Given that the ER and EMP satisfactorily addresses these matters, and in the absence of any comment from the Council that the proposed EMP is inadequate, I consider it not to be reasonable to require the information set out within the Council's proposed biodiversity condition to be re-provided. Alternative conditions are therefore put forward.
42. A condition restricting noise to a level of 5dBA above background noise is necessary to safeguard the living conditions of neighbouring occupiers.

Conclusion

43. Taking all matters into consideration, I conclude that the appeal scheme accords with the development plan taken as a whole and whilst I have had regard to the views of parties opposing the development, these matters do not indicate that a decision should be taken otherwise than in accordance with the development plan. Therefore, for the reasons given above, the appeal is allowed subject to the conditions.

E Brownless - INSPECTOR