



Appeal Decision

Site visit made on 27 July 2022

by **E Griffin LLB Hons**

an Inspector appointed by the Secretary of State

Decision date: 31 August 2022

Appeal Ref: APP/B3030/C/21/3289894

Land at Old Hall Farm, Greaves Lane, Edingley NG22 8BJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by Mo Kelly against an enforcement notice issued by Newark & Sherwood District Council.
- The notice was issued on 24 November 2021.
- The breach of planning control as alleged in the notice is: Without planning permission, 'development' consisting of an engineering operation, that being the excavation of a lake/ reservoir, as shown outlined in red and denoted with an 'X' on the aerial photograph in image 1 and within the photograph within image 2 (previously the subject of planning application ref 21/0114/FUL).
- The requirements of the notice are to:
 - A. Infill the lake/reservoir and remove from the land the banks and mounds that have been created to form the lake/ reservoir by means of reinstating the land to its condition before the development took place. The materials that were previously excavated to create the lake/reservoir should be used wherever possible to infill the excavated lake/ reservoir, and any additional material required to fill the lake/reservoir to return the land to its condition before the development took place must be subsoil and first be tested to ensure that it is not contaminated
 - B. Reseed the affected areas to grass
- The periods for compliance with the requirements are
 - A. 6 months after this notice takes effect.
 - B. 7 months after this notice takes effect.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The enforcement notice is upheld subject to variations and the appeal is dismissed.

Decision

1. It is directed that the enforcement notice is varied by
 - (i) deleting requirement A in full and replacing it with :
 - A. "Infill the lake/reservoir and remove from the land the banks and mounds that have been created to form the lake/ reservoir by means of reinstating the land to its condition before the development took place".
 - (ii) deleting the words "(previously the subject of planning application ref 21/0114/FUL)" from the end of the allegation.
2. Subject to this variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary and Background Matters

3. The Council refused to grant planning permission for the excavation and implementation of an irrigation reservoir (retrospective) on the 5 November 2021¹ for similar reasons to the reasons given for issuing the notice. The ground (a) appeal does however relate directly to the allegation rather than being an appeal against the planning refusal.
4. Although the Council refers to unauthorised residential use taking place within the wider site, that is a matter for the parties to address separately as it is not part of the allegation before me.

The Notice

5. It is the duty of the Inspector to put the notice in order. With regard to any requirements, a notice shall specify the steps required to achieve any of the purposes set out in Section 173(4) (a) and (b) of the Act. Those purposes include remedying the breach by restoring the land to its condition before the breach took place which is part of requirement A. The Council then prescribes how compliance should be achieved and requires subsoil which is not contaminated to be used. Nevertheless, the Council cannot seek betterment or improvement of the land through the requirements.
6. Requiring re-instatement of the land to its condition before the breach took place would achieve the purpose of the notice. The second part of the first requirement will therefore be removed so that requirement A reads "Infill the lake/reservoir and remove from the land the banks and mounds that have been created to form the lake/ reservoir by means of reinstating the land to its condition before the development took place."
7. The reference to the planning application at the end of the allegation is superfluous. I will remove the wording " previously the subject of planning application ref 21/0114/FUL)" from the allegation and amend the notice accordingly.

The appeal under ground (a) and the deemed planning application (the DPA)

Main Issues

8. The main issues are (i) the effect of the development upon the character and appearance of the area (ii) whether the development is in a suitable location having regard to policies relating to agricultural need and development in the countryside and (iii) whether the development complies with local policies with regard to flood risk

Reasons

Character and appearance

9. Core Policy 9 of the of the Newark and Sherwood Amended Core Strategy (2019) (the Amended Core Strategy) seeks to ensure that development is of an appropriate form and scale to its context and complements the existing built and landscape environments. The development is within the Mid Nottinghamshire Farmlands Regional Character Area as defined in the

¹ 21/0114/FUL

Landscape Character Assessment. The development is within a specific subclass of that assessment which is described as an area of rolling and undulating topography with medium to long distance views towards frequently wooded skylines. Conserving the existing landscape by limiting new development hedgerows and preventing fragmentation is seen as an aim of this policy.

10. The development consists of a reservoir which is situated within a field whose boundaries are defined by mature hedgerows and trees. Whilst the character of the surrounding area is largely rural, there are two dwellings Old Hall Croft and Old Hall Barn to the south east of the development.
11. The Council indicates that the development has a diameter of 86 metres and a maximum depth of over 3 metres. The appellant states that it has a capacity of less than 10000 cubic metres although the Council puts the capacity at approximately 17400 cubic metres. Irrespective of its actual capacity, it is a substantial man- made structure within a rural landscape.
12. Access to the reservoir itself is across an embankment which has been formed with the dugout soil and covered over with grass which represents further changes to the original topography. Whilst the reservoir itself is sunk into the ground, the embankment which surrounds it is in contrast to the existing coherent pattern of a rural landscape with few detracting features.
13. A section of Edingley Footpath No 11 previously crossed through the appeal site. The appellant has provided information during the course of the appeal to show that a diversion order has now been made, which is likely to be confirmed subject to there being no objections. The diversion now takes walkers passed the side of the 'embankment rather than across the original field. Public views along the diverted route are therefore very different to those that existed prior to the development taking place. I do consider that the adverse visual impact of the development is significant within the immediate vicinity largely due to its size and scale.
14. The appellant believes that there are biodiversity benefits arising from the development which may outweigh any identified harm. However it is difficult to assess those benefits particularly when an expanse of land that may have had biodiversity benefits has been lost to create the reservoir. It is also not clear to what extent biodiversity benefits have been lost due to the drying up of the watercourse to the bottom of the nearby dwellings. In terms of landscaping, I have no information as to how landscaping could mitigate the size and nature of the development particularly the raised embankment element.
15. The development does therefore harm the character and appearance of the area. It is therefore contrary to Spatial Policy 3 of the Amended Core Strategy which supports new development subject to it not having a detrimental impact on the character of the location. It is also in conflict with Core Policy 9 of the Amended Core Strategy which requires development to be appropriate in form and scale to the context. The development is also contrary to Core Policy 13 of the Amended Core Strategy which requires, amongst other things, that development is considered against the Landscape Character Assessment which seeks to conserve landscape features.

Agricultural Justification

16. The reasons for the issue of the notice include the land not being in agricultural use but the Council has clarified in its final comments that it accepts that the lawful use of the land is agriculture. I will therefore assess the development on the basis of whether it has been demonstrated that there is a need for it in association with agricultural use. Different criteria apply under the prior approval procedure.
17. Spatial Policy 3 of the Amended Core Strategy refers to supporting appropriate agricultural development. Policy DM8 of the Council's adopted Allocations and Development Management Development Plan Document (ADMDDP) states that agricultural proposals requiring planning permission will need to explain the need for development, its siting and scale in relation to the use it is intended to serve. The supporting text refers to applications being accompanied by an explanation of the operational requirements of the development.
18. The development is part of a smallholding in the countryside. The appellant considers that the reservoir is needed to drain surrounding land and to use the collected water to irrigate crops and sustainably provide watering for all other agricultural processes. He has provided a statement setting out the agricultural outlook for the period from 2021 to 2030. This states that "the farm *will be* (my emphasis) a low carbon, highly diversified agricultural smallholding showcasing innovations."
19. The appellant refers to having a 25 acre site and needing an irrigation system for the proposed poly tunnels and for new crop planting in the adjacent 12 acre field. The appellant's plan is to have an intensive hydroponic crop growing on the appeal site in the future. However, an application for Prior Approval² for 2 polytunnels was refused on the 25 October 2021. The Council considered that the proposal did not fall within the provisions of Part 6 Schedule 2 of the Town and Country Planning (General Permitted Development (England) Order 2015 as amended and a full planning application was required.
20. The appellant also plans to increase the number of pigs and sheep on site but these proposals are also aspirational rather than part of an existing agricultural enterprise. The extent of the existing agricultural appears to consist of a small number of animals and limited other agricultural activity. In the absence of proposed polytunnels and extensive crops and with limited animal numbers, the reservoir is not being used for the future purposes for which it was constructed. There is also no information as to how the water would be managed for the whole site or how the water would be used to water crops.
21. Whether or not irrigation reservoirs are a common feature in farming, it is still the case that the siting and scale of such features need to relate to the nature and size of the agricultural enterprise. I do not share the appellant's view that the development is modest in size and an appropriate scale to complement the agricultural enterprise proposed. The policy requirements do not permit development in the open countryside based upon future plans.
22. I therefore do not consider that the development does comply with Policies Spatial Policy 3 of the of the Amended Core Strategy and Policy DM8 of the ADMDDP) which collectively seek to limit development in the countryside to

² 21/01889/AGR

what is appropriate and to where an explanation has been provided to explain the need for development, it's siting and scale in relation to the use it is intended to serve.

Flood Risk

23. The appeal site lies within Flood Zone 1 on the Environmental Agency flood maps. Whilst it is not considered to be of risk of main river flooding, it is identified as being prone to surface water flooding. Core Policy 10 of the Amended Core Strategy states that new development should positively manage its surface water through the design and layout of development to ensure that there is no unacceptable impact in run-off into surrounding areas or the existing drainage regime. Core Policy 9 of the Amended Core Strategy requires new development to proactively manage surface water.
24. Limited information has been provided from the appellant in terms of how the risk of flood has been assessed despite the size and capacity of the development. Two open watercourses appear to flow from higher land to the west of the site. The occupants of the two nearby dwellings have expressed concern that since the development has been constructed, the watercourse that ran along the bottom of their gardens has now completely dried up. In the absence of any detailed information, the Council is of the view that the presence of a pipe now directs that watercourse into the reservoir. There are no calculations about the likely rate of filling of the reservoir or why there was a need to divert the open watercourse by the dwellings.
25. In terms of the structure itself, the appellant considers that the reservoir is safe due to being made of clay. The appellant refers to the reservoir clearly holding water and being an established method of water management. However, the flood risks arising from the creation of the reservoir for surrounding land and nearby residents are not known. A grant of permanent planning permission would run with the land and it is for the appellant to provide enough information to show that the structure complies with the relevant policies in actively managing flood risk.
26. There is very limited evidence from the appellant as to how water levels are controlled and whether a single overflow pipe is sufficient to ensure that there is no unacceptable impact in run-off for surrounding areas. It is not clear if the man-made embankments made of soil would be adequate to hold back water levels in the event of levels rising. It is also not clear if the impact of any increased surface water from the embankment itself has been assessed as part of flood risk. Third parties refer to land around the base of the reservoir being boggy.
27. It has therefore not been demonstrated that there has been an appropriate assessment of the development in relation to flood risk. The development does not therefore comply with Core Policy 9 (Sustainable Development) and Core Policy 10 (Climate Change) which collectively seek to manage flood risk arising from new development.

Conclusion

28. I have found harm to the character and appearance of the area. I have also found that the size and nature of the development is not justified having regard to the existing agricultural use. There is limited evidence to show that flood risk

has been proactively managed. The development therefore conflicts with the development plan as a whole and there are no material considerations to indicate a decision should be made other than in accordance with the development plan.

29. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

E Griffin

INSPECTOR