
Appeal Decision

Site visit made on 7 June 2022

by L Page BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 September 2022

Appeal Ref: APP/Q3115/W/21/3287145

Toll Lodge Farm, London Road, Tetsworth, Thame OX9 7AZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr R Cockram against the decision of South Oxfordshire District Council.
 - The application Ref P20/S4792/O, dated 12 December 2020, was refused by notice dated 18 May 2021.
 - The development proposed is provision of equestrian fitness and rehabilitation centre, with ancillary buildings, parking, and landscaping.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was submitted in outline with all matters submitted in detail except landscaping, which has been treated indicatively under the appeal.
3. New evidence relating to drainage was submitted at the start of the appeal. This does not fundamentally change the proposal and parties have had an opportunity to comment during the appeal. The Council subsequently confirmed the new evidence addresses their fourth reason for refusal.
4. The Council acknowledge that landscaping is a key element which determines whether or not a development can deliver a net gain for biodiversity, and that there is scope to provide biodiversity net gain on site under reserved matters. Consequently, the Council confirmed that a planning condition would address the second part of their fifth reason for refusal.
5. New evidence relating to contamination was submitted at the start of the appeal. This does not fundamentally change the proposal and parties have had an opportunity to comment during the appeal. The Council subsequently confirmed the new evidence addresses their sixth reason for refusal.

Main Issues

6. The main issues are:
 - (a) whether the proposal incorporates appropriate building design standards;
 - (b) the effect of the proposal on European protected species;
 - (c) whether the proposal is in an acceptable location; and
 - (d) the effect of the proposal on the character and appearance of the area;

Reasons

Building and Design Standards

7. Policy DES10 of the South Oxfordshire Local Plan 2020 requires non-residential development to meet BREEAM excellent standards and for proposals of 1000m² or more to achieve at least a 40% reduction in carbon emissions compared to a 2013 Building Regulations compliant base case.
8. I note that the appellant cites a number of planning permissions where the Council secured these provisions by planning condition. However, these planning permissions were granted during a transition period following the local plan's adoption.
9. Advice Note on Policy DES10: Carbon Reduction 2022 makes clear that once the transition period ends the provisions of the policy should be strictly adhered to. Whilst not a mechanism to create policy in and of itself, as contended by the appellant, the advice note is a material consideration informing how policy should be applied.
10. The transition period has ended and there are no other material considerations indicating that the provisions of Policy DES10 the South Oxfordshire Local Plan 2020 should not be strictly applied in this case.
11. Consequently, the policy is clear that an energy statement should be submitted to demonstrate compliance, whilst the supporting text is clear that such evidence should be submitted with the application; the inference being that compliance cannot be secured by planning condition.
12. I note Policies DES1 and DES8 of the South Oxfordshire Local Plan 2020 also form part of the Council's reason for refusal. These include similar provisions to Policy DES10 of the South Oxfordshire Local Plan 2020 covering climate change and energy efficient designs. It follows that non-compliance with DES10 would therefore lead to non-compliance with the relevant shared provisions of Policies DES1 and DES8.
13. Whilst the Council has included a suggested planning condition, this is without prejudice to their case, and for the reasons given a planning condition would not be an appropriate mechanism to secure compliance with the aforementioned policy requirements.
14. Overall, there is insufficient evidence to determine that the proposal incorporates appropriate building design standards. It would therefore conflict with Policies DES1, DES8 and DES10 of the South Oxfordshire Local Plan 2020, which among other things seek to ensure proposals have high quality design to combat climate change.

European Protected Species

15. It is not disputed that the site has the potential for Great Crested Newts (GCN) or that the site is in the 'red zone' and an area of highest risk to GCN, which are protected under the Wildlife and Countryside Act 1981, Natural Environment and Rural Communities Act 2006 and The Conservation of Habitats and Species Regulations 2017.

16. Evidence suggests that the District Level Licensing (DLL) scheme offers an alternative to the more traditional approach of GCN presence or absence surveys. However, in my mind, the relevant documentation pursuant to the DLL scheme needs to be provided before granting planning permission.
17. This is to ensure the level of potential harm to the GCN habitat is established so that the correct level of mitigation and compensation can be secured under the DLL scheme and via planning conditions.
18. To grant planning permission without following this approach would not be consistent with legislation and associated guidance¹, or development plan policy, which require the effects on protected species to be established before planning permission is granted.
19. Standing advice and other DLL guidance from Natural England reaffirms that any agreement under a DLL scheme should come forward at the time of the application and before planning permission is granted.
20. Both parties have referenced other planning applications relating to the application of the DLL scheme. However, the full details are not in front of me to properly factor these into my assessment.
21. I note the appellant's contentions around the potential financial and commercial implications associated with pursuing a DLL scheme. However, it is their prerogative to rely on the scheme and other traditional approaches were available to them.
22. The appellant also contends the Council's countryside officer confirms that planning conditions are appropriate. Clearly, planning conditions are appropriate, but only after the relevant documentation pursuant to the DLL scheme has been submitted.
23. Overall, there is insufficient evidence to determine that European protected species would not be harmed by the proposal. It would therefore conflict with Policies DES1, ENV2 and ENV3 of the South Oxfordshire Local Plan 2020 and Policy TET8 of the Tetsworth Neighbourhood Plan 2021.
24. Among other things, these policies set out that planning permission will only be granted if impacts on biodiversity can be avoided, mitigated or, as a last resort, compensated fully. These provisions also reflect the obligations set out in legislation.
25. Whilst I note that the site has an extant planning permission, it is not clear that the fallback position overrides legal obligations relating to protected species, or that it would not still bind the appellant when implementing the extant planning permission².
26. Furthermore, given the length of time since the extant planning permission was granted, it is not clear that local conditions for GCN habitat have remained the same. Altogether, I have given the extant planning permission limited weight as a fallback position in my assessment of this main issue.

¹ Paragraph 99 of ODPM Circular 06/2005

² Over and above whatever obligations they have already discharged under planning legislation.

27. Paragraph 175 of the National Planning Policy Framework (the Framework) was cited in the reason for refusal, but it is not clear that it is taken from the latest version of the Framework or correlates with the subject matter of the dispute.

Location

28. The site is located approximately 1km to the north west of Tetsworth, beyond the settlement limits and in the countryside. Consequently, the proposal would need to satisfy countryside and rural business related policies within the development plan and the Framework.
29. Guidance³ sets out that the application site should be edged clearly with a red line on the location plan. It should include all land necessary to carry out the proposal, such as land required to access the site from a public highway, visibility splays, landscaping, car parking and open areas around buildings, among other things.
30. If the land to the west is necessary to turn out horses and integral to justifying the proposal as a land-based rural business, it should be edged clearly with a red line on the location plan. Consequently, because it is not, I cannot take it into account as part of the proposal. Therefore, the proposal would operate out of buildings, and I cannot conclude that it is land based.
31. Policy STRAT1 of the South Oxfordshire Local Plan 2020 (SOLP) seeks to protect and enhance the countryside by ensuring change outside of towns and villages is related to very specific needs such as those of the agricultural industry or enhancement of the environment.
32. Despite the presence of other such businesses in the area, there is no assessment demonstrating that very specific needs are being met by the use proposed in this case. For example, whilst it may be the case that a viability assessment is not required, there is no evidence of an ongoing or unmet need for businesses of this nature in the area or that there would be appreciable benefits to the wider rural economy in this context.
33. Furthermore, because the proposal has not been demonstrated as being land based, it is not clear that there is a very specific need for it to be in a countryside location. Altogether, it follows that the proposal fails to demonstrate that it would result in sustainable growth of the rural economy.
34. Overall, the proposal would not be a land based rural business or relate to very specific needs and therefore would conflict with Policies STRAT1 and EMP10 of the South Oxfordshire Local Plan 2020, Policy TET1 of the Tetsworth Neighbourhood Plan 2021 and Paragraphs 84 and 85 of the Framework. Among other things, these policies seek to support the development and diversification of agricultural and other land based rural businesses.
35. Whilst there is conflict with the development plan and the Framework, the site benefits from an extant planning permission for equine use without restriction⁴. Consequently, based on the evidence before me, it seems possible that the extant planning permission could be used to establish an equine business use similar in nature to what is being proposed in this case.

³ Planning Practice Guidance, Paragraph: 024, Reference ID: 14-024-20140306.

⁴ There is no evidence that planning conditions restrict the proposal to personal use and it is unclear that wording within the design and access statement would be sufficient to achieve the same effect.

36. This provides a fallback position in favour of the proposal and the principle of development in this location, and something which I give significant weight.
37. Whilst I am mindful that the amount of built form is somewhat different, I do not think that this necessarily goes to the heart of whether the proposal is acceptable in this location as a matter of principle.
38. Indeed, the practical implications of introducing more development than what is permitted by the fallback position, such as those relating to the scale of buildings and effects on character and appearance, have been dealt with later in my decision.
39. Altogether, in the context of the fallback position, the principle of development is all but established and this provides a material consideration indicating that a decision on this main issue should be taken otherwise than in accordance with the development plan and the Framework.

Character and Appearance

40. The site is located in the Clay Valley Character Area as identified by the South Oxfordshire Landscape Character Assessment 2017. It includes predominantly agricultural landscape and busy transport corridors, among other things. Within this character area, the site is part of the Undulating Semi-Enclosed Vale Landscape Character Type, which is characterised by a strong structure of hedgerows and trees with moderate intervisibility.
41. Indeed, during my site visit, and upon walking the area and taking in some of the views identified within the Landscape and Visual Appraisal, the strong structure of hedgerows and trees was clearly apparent. Views of the site were generally limited in this context, albeit I acknowledge there are some views from surrounding footpaths and higher ground to the south of the A40.
42. The site has extant planning permission for a stable block and manège which provides the baseline for my assessment of landscape impact⁵. The stables would be 4.5m in height and 19.5m in length, constructed of timber with dark sheeted roof. When granting planning permission, the Council considered that the use of boundary planting and traditional materials were acceptable forms of mitigation in principle.
43. The proposal would deliver an equestrian fitness and rehabilitation centre, with ancillary buildings, parking, and landscaping. The buildings would be similar to those under the extant planning permission insofar as their height would not exceed that of the approved stable block and their use of materials would be consistent with that of the approved buildings generally.
44. However, they would be of significantly greater scale in terms of footprint. Consequently, the massing of the proposal would have a greater visual impact within the landscape. Despite this difference in scale, I am mindful that the general appearance of the buildings would be in keeping with the agricultural landscape, something acknowledged by the Council's landscape officer.

⁵ Whilst also noting that the development deemed unlawful under the enforcement appeal should not be considered as part of the baseline, meaning the magnitude for change is greater than that contained in the Landscape and Visual Appraisal itself. The wider implications of the enforcement appeal have been addressed later in my decision under other matters.

45. Furthermore, I am mindful that landscaping is a reserved matter, and the Council has already accepted that the use of boundary vegetation and traditional materials were acceptable forms of mitigation in principle whilst presiding over the preceding planning application at the site. Consequently, it would be unreasonable not to apply the same logic in this case.
46. As such, whilst the scale of the buildings is significant compared to those with extant planning permission, I am satisfied that the impact can be mitigated through robust landscaping measures. These could tie into and reinforce the Undulating Semi-Enclosed Vale Landscape Character Type, which is heavily predicated on a strong structure of hedgerows and trees with moderate intervisibility.
47. Indeed, whilst the landscape officer queries whether some of the potential impacts have been underplayed, acknowledging that the magnitude is greater than that established within the Landscape and Visual Appraisal, it appears they outline a range of potential planting options over and above what is currently indicatively proposed that would satisfy their concerns in this regard.
48. These planting options include oak and willow planting along the hedgerows on the eastern and southern site boundaries, and additional crack willows along the northern stream boundary. A new native hedgerow with trees on the western site boundary to screen in the absence of the earth bund that was found to be unlawful. They conclude that this would reinforce the existing hedgerow network and would be in keeping with the local landscape character.
49. So, even if the proposal would be intrusive in local views in the short term, the medium and long term impact would be significantly reduced once any potential landscape planting becomes established.
50. Altogether, even if the current indicative landscape planting and mitigation proposals do not satisfy the Council, there is clear potential to provide robust landscape planting and mitigation as detailed by the landscape officer. Consequently, whilst landscaping is submitted in outline, there is clear potential for an appropriate and effective landscaping scheme to be secured at reserved matters.
51. In light of the above, I agree with the conclusions of the Landscape and Visual Appraisal that the site has the capacity to accommodate the proposed development without significant effects on the surrounding landscape or visual amenity.
52. The Council has not fully substantiated that the proposal is of a scale significantly greater than other large agricultural installations in the area or would be incongruous in the landscape by comparison, or that the site's position adjacent to the road makes it more prone to incongruity.
53. Furthermore, it has not been substantiated that a manège cannot be enclosed as a matter of principle or that this would be inappropriate and should weigh against the proposal. Consequently, these matters have carried limited weight in my assessment of this main issue.

54. Overall, an effective landscaping scheme could be secured at reserved matters to mitigate the landscape impacts of the proposal, which would not harm the character and appearance of the area, or conflict with Policies DES1, DES2, and ENV1 of the South Oxfordshire Local Plan 2020, Policy TET3 of the Tetworth Neighbourhood Plan 2021. Among other things, these policies seek to protect the agricultural landscape from harmful development.
55. The Council states that Policy ENV1 requires both conserving and enhancing of the landscape. It is clear that enhancements are only required where possible, and there is no evidence that such enhancements are possible in this case. Consequently, I am satisfied that the proposal's conserving of the landscape secures compliance with policy.
56. Paragraphs 127 and 170 of the Framework were cited in the reason for refusal but it is not clear that they are taken from the latest version of the Framework or correlate with the subject matter of the dispute.

Other Matters

57. The issue of whether or not the land is previously developed has not been determinative under the appeal, due to the fallback position provided by the extant planning permission at the site and which in my mind overtakes the issue of whether the site is previously developed land or not.
58. Whilst I acknowledge that there is the potential for measurable biodiversity net gain, this is intrinsically linked with landscaping where details are reserved for future consideration. Consequently, I am unable to be definitive about the potential benefits at this stage or give them any more than limited weight in my decision.
59. Even if I were to give these benefits significant weight, the cumulative weight of several other instances of harm and conflict with the development plan and the Framework, as identified under the main issues, would carry overriding weight.
60. I note the enforcement appeal at the site, and that it relates to the material change of use of the land from paddock land to a mixed use of paddock land and storage of building materials and machinery including creation of hard surfacing and earth bunds.
61. Whilst I acknowledge the outcome of the enforcement appeal and the legal implications, the type of development being proposed, how the evidence was presented and argued, and the nature of the appeal process in the round are very different compared to the appeal in this case.
62. For example, whilst the Landscape and Visual Appraisal may be the same under both appeals, the development under the enforcement appeal is of a very different nature compared to the development under this appeal.
63. It is reasonable that different forms of development can engender different conclusions even when dealing with the same baseline evidence. Indeed, Paragraphs 79 and 85, among others within the enforcement appeal decision speak of such differences.

64. Furthermore, it is not clear what evidence or arguments were presented when it was concluded under the enforcement appeal that the development comprising the fallback position could only be used for private rather than commercial use. As I have already set out under the main issues, it is not clear that the wording within the design and access statement would be sufficient to achieve the same effect as a planning condition in restricting the use.
65. In the round, Paragraph 64 of the enforcement appeal decision sets out that “even if there is overlap between the planning issues raised, the Council’s decisions to refuse outline permission for an equestrian fitness and rehabilitation centre with ancillary buildings, parking and landscaping are outside of my remit. They have not influenced any part of this decision letter which is written without prejudice to any separate appeal proceedings.”
66. In this context, the enforcement appeal decision, and any other contentions by the parties relating to that decision, have carried limited weight in my own decision.
67. A number of other appeals and applications⁶ have been cited by the parties. However, the full details or underlying arguments of these are not in front of me and it is not possible to determine how they should factor into my assessment or that they are wholly relevant. Consequently, they have carried limited weight.

Conclusion

68. Whilst the proposal is acceptable in relation to its location, character and appearance, there would be conflict with the development plan and the Framework in relation to building and design standards and European protected species. Consequently, without material considerations indicating that a decision should be taken otherwise than in accordance with the development plan, the appeal is dismissed.

Liam Page

INSPECTOR

⁶ APP/Q3115/W/16/3156409 and APP/Q3115/W/18/3205628, APP/Q3115/W/21/3271594, P21/S0267/FUL and P17/S4441/O