



Appeal Decision

Hearing held on 25 May 2022

Site visit made on 25 May 2022

by Sarah Manchester BSc MSc PhD MEnvSc

an Inspector appointed by the Secretary of State

Decision date: 25th July 2022

Appeal Ref: APP/R0660/W/21/3288270

Lakemore Fisheries, Clay Lane, Haslington, Cheshire, CW1 5SQ

- 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 Mr M Ashmore against the decision of Cheshire East Council.
 - The application Ref 21/2420N, dated 29 April 2021, was refused by notice dated 30 September 2021.
 - The development proposed is erection of essential rural worker's dwelling and associated office/garage building.
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Decision

1. The appeal is allowed and planning permission is granted for erection of essential rural worker's dwelling and associated office/garage building at Lakemore Fisheries, Haslington, Cheshire, CW1 5SQ in accordance with the terms of the application, Ref 21/2420N, dated 29 April 2021, subject to the conditions in the attached schedule.

Applications for costs

2. An application for an award of costs was made by Mr M Ashmore against Cheshire East Council. That application is the subject of a separate Decision.

Preliminary Matters

3. The Hearing was originally opened on 27 April 2022. However, it was adjourned in order that the correct notifications could be carried out.

Main Issue

4. The main issue is whether there is an essential need for a rural worker's dwelling to enable a rural worker to live permanently at the site.

Reasons

5. Lakemore Fisheries comprises 2 large fishing lakes in a wooded setting, with areas of open grassland and car parking. The fishery is adjacent to Clay Lane, which is a rural road in an area of sparsely developed open countryside. There are 2 public rights of way (footpaths) in and adjacent to the fishery site, along the southern boundary and crossing the south-east corner of the site.
6. The lakes were created around 1981 by the appellant's father as part of a larger country park that extended northwards along Clay Lane. The fishery was opened to the public in 1998. In 1999, planning permission was granted retrospectively for the change of use of land to country park including play barn

and area, display of rare animals and angling lake. The country park was subsequently subdivided and Lakemore Fisheries now operates independently. The fishery provides 22 fishing pegs across both lakes, for use by licensed anglers through night fishing tickets, 24 hour tickets and memberships.

7. Policy PG6 of the Cheshire East Local Plan Strategy 2010-2030 Adopted July 2017 (the CELP) seeks to restrict development in the open countryside to that which requires a rural location including agriculture, forestry and outdoor recreation. Policy RES.5 of the Borough of Crew and Nantwich Replacement Local Plan Adopted February 2005 (the CNLP) requires new dwellings outside of settlement boundaries to meet listed criteria. These include that the dwelling is required for a full time rural worker and the location is essential for the efficient working of the enterprise and the need cannot be met by a dwelling elsewhere. This is broadly consistent with the National Planning Policy Framework (the Framework), which seeks to avoid the development of isolated homes in the countryside except in listed circumstances including where there is an essential need for a rural worker to live permanently at or near their place of work.
8. In this case, the appellant considers that there is an essential need for a rural worker to be present on site 24 hours a day in the interests of animal welfare, customer welfare and security.
9. The lakes are stocked with carp, including large and high value specimens, and catfish. The lakes are not hydrologically connected to other waterbodies in the area. This, together with the high stocking density of large fish, renders them susceptible to regular deoxygenation events. Such events can occur at any time through the warmer months due to algal blooms, thunderstorms and heavy rain, and during winter as a result of ice formation. If adequate oxygen levels are not restored quickly then fish, particularly the large specimens with higher oxygen demands, will become distressed and die. Even if deoxygenation does not result in immediate death, the physiological stress can result in adverse health outcomes including death at a later date.
10. Consequently, oxygen levels and water quality must be monitored daily and ice formation during periods of cold winter weather. In the event of deoxygenation or ice formation, pumps are turned on manually to oxygenate the water and ice is broken to allow methane gas to escape. Fish are then monitored for signs of distress and relocated to more favourable areas of the lakes as necessary. There are on average 3-5 oxygen related incidents each week from April to October. Problems due to ice are less predictable, but generally occur in January and February. Restoring oxygen levels and monitoring fish welfare often takes several hours, frequently outside of normal working hours.
11. The hearing explored whether there were alternative ways of maintaining optimal water conditions. Reducing stocking densities, including fewer large fish, would create a healthier and more resilient water environment but it would not be compatible with a viable commercial fishery. Equipment could be installed to permanently aerate water, but there would be cost and maintenance implications and risk of mechanical failure. Localised water problems could be more widely dispersed and water could be over oxygenated. In winter, the mixing of cold upper water layers with deeper warmer water would cool the entire lake resulting in widespread fish death.
12. While there appears to be no realistic means to reduce the need for monitoring and manual intervention, automated water testing equipment and an alarm

system could be installed to enable remote monitoring. However, equipment failure, due to algae blocking probes or loss of power and communications in the event of a storm, would have potentially catastrophic consequences for fish welfare and the business. Even if remote monitoring was reliable, a worker would still need to attend the site if the alarm was activated. Depending upon the sensitivity setting of the equipment, this could result in more frequent call outs to false alarms or it could fail to alert the appellant of an incident in sufficient time for him to respond. Therefore, automated monitoring systems would not necessarily reduce the number of physical visits to the site or be adequate in the interests of animal welfare.

13. Fish also become snagged on lines, resulting in adverse outcomes if they are not quickly freed. Mr Ashmore is reliant upon anglers contacting him in the event of snagging, and his response time will vary with time of day, seasonal weather conditions and distance from the site. Snagging events appear to be relatively infrequent, but even the loss of 1 or a few large specimens over the course of a year would have financial implications for the business.
14. The failure to respond quickly or at all to deoxygenation or snagging events has the potential to result in significant suffering and death of fish, with associated impacts on the business as a result of financial losses, the subsequent unavailability of specimen fish to attract anglers and potential loss of reputation.
15. Fish stocks also need to be protected from predation by waterbirds such as cormorants, herons, grebes and goosander. Automated bird scarers and deterrents are of limited use as the birds become habituated to them. Human presence is a more effective deterrent. However, while the presence of anglers might be expected to scare birds to a degree, customers could not be expected or relied upon to protect fish stocks from predation particularly at times when the site operates below capacity. Consequently, there is a need for a worker to be regularly present on site coincidental with the times that fish-eating birds are active. As the birds generally feed at first light, this requires a worker to attend the site unsociably early in the morning during the summer months.
16. Mr Ashmore also has a duty of care to his customers, including checking their tickets and their welfare, and dealing with injuries and incidents. In this regard, alcohol-fuelled disruptive behaviour is apparently an increasingly regular occurrence. This has the potential to result in adverse outcomes for individuals given the proximity of water. Unchecked antisocial behaviour would also be detrimental to other customers and ultimately the reputation of the business. A permanent on site presence would encourage better standards of behaviour, and it would allow Mr Ashmore to monitor and identify problems rather than relying on other customers to effectively police the site.
17. There is also a problem with unauthorised fishing, predominantly in the overnight period, which can only be effectively detected and prevented by in person checks. Since only a proportion of illegal anglers when challenged will subsequently pay to stay and fish, this does not necessarily result in a significant loss of income. Even so, financial losses could be sustained as illegal anglers would be less likely to contact Mr Ashmore in the event of fish snagging. Irrespective, illegal access and fishing are clearly matters that need addressing as part of the efficient management of a reputable fishery.

18. There is also evidence before me in relation to the increasing threat of illegal poaching, typically at night, and particularly of the larger high value specimen carp. Poaching is also a problem in winter, when there may be fewer or no anglers and a reduced employee presence to act as a deterrent. The loss of specimen fish, which are the primary attraction to poachers, would be a significant financial loss. It would also result in reputational damage and a loss of income as the large specimen fish are the primary attraction to anglers. While poaching has apparently not resulted in significant losses to date, this appears to be due to the appellant's frequent visits and vigilance.
19. The site is not securely fenced or covered by CCTV and it is readily accessible, including from the footpaths that cross the fields to the rear. Enhanced security infrastructure would deter some illegal entry. However, it would be expensive and it would not offer a complete solution, taking into account the need to monitor cameras and the delayed response times from the appellant's home to the site. Moreover, the Angling Trust Fisheries Enforcement officer notes that security measures are often breached by organised groups posing as legitimate anglers in order to steal high value fish. In this regard, a trained bailiff team and CCTV would provide some protection, but a live in member of staff would likely be the strongest deterrent particularly at night. The Environment Agency Fisheries Technical Officer similarly advises that close and regular supervision, often at inconvenient and unsociable hours, is essential in terms of welfare and protection of high value fisheries stock and it is best practice for professional and conscientious fishery management.
20. The fishery has been managed by Mr Ashmore since its inception, with guidance and support provided by his late father until his death in 2016. Although his father did not live on site, it was only a short walk across his land to the Lakemore fishery. Consequently, he was able to act in the capacity of an unsalaried night bailiff and he would also be aware of localised weather conditions that could indicate potential deoxygenation events. Since his father's death, Mr Ashmore has taken on the additional out of hours duties previously carried out by his father.
21. The business has a labour requirement equivalent to 1.78 full time workers, which includes long working days and out of hours visits for monitoring, supervision and emergencies. The labour requirement is largely met by the appellant. His sons do provide some additional labour, but they are not employed by the business and they do not routinely assist overnight or in emergencies. The financial statements indicate the business could not afford a second rural worker salary nor the higher costs associated with employing a security guard.
22. The fishery is a long established business and the evidence before me indicates that meeting its essential needs requires a considerable time investment, including during the overnight period. Following his father's death, and taking account of the changing pressures on fisheries, managing the site requires an increased and ultimately unsustainable level of resourcing and commitment for a single rural worker living remote from the site.
23. The appellant has explored a range of options and alternative solutions including automated water quality testing and alarms, automated bird scarers, security fencing and gates, CCTV, and security guards with associated welfare facilities. These measures would not negate the need for a rural worker to

regularly attend the site in the event of deoxygenation events or animal welfare emergencies, although collectively they would meet some of the business needs. However, the business makes only a relatively small profit and it could not sustain the capital and ongoing costs associated with implementing the full suite of measures. Costs could be reduced by implementing some but not all measures, but there is little evidence that a lesser package of measures would be affordable or that it would meet the essential needs of the business. Conversely, the parties agree that the business could fund a dwelling.

24. Overall, I find that there is a compelling case for a rural worker to live at or near Lakemore Fishery, which is one of the North West's premier day ticket specimen fisheries and one of only a small number of fisheries that offer Wels catfish. There is little evidence that the current level of monitoring and management is either excessive or unnecessary or that it could be reduced without significant detriment to the business. Consequently, I am satisfied that the ability to meet the essential functional needs of the existing business, let alone expand it, requires a level of commitment and resourcing that could only be sustained in the long-term by a rural worker living at or close to the fishery.
25. The dwelling formerly occupied by his father is not available to the appellant and there is no suitable available alternative accommodation in close proximity to the site. There are relatively affordable dwellings in the nearby settlements. However, while it might be possible to reduce his travel time by moving house, even if he lived at the edge of the closest settlement he would still be remote from the site. As such, there is no suitable alternative accommodation that could meet the essential functional needs of the business.
26. Therefore, I conclude that there is an essential functional need for a rural worker's dwelling at this site in connection with the established fishery business. The proposal would not conflict with the aims of CELP Policy PG6 or CNLP Policy RES.5. It would not conflict with the rural housing aims of the Framework.

Other Matters

27. The emerging Cheshire East Local Plan Revised Publication Draft Site Allocations and Development Management Policies Document (the SADPD) is at an advanced stage of preparation. Accordingly, the parties agree that moderate weight can be attached to the most relevant emerging policies, including RUR3. This supports essential rural workers dwellings in the open countryside that accord with other development plan policies and that meet additional criteria. Taking into account my findings in relation to the main issue in this appeal, the proposal would accord with the emerging SADPD including Policy RUR3.
28. There is a diversity of habitats at the fishery site including trees and woodland, water bodies, scrub, bare ground, grassland and hedgerows. These provide habitat for protected species and the ecological assessment therefore sets out reasonable avoidance measures for protected species and their habitat, including bats, nesting birds and amphibians during construction and occupation of the dwelling. I am satisfied that this matter can be addressed by the imposition of a planning condition.
29. The proposed dwelling would be sited towards the south east corner of the site. It would be accessed via the existing car park and a new internal road between the southern site boundary and the lake. The proposed garage and office would

be sited close to the existing car park. The Council has no fundamental visual amenity concerns in relation to the design of the dwelling or its location. There was a discussion at the Hearing about the suitability of the location in terms of deterrence and surveillance of the fishery. However, the mature woodland and trees surrounding the lakes mean that uninterrupted views across the whole site are not afforded from any one location within the fishery site.

30. My attention has been drawn to appeal decisions elsewhere that considered whether there was an essential need for a rural worker dwelling in connection with fisheries enterprises.
31. Coole Acres¹ relates primarily to a fish rearing enterprise for which there was no business plan nor guarantee that that it would occur. The Inspector found that fish predation by birds occurred mainly in winter around dawn, which is not an unreasonable time of day for an off-site worker to attend and in any case the stock rearing ponds were of a size that could be netted. The site was already securely fenced and gated. No costs for CCTV or a security guard had been provided to demonstrate it would be prohibitively expensive. No evidence had been provided to demonstrate any out of hours emergencies. Therefore, it does not appear directly comparable to the appeal scheme.
32. The Roan Fisheries² case relates to temporary siting of a caravan in connection with a recreational fishing lake in the Green Belt. The justification for the dwelling appears to have been based on fish rearing in controlled tanks in a hatchery building. The Inspector concluded the alarm could be programmed to increase available response time and a back up generator would address the risk of loss of electrical supply to the monitoring and aeration equipment. However, the monitoring and management of controlled indoor hatchery tanks does not appear directly comparable to the large outdoor lakes in this appeal.
33. The Eastfield³ appeal relates to a proposal for 3 stock lakes, 4 glamps and a temporary mobile home for a fishery manager. The Inspector considered the automated oxygen level alarm could be programmed to give the responder a greater window of opportunity to remedy the problem, even if it resulted in more frequent call outs to false alarms. However, in relation to security, there was already CCTV on site and alternative measures such as a security guard had not been explored and discounted. Much of the justification for the need to live on site appears to relate to equipment, security and the health and safety of the occupants of the glamps. Irrespective of the Inspector's findings in relation to the alarm system, based on the limited evidence before me and taking into account that that fishery is not open overnight or during winter, the Eastfield scheme does not appear directly comparable to the appeal proposal.
34. The appeal fishery is an existing outdoor leisure and recreation facility. The third party representations evidence that it provides a high quality and safe environment for different members of society, including women and children, to engage in recreational fishing. The permanent presence and availability of a rural worker, particularly overnight, would undoubtedly enhance the fishery for recreational use by more vulnerable members of society. The proposal would secure the future of the fishery as a small rural business and a valued facility for anglers. Moreover, while future business expansion does not form part of

¹ Ref APP/R0660/W/19/3220282

² Ref APP/F4410/W/15/3136508

³ Ref APP/H1840/W/17/317465

the justification, the proposal would offer the opportunity for fish to be reared from fry. This would be an economic benefit as it would reduce stocking costs. It would also be a benefit in terms of biosecurity and fish health and welfare as there would be no risk of introducing diseases from other fisheries.

Conditions

35. The Council has suggested planning conditions in the event the appeal was allowed. I have assessed these against the relevant tests set out in the Framework and I have amended the wording accordingly where I consider this is necessary.
36. In addition to the standard condition limiting the lifespan of the planning permission, I have specified the approved plans in the interests of certainty.
37. Conditions relating to surface and foul water drainage, ground levels, soil importation and ground contamination are necessary in the interests of environmental water protection and human health. Measures for ground remediation and the protection of retained trees, landscaping, and specifying the garden area, are necessary in the interests of tree protection and visual amenity. Sensitive lighting schemes, mitigation measures for protected species, nesting and roosting features and habitat enhancements are necessary for the maintenance and enhancement of biodiversity. Details of external materials and the removal of storage containers are necessary in the interests of visual amenity.
38. An occupancy condition is necessary to make the construction of a dwelling in the countryside acceptable. Conditions removing permitted development rights are necessary to ensure that the development remains commensurate in size with a rural workers dwellings and the size of the unit and that the buildings are used solely in association with the fishery.

Conclusion

39. For the reasons set out above, the appeal is allowed.

Sarah Manchester

INSPECTOR

SCHEDULE OF 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: 786-LOC-01 – Location Plan; 786-SL-01 – Site Layout; 786-BP-01 – Block Plan; 786-H-P-01 – House Plans; 786-H-E-01 – House Elevations; 786-GO-01 – Garage/ Office Plans and Elevations; 6527.01 Tree Survey and Root Protection Area Plan; 6527.02 rev B Tree Protection Plan; 6527.03 Rev A Landscape Proposal.
- 3) Development shall not commence until a surface and foul water drainage scheme has been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented in full in accordance with the approved details prior to the first occupation or first use of the dwelling and garage/ office hereby approved.
- 4) Development shall not commence until details of existing and proposed ground levels and the level of the proposed floor slabs have been submitted to and approved in writing by the local planning authority. The development hereby approved shall be carried out in accordance with the approved details.
- 5) No site clearance, preparatory work or development shall take place until a detailed service and foul and surface water drainage layout has been submitted to and approved in writing by the local planning authority. The layout shall provide for the long-term retention of trees. The development hereby approved shall be carried out in accordance with the approved service drainage layout.
- 6) Development shall not commence until details of remediation measures that adhere to section 4.3 of the Arboricultural Impact Assessment and Method Statement Rev B (TBA Landscape Architects, April 2021) have been submitted to and approved in writing by the local planning authority. The details shall include the working methods in relation to retained trees. The approved details shall be implemented in full.
- 7)
 - a) All works shall be carried out in accordance with the tree protection measures identified in the Arboricultural Impact Assessment and Method Statement Rev B and drawing ref 6527.02 Rev B Tree Protection Plan, with measures to be implemented under arboricultural supervision in accordance with British Standard BS 5837: Trees in relation to design, demolition and construction – Recommendations (or an equivalent British Standard if replaced).
 - b) No site clearance, preparatory work or development, including tree felling, tree pruning, demolition, soil moving, access works or use of vehicles or construction machinery, shall take place until the approved tree protection measures have been implemented.
 - c) No excavation, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, fires or disposal of liquids shall take place within any area designated as being fenced off or otherwise protected in the approved tree protection scheme.

- d) The approved protective fencing shall be retained intact for the full duration of construction.
- 8) Prior to the commencement of development, details of the proposed lighting scheme shall be submitted to and approved in writing by the local planning authority. The scheme shall consider both illuminance (lux) and luminance (candelas/sqm) and it shall make provision for dark areas and it shall avoid light spill onto bat roosting features and bat commuting and foraging habitat (including hedgerows, trees and watercourses). The approved scheme shall be implemented in full and retained thereafter.
- 9) Prior to the commencement of development, a plan detailing the proposed garden area associated with the dwelling hereby permitted shall be submitted to and approved in writing by the local planning authority. The approved details shall be implemented in full and retained thereafter.
- 10) No development involving the use of facing or roofing materials shall commence until details / samples of the materials to be used in the construction of the external surfaces of the dwelling and the garage/office hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details / samples.
- 11) Prior to the construction of the dwelling and the garage/office, details of measures for the enhancement of biodiversity shall be submitted to and approved in writing by the local planning authority. The details shall include provision of features for nesting birds including house sparrow and roosting bats (and external lighting to avoid light spill upon bat roost features), woodland enhancement and native species planting. The approved details shall be implemented in full prior to occupation of the dwelling or first use of the garage whichever is the sooner and they shall be retained thereafter.
- 12) Prior to the use of any facing or roofing materials, a scheme for the landscaping of the site shall be submitted to and approved in writing by the local planning authority. The scheme shall include details of hard landscaping, boundary treatments, planting plans, written specifications (including cultivation and other operations associated with tree, shrub, hedge or grass establishment) and plant schedules noting species, plant sizes, proposed numbers and densities, and an implementation programme.
- 13) The approved landscaping scheme shall be implemented in full within the first planting season following first occupation of the development hereby approved, or in accordance with a programme agreed in writing by the local planning authority. Any trees, shrubs or hedges that are removed, die, become severely damaged or seriously diseased within 5 years of planting shall be replaced within the next planting season by trees, shrubs or hedge plants of a similar size and species to those removed.
- 14) No development other than demolition and site clearance shall commence until:
- a) A proportionate risk assessment, and if appropriate site sampling exercise, has been carried out to address the risks posed by land contamination and submitted to and approved in writing by the local planning authority.

- b) If the assessment indicates the need for remediation, a remediation strategy shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented in full.
- 15) Prior to first occupation of the dwelling and first use of the garage, a verification report prepared in accordance with the approved remediation strategy that covers those parts of the development hereby permitted shall be submitted to and approved in writing by the local planning authority.
- 16) Within 6 months of the date of completion/ first use of the garage/office building hereby permitted, the storage containers on the site shall be removed and the land shall be restored to its former condition, or in accordance with a scheme submitted to and approved in writing by the local planning authority.
- 17) No vegetation clearance, demolition or conversion of buildings shall take place between 1 March and 31 August in any year unless the absence of nesting birds has been confirmed in advance by a suitably qualified person. A 4m exclusion zone shall be maintained around any active nest site until breeding is complete. Completion of nesting shall be confirmed by the suitably qualified person in a report submitted to and approved in writing by the local planning authority prior to any works in the exclusion zone.
- 18) The development hereby permitted shall be carried out in accordance with the reasonable avoidance measures detailed in section 7.2 of the Preliminary Ecological Appraisal Report (Envirotech, 28/05/2021).
- 19) Any soils or soil forming material to be brought on site for use in soft landscaping shall be first tested for contamination and its suitability for use. Prior to first occupation of the dwelling hereby permitted, evidence and verification such as laboratory certificates shall be submitted to and approved in writing by the local planning authority.
- 20) No trees, shrubs or hedges indicated for retention on the approved plans shall be felled, uprooted, wilfully damaged or destroyed, or removed without the prior written consent of the local planning authority. Any retained trees, shrubs or hedges removed without consent, or which die or become severely damaged or diseased within 5 years from the occupation of any building hereby permitted shall be replaced with plants of a similar size and species to those removed.
- 21) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.
- 22) The occupation of the dwelling hereby permitted shall be limited to a person employed as a full time worker at the fishery enterprise operating from Lakemore Fisheries, Clay Lane, Haslington only and to any resident dependents.

- 23) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development (as defined by Section 55 of the Town and Country Planning Act 1990) as may otherwise be permitted under Classes A, AA, B, C, E and F of Part 1 Schedule 2 of the Order shall be carried out.
- 24) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), and regardless that other uses may not represent a change of use under the provisions of Section 55 of the Town and Country Planning Act 1990 and the Town and Country (Use Classes) Order 1987, the dwelling and the garage/office building hereby permitted shall be used solely for purposes ancillary to the fishery enterprise operating at Lakemore Fisheries, Clay Lane, Haslington and for no other purpose.

APPEARANCES

FOR THE APPELLANT:

Mr M Ashmore, appellant
Mr S Goodwin, Goodwin Planning Services
Mr C Harvey, Harvey Hughes

FOR THE LOCAL PLANNING AUTHORITY:

Mrs A Power, Cheshire East Council

INTERESTED PARTIES:

Mr E Whitby