



Appeal Decision

Site visit made on 16 August 2022

by G Bayliss BA (Hons) MA MA MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 27 September 2022

Appeal Ref: APP/Y2430/W/22/3290744

Field OS 2713 2100, Longcliff Hill, Old Dalby LE14 3LP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Paul Clayton against the decision of Melton Borough Council.
 - The application Ref 21/01092/VAC, dated 17 September 2021, was refused by notice dated 10 December 2021.
 - The application sought planning permission for the variation of conditions 2 (plans), 7 (footpath) and 13 (obscure glazing) of planning permission 18/01111/FUL for residential development on land off Longcliff Hill, Old Dalby that currently benefits from 3 outline planning approvals - 16/00911/OUT, 16/00184/OUT and 17/00743/OUT and the submission of additional details relating to (4 & 6) surface water drainage, (5) surface water management, (10) archaeology, (11) foul and surface drainage, (14) materials, (15) landscaping and (17) ridge heights of 2.5 storey dwellings without complying with a condition attached to planning permission Ref 20/00593/VAC, dated 1 April 2021.
 - The condition in dispute is No 22 which states that: Notwithstanding the plans hereby approved, permission is not granted for the infilling of the ditch that traverses the site, except as required to form the access to plots 1-4 and 5-8 in the layout plan 7737-03-01CC hereby approved.
 - The reason given for the condition is: To safeguard the ecological interest in the site.
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Decision

1. The appeal is allowed and planning permission is granted for the variation of conditions 2 (plans), 7 (footpath) and 13 (obscure glazing) of planning permission 18/01111/FUL for residential development on land off Longcliff Hill, Old Dalby that currently benefits from 3 outline planning approvals - 16/00911/OUT, 16/00184/OUT and 17/00743/OUT and the submission of additional details relating to (4 & 6) surface water drainage, (5) surface water management, (10) archaeology, (11) foul and surface drainage, (14) materials, (15) landscaping and (17) ridge heights of 2.5 storey dwellings in accordance with application Ref 21/01092/VAC without complying with condition No 22 previously imposed on planning permission Ref 20/00593/VAC, dated 1 April 2021, but subject to the conditions set out in the attached schedule.

Background

2. The condition in dispute requires the ditch crossing the site to be kept open and not infilled with the exception of two access drives which would cut across this ditch. The ditch is identified on approved site layout plan Ref. 7737-03-01 CC of Planning Permission Ref 20/00593/VAC and is referred to on this plan as "approximate line of a culverted ditch". It is shown running west to east across the site, near to a hedge, just to the south of the new southern access road

within the appeal site. The appellant wishes to have the condition removed to allow the infilling of the ditch.

3. Although the Council suggests that the ditch has been infilled, evidence of a ditch could be viewed along parts of its length. However, the construction of the two driveways serving plots 1-4 and 5-8 and the realignment of the hedgerow boundary near to Longcliff Hill, both approved under permission Ref. 20/00593/VAC, together with the replanting of the hedgerow and extensive undergrowth, had substantially impacted on the ability to read the line of a ditch.

Main Issue

4. The main issue is whether the condition is reasonable or necessary in order to safeguard the ecological interest of the site, including the role of the ditch as a wildlife corridor.

Reasons

5. The appeal site is a predominantly square parcel of land to the north and north east of Longcliff Hill. It is accessed in the SW corner of the site and is bordered by countryside to the north and east, by housing on Longcliff Close to the south and by North Lodge Farm to the west. On the approved site layout plan (7737-03-01 CC), the culverted ditch is shown connecting to a ditch just beyond the appeal site to the east, which runs in a north south direction. This ditch just beyond the appeal site was visible through thick hedging.
6. Policy ENV3 of the Broughton and Old Dalby Parish Neighbourhood Plan (NP) (2018) specifically requires development proposals to protect and enhance wildlife corridors and avoid creating barriers to the permeability of the landscape for wildlife. The ditch which is the subject of this appeal and the ditch running north-south just outside the appeal site are not identified in the NP as a wildlife corridor. Policy EN2 of the Melton Borough Local Plan (2018) (LP) seeks to protect and enhance biodiversity and ecological networks throughout the Borough.
7. Prior to the application Ref 20/00593/VAC the ditch, which is the subject of this appeal, had not previously been identified as having any ecological value or serving as part of a wider wildlife corridor. Even during the determination of this application, which specifically mentioned the ditch for the first time and proposed that it should be culverted, the Council's ecology specialist made no comment in relation to it. Furthermore, the ecologist did not object to the removal of Condition No 22 when consulted and questioned why the condition had been imposed.
8. The Council, Parish Council and several local residents consider that the ditch has a degree of ecological value, benefitting insects and animals in the form of a local wildlife corridor within the appeal site which has a value even when dry. They consider that it should be retained in a similar way to hedgerows. However, whilst ecology and wildlife corridors are supported by planning policy, these comments are vague assertions and are not backed up by any evidence or specialist advice.
9. Whilst previously there may have been no reason to alter the ditch, as it ran substantially alongside a hedgerow and facilitated storm water drainage, the appellant considers that in the absence of any evidence of ecological value its

retention is no longer appropriate and there are justifiable reasons for its infilling. A new drainage scheme for the site has been approved by the Leicestershire Lead Local Flood Authority (LLFA) which is not reliant on the ditch for surface water drainage, and has approved its infilling. Furthermore, the approved construction of the two access drives cutting across the ditch has significantly impacted on a lengthy stretch of it. A further planning application is pending, awaiting the determination of this appeal, at Sekura House which stands at the junction of Longcliff Hill and the new access road to the site (Ref. 21/00613/FULHA). This seeks to culvert a further section of this ditch in order to re-site a boundary fence to improve the privacy of the occupier's garden.

10. Therefore, in the absence of any clearly stated evidence to demonstrate that the ditch plays an active role in the site's ecology and that it forms part of a wider wildlife corridor, and the clearly stated reasons for the infilling of the ditch, there are no adequate grounds for the retention of this condition.
11. I therefore conclude that the condition is not reasonable or necessary in order to safeguard the ecological interest of the site, including the role of the ditch as a wildlife corridor. The development without the condition would not adversely affect the ecology of the site and in this regard the ditch serves no useful purpose.
12. As such there would be compliance with NP Policy ENV3 and LP Policy EN2. Policy ENV4 of the NP was also stated in the Council's decision notice but as this solely relates to woodland, trees and hedges it is not relevant to this proposal. It would also comply with Section 15 of the National Planning Policy Framework 2021 which seeks to protect and enhance sites of biodiversity.

Conditions

13. The Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.

Conclusion

14. The appeal is allowed, and I grant a new planning permission subject to the conditions in the schedule below.

G Bayliss

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be begun before 01.04.24
- 2) The development hereby permitted shall not be carried out otherwise than in complete accordance with the following plans:
7737-01-001B
7737-10-001B
7737-03-03E
7737-03-04D
7737-03-05K
7737-03-06K
7737-03-07F
7737-03-08J
7737-03-10C
7737-03-11E
7737-03-13E
7737-03-19B
7737-03-20
7737-03-22
7737-03-23
7737-03-24A
7737-03-09H
7737-03-14H
7737-03-21
7737-03-02B
7737 03 01CC
7737 04 15K
- 3) Development shall only take place after all existing trees and hedges that are to be retained have been securely fenced off by the erection of post and rail fencing to coincide with the canopy of the tree(s), or other fencing as may be agreed with the Local Planning Authority, to comply with BS5837. In addition all hedgerows that are to be retained shall be protected similarly by fencing erected at least 1m from the hedgerow. Within the fenced off areas there shall be no alteration to ground levels, no compaction of the soil, no stacking or storing of any materials and any service trenches shall be dug and backfilled by hand. Any tree roots with a diameter of 5 cms or more shall be left unsevered.
- 4) Final occupation of the dwellings shall not take place until the public footpath G89 is provided in accordance with the approved plan and shall thereafter so remain.
- 5) The Public Footpath shall be provided with a hand-gate in the perimeter fence in the north eastern corner of the site compliant with LCC standard drawing SDFP11_REV_A.
- 6) Prior to occupation of the final dwelling the Public Footpath G89 shall be signposted from the point where it leaves the new estate road with a LCC standard footpath fingerpost compliant with LCC standard drawing SD/FP/7.

- 7) No use of the car parking areas serving Plots 1-8 shall be made until details of their illumination have been submitted to and approved in writing by the Local Planning Authority. These approved details shall be implemented prior to the use of the area for parking of resident's vehicles and shall thereafter be so retained
- 8) All ensuite and bathroom windows on all plots and bedrooms shown on the approved plans to be obscure glazed shall be glazed with densely obscured glass. This arrangement shall thereafter be retained at all times unless otherwise agreed in writing by the Local Planning Authority.
- 9) The development shall be carried out in accordance with the materials schedule 7737-10-001B.
- 10) The approved landscape scheme (7737-04-15K) shall be carried in the first planting season following the completion of the development, unless otherwise agreed in writing by the Local Planning Authority. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.
- 11) No part of the development hereby permitted shall be occupied until such time as the access arrangements shown on M-EC drawing number 4154_08_020_01 Rev A have been implemented in full.
- 12) No part of the development hereby permitted shall be occupied until such time as vehicular visibility splays of 2.4 metres by 43 metres have been provided at the site access. These shall thereafter be permanently maintained with nothing within those splays higher than 0.6 metres above the level of the adjacent footway/verge/highway.
- 13) No part of the development hereby permitted shall be occupied until such time as 1.0 metre by 1.0 metre pedestrian visibility splays have been provided on the highway boundary on both sides of the access with nothing within those splays higher than 0.6 metres above the level of the adjacent footway/verge/highway and, once provided, shall be so maintained in perpetuity.
- 14) The development hereby permitted shall not be occupied until such time the parking and turning facilities have been implemented in accordance with HSSP Architects drawing number 7737-03-01CC. Thereafter the onsite parking provision shall be so retained for car parking in perpetuity.
- 15) No part of the development shall be occupied until a scheme for offsite highway works, that being the provision of a footway on the eastern side of Longcliffe Hill, between the proposed site access and the existing footway at Longcliffe Close, with associated kerbing and carriageway widening where necessary to maintain a suitable carriageway width, has been submitted to and approved in writing by the Local Planning Authority and implemented in full.

- 16) The development shall be carried out in accordance with the surface water drainage scheme set out in General Arrangement (ref: 24154_02_020_02 G).
- 17) The development shall be carried out in accordance with the Surface Water Construction Management Plan received by the Local Planning Authority on 23.12.2020.
- 18) The long term maintenance of the surface water drainage system shall be carried out in accordance with the Surface Water Maintenance Management Plan received by the Local Planning Authority on 23.12.2020.
- 19) The development shall be carried out in accordance with the disposal of surface water and foul sewage set out in Ordinary Watercourse Land Drainage Consent (LCC 18/11/2020) and Severn Trent Water Letter S104 Technical Approval (26/06/2020).
- 20) Notwithstanding the plans hereby approved, the hedgerow traversing the site on an east – west axis shall not be removed except for the length necessary to allow access to plots 1 -4 and 5-8 as indicated in the layout plan 7737-03-01CC hereby approved.
- 21) Notwithstanding the plans hereby approved, all of the verges to the public footpath G89 indicated in the layout plan 7737-03-01CC hereby approved shall be a minimum of 1m wide, including the length adjacent to Plot 28.
- 22) Notwithstanding the plans hereby approved the height of the 2.5 storey dwellings shall not exceed 9.2 metres to ridge level above the adjacent existing land levels.