



Appeal Decision

Hearing held on 24 August 2022

Site visit made on 25 August 2022

by M Woodward BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 October 2022

Appeal Ref: APP/J1535/W/22/3293913

Valley Grown Nurseries, Paynes Lane, Nazeing EN9 2EX

- 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 Giacomo Russo (Valley Grown Salads) against the decision of Epping Forest District Council.
 - The application Ref PL/EPF/1663/20, dated 19 November 2020, was refused by notice dated 2 September 2021.
 - The development proposed is additional access road from Nazeing Road to Valley Grown Nurseries.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A plan showing proposed works to an existing culvert was submitted with the appeal¹ and the Council and the Environment Agency were given an opportunity to comment on it. A revised plan showing indicative landscaping was also submitted², and the Council commented on it as part of the appeal. I have accepted these plans as they do not significantly alter the proposal, and I am satisfied that no procedural unfairness would arise, in line with the *Wheatcroft Principles*³.
3. The Council's officer report refers to a previous version of the National Planning Policy Framework (the Framework). The substance of their objections remains unchanged by the latest version of the Framework, and it is this version I have used in my decision.

Main Issues

4. The main issues in this case are the effect of the proposal on:
 - The character, appearance and function of the area, having regard to the Lee Valley Regional Park.
 - Biodiversity, with particular regard to habitats and protected species.
 - Flood risk, with particular regard to the existing culvert.

¹ Drawing no. VGS RJL DR S 001 P1

² Drawing no. Turley 01 Illustrative Landscape Strategy Rev A

³ *Bernard Wheatcroft Ltd v SSE* [JPL 1982 P37]

Reasons

Background

5. The Epping Forest District Local Plan of 1998, along with the Epping Forest District Local Plan Alterations of 2006, comprise the adopted development plan (Local Plan). The emerging Epping Forest District Local Plan Submission Version 2017 (emerging Local Plan) is at an advanced stage and, having regard to paragraph 48 of the Framework, the policies within it which relate to the appeal can carry significant weight⁴.

Character and appearance

6. The appeal site does not lie within any national landscape designations and is not a 'valued' landscape⁵. However, it does lie within the Lee Valley Regional Park (the Park), which covers an area in excess of 4,000 hectares. The Park Authority was created by the Lee Valley Regional Park Act 1966, and this defines the boundary of the Park, and the Authority's statutory duties to develop and preserve leisure, recreation, sport and nature throughout the Park. This is broadly reflected in Policy RST24 of the Local Plan which requires, amongst other things, that development within the Park should have regard to the importance of the park for leisure, recreation and nature conservation.
7. In landscape terms, the site forms part of the *Kings Weir to Waltham Town Lock* character, as set out in the Lee Valley Landscape Character Assessment 2019⁶ (LCA). According to the assessment, this landscape character area is characterised by diverse wetland habitats, a general lack of development, and a sense of remoteness.
8. The proposed haul road would mainly replace grassland and scrub and would also route along part of an existing track. The northern part of the site and the immediate surroundings are generally open and verdant, although the rurality has been diminished to a limited degree by the presence of a large pylon, power lines, and housing located along Nazeing Road. The southern part of the site, where the haul road would cut across the land towards Paynes Lane, is well screened by existing trees and scrub, although there are occasional views of some of the commercial uses situated along Paynes Lane. Therefore, unlike the LCA which describes the wider area as one of high landscape quality, I find the area overall to be of moderate landscape value, and some of the key characteristics identified in the LCA are not fully reflective of the appeal site and its immediate surroundings.
9. Taking into account the situation on the ground, the proposed access would not be visually obtrusive or out of keeping with the area. This is partly due to the presence of other access tracks in the area (remnants of past mineral workings), and the similar appearance of those in comparison with the proposed haul road. There would also be limited harm to the wider landscape given that views of the site and its surroundings are mainly localised in nature. Key characteristics of the landscape including waterbodies would be retained, and the extent of encroachment into the countryside, given the relatively narrow profile of the proposed road, would be limited.

⁴ As agreed by the Council and appellant in the Statement of Common Ground

⁵ As per paragraph 174b) of the National Planning Policy Framework

⁶ Full title – Lee Valley Regional Park Landscape Character Assessment and Landscape Strategy 2019

10. However, the qualities that distinguish an area are not limited to visual aspects. In this regard, the LVRP Development Framework⁷ maps the different footpath routes which run through the Park. From this, it is evident that the appeal site and its surroundings are peripheral to the main visitor hub and recreational activities, which in this part of the Park, are generally focussed around the wetlands to the south. It is also the case that the land surrounding the appeal site is mainly in private ownership, thus not accessible to the public.
11. The important exception to this is the Public Right of Way⁸ (PRoW) which runs from Nazeing Road in a southerly direction, connecting with an existing network of footpaths within the Park. Part of the PRoW generally runs along the same alignment as the northern section of the proposed haul road, being within the appeal site in places, and within close proximity of it in others.
12. As part of my site visit, I had the opportunity to walk along the PRoW. The prevailing background noise experienced was generally low, with intermittent traffic noise associated with Nazeing Road quickly dissipating when walking away from the road. Noise associated with uses along Paynes Lane was not perceptible. Moreover, despite the proximity of some urban features, the PRoW exhibits a verdant character, and comprises a pleasant walking route, synonymous with the Park's recreational function.
13. As a result of the foregoing, the introduction of HGVs into this environment would not be compatible with the area's prevailing character. Whilst I appreciate that the number of HGV movements would be limited to 12 each day (6 in and 6 out), limiting the frequency of disturbance, the movements would take place throughout the daytime when use of the PRoW would reasonably be expected.
14. Specific details outlining the interaction between the proposed haul road and the PRoW, and any footpath diversions necessary, are limited. The submitted access plan indicates that part of the PRoW would be diverted 'to the east' of the haul road. The submission also suggests that the PRoW may be retained along part of the proposed access, giving users an opportunity to use the surfaced route. I am conscious that any diversion would rely on an Order being made under a separate process and legislation⁹, thus details could only ever be indicative at this stage. However, for the purposes of this appeal, I have assessed the proposal based on the details before me, taking into account that a planning condition could be imposed requiring final details of the PRoW's diversion or realignment to be agreed.
15. In any event, irrespective of whether the PRoW would be diverted in places as proposed, or retained on its current alignment, the introduction of HGVs into the area would be a significant departure from the prevailing quiet and peaceful surroundings. The noise and disturbance associated with each HGV movement would fundamentally change the experience of those using this part of the PRoW and the Park for recreational purposes.
16. Moreover, the appellant's claim that the PRoW is not well used is unsubstantiated by any objective analysis. Nevertheless, even if I was to accept that it is not a popular footpath, the PRoW is a component part of a

⁷ Lee Valley Regional Park Development Framework 2019

⁸ PRoW 10

⁹ Generally this is done under S257 of the Town and Country Planning Act 1990

network of routes which provides a rural, car-free access to more popular areas of the Park, as well as exhibiting important recreational value in itself given it promotes pedestrian access to the countryside. As such, the PRoW contributes to the purposes of the Park¹⁰. This is also reflected in the 'vision' set out in the emerging Local Plan which, in summary, recognises the Park as a valued regional green lung, accessible and permeable as a visitor attraction, which also includes local communities¹¹. Consequently, the proposed use of the haul road by HGVs would compromise the important recreational function of the Park, to the detriment of the character of the area.

17. I have already identified limited visual impact in terms of the appearance of the proposed haul road. In terms of its intended use, HGVs moving through the area would be somewhat discordant features for users of the PRoW. However, vehicular movements would be transient and irregular, and the landscaping proposed would lessen the visual effects over time. However, this does not reduce the harm I have identified in relation to the area's character.
18. Therefore, I conclude that the proposed use of the haul road by HGVs would significantly harm the character of the area, diminishing the Park's accessibility, its use as a recreational resource, and its overall function as important green infrastructure. Therefore, the proposal would conflict with policies RST24, LL1, LL2, and CP2 of the Local Plan which require, amongst other matters, that development respects the character of the landscape and has regard to the importance of the Park for leisure and recreation. The proposal would also conflict with emerging Local Plan policies SP7 and DM3 which require, amongst other things, that the natural environment is protected and that the well-connected green infrastructure that is accessible for recreation and quiet enjoyment will be developed. I also find conflict with paragraph 174 of the Framework insofar as the proposal would fail to respect the intrinsic character of the countryside.

Ecology

19. The appeal is accompanied by ecological survey information, including an extended phase 1 survey, an addendum to the extended phase 1 survey, and an appeal statement relating to ecology. In commenting on the planning application, the Council's ecological consultant raised several concerns, the main area of contention relating to the proposal to carry out culvert strengthening works, and the potential impact of these works on Water Voles and Otters, which are protected species¹².
20. The appeal site falls within the *Ep 5 Lea Valley Central* Local Wildlife Site, an important wildlife corridor, with the proposed culvert works occupying the adjacent watercourse. I also note Lee Valley Regional Park's comments concerning the observed presence of Otters within 500m of the appeal site¹³. From the outset therefore, it appears that the presence of these species is reasonably likely.
21. The appeal statement confirms that no evidence of Water Vole or Otter using the watercourse was recorded, with reference made to a 'full Otter and Water Vole survey'. A brief summary of the survey findings is included in the appeal

¹⁰ Section 12 of the LVRP Act 1966

¹¹ See page 18 of emerging Local Plan 'Lee Valley Regional Park Vision'

¹² Protected under the Species of principal importance under S41 of the NERC Act 2006, amongst other legislation

¹³ As set out in paragraph 7.39 of the 'Statement of Lee Valley Regional Park Authority'

statement, referring to good practice guidance on the methodology used. However, the detailed survey from which this summary was apparently taken has not been provided with this appeal. Consequently, the information I have before me is insufficient to adequately assess the impacts. For example, I would expect a full survey to include, *inter alia*, details of the survey dates and times, environmental/weather conditions, scope and nature of the survey work undertaken, details of the methodology, details of the findings and any mitigation necessary.

22. In respect of other ecological matters, the appeal statement responds to several of the Council's concerns regarding the general impact on the Local Wildlife Site, including the extent to which the appeal site constitutes an open mosaic habitat (priority habitat). In the absence of further comments on these aspects from the Council, I have no reason to disagree with the appellant's overall conclusion, that no priority habitat would be lost as a result of the proposal.
23. However, that does not address the fundamental concerns I have in relation to the survey work provided. As a result, it is not possible for me to properly consider the effects on these protected species given the lack of substantive survey information. Therefore, the proposal would fail to demonstrate protection of biodiversity, with particular regard to protected species. It would be contrary to policies CP1, CP2, NC3, NC4 and RST24 of the Local Plan which require, amongst other matters, that proposals make adequate provision for the protection of habitats of local significance, that impacts on the environment are minimised, that river and wildlife corridors are preserved, and that regard is had to the Park's nature conservation. The proposal would also conflict with paragraph 179 of the Framework and policies SP7 and DM1 of the emerging Local Plan which also generally seek to protect biodiversity.

Flood risk

24. The main area of contention concerns the structural integrity of a culvert over which the proposed access would be taken, and an objection was raised by the Environment Agency (EA). There is no dispute between the parties that the function of the culvert is paramount in channelling water into nearby watercourses and reducing the risk of flooding in the locality.
25. In response to the EA's objection, the appellant prepared a culvert inspection and condition survey, along with a drawing highlighting several proposed maintenance upgrades. These documents accompanied the appeal. Ultimately, the condition survey concludes that the culvert would be able to withstand additional loading from HGVs passing over it, on the basis of the works proposed to strengthen the culvert.
26. During the Hearing the EA explained that they were concerned that the appellant's non-intrusive survey was not adequate in order to fully assess the structural integrity of the concrete culvert. They also highlighted that a separate permit would be necessary, and there would be guarantee that a permit would be granted in this case¹⁴.
27. Be that as it may, the EA confirmed at the Hearing that they had no 'in-principle' objection to the proposal. There was no suggestion that an

¹⁴ The Environmental Permitting (England and Wales) Regulations 2016

appropriate engineering solution could not be found to ensure adequate protection of the culvert. As such, I see no reason why a planning condition could not be imposed requiring additional survey work as necessary, and an agreed scheme of mitigation to address any structural deficiencies relating to the culvert. Whether or not a separate permit would be granted is of limited materiality in this case given my findings above which relate solely to the merits of this appeal.

28. As a result, and subject to the imposition of an appropriately worded planning condition, the proposal would not increase the risk of flooding. Therefore, there would be no conflict with policies DM15 and DM16 of the emerging Local Plan or paragraph 167 of the Framework which require, amongst other matters, that development reduces the risk of flooding and does not increase the risk of flooding elsewhere.

Other Matters

29. The site lies in the Green Belt and the main parties agree that the proposal would not constitute inappropriate development in the Green Belt. The appellant submitted a noise assessment which focused on the anticipated noise associated with the use of the proposed haul road at the nearest residential properties. It concluded that any increase in noise would not unduly impact on the living conditions of the nearest occupants. I have no reason to take a different view on either of these matters.
30. I am aware that the Council's Trees and Landscape officer raises no objection to the proposal. Whilst I have taken their comments into account, they relate specifically to tree removal and landscaping and does not alter my conclusions on the main issues. Furthermore, the Highway Authority raise no objections to the proposal from a highway safety or capacity perspective. In any event, the harm I have identified does not conflict with the comments they made on the technical aspects of the proposal.

Planning Balance

Access considerations and benefits

31. Paynes Lane is a private surfaced road providing access to the appellant's business, along with a number of other premises which are located along its length. It is also a PRoW¹⁵. As well as being narrow, it is rutted in places, and does not appear to be built to the same specification as most of the adopted roads in the locality. On my site visit I observed that larger vehicles travelling along it had to exercise a degree of caution, and passing places along its length are limited, with vehicles traveling in opposing directions often required to pull into private driveways to allow other vehicles to pass. In addition, there is a lack of demarcation to separate vehicles and pedestrians, and its safety, attractiveness, and useability as a PRoW is compromised.
32. The proposal would remove HGVs from Paynes Lane associated with the appellant's business¹⁶. Those vehicles would instead use the proposed haul road, thus a source of conflict between users of Paynes Lane would be removed. However, the appellant accepts that the other commercial and

¹⁵ PRoW 26

¹⁶ Valley Grown Nurseries

residential uses on the lane generate a high level of vehicular movements¹⁷. Consequently, whilst the cessation of HGVs using this route in connection with the appellant's business would be beneficial, particularly given the inherent difficulties involved in reversing and manoeuvring HGVs along this narrow and constrained access, to my mind the overall benefits to users of the PRoW would be limited. This is because the existing conflict between all users of the lane and PRoW would remain due to the continued use of it by other motor vehicles.

33. I also recognise that HGV traffic is likely to degrade the surface of Paynes Lane, which affects its useability for recreational purposes. Nevertheless, given the numerous other vehicles using the lane, I cannot be certain that damage to the surface is mainly due to HGVs associated with the appellant's business. As a result, whilst I recognise there would be benefits to all users of the PRoW and Paynes Lane as a result of HGV displacement, overall, these are matters which carry moderate weight.
34. The appellant's business employs a number of staff and contributes directly to the economy, with indirect benefits associated with the use of local businesses in the supply chain. The success of the business thus far has relied on Paynes Lane as its access for the delivery of goods. In this regard, I am told by the appellant that the aforementioned problems associated with the use of Paynes Lane has affected deliveries to their supermarket customers, owing largely to the requirement to deliver fresh produce to clients in a timely manner. It is stated that the continuation of this situation could ultimately lead to the loss of customers and job losses.
35. However, no detailed analysis has been advanced outlining the severity and regularity of such delays, and the consequences for the viability of the business moving forwards, particularly given that Paynes Lane, despite its shortcomings, does not appear to have unduly constrained the growth of the business to date. Therefore, I am not satisfied that the provision of the access proposed is imperative to the future viability of the business.
36. To summarise, I conclude that the proposed access would result in operational and efficiency benefits for the business, as HGVs delivering goods would be able to utilise a direct route to the public highway network which avoids the constraints associated with Paynes Lane. For the reasons set out, I attribute moderate weight to these benefits.

Other benefits

37. Other benefits which would flow from the scheme include potential biodiversity enhancement, based on the landscaping proposed as part of the illustrative landscaping plan, and the details set out in the ecology reports. Therefore, and notwithstanding the ecological issues I have identified, I am satisfied that the potential for biodiversity enhancement exists¹⁸ and could be secured by planning condition, although this would be at the expense of encroachment into the countryside and the loss of some existing trees and scrub. I therefore, attribute limited weight to these benefits.

¹⁷ Appellant Statement of Case

¹⁸ As stated on the Ecology Appeal Statement

Balance

38. Planning law requires that applications for planning permission shall be determined in accordance with the development plan unless material considerations indicate otherwise¹⁹. The Framework makes clear that the planning system should be genuinely plan-led.
39. With this in mind, the proposal would result in significant harm to the character of the area, the function of the Park as an important area for recreation, and would conflict with the development plan as a whole. There would be no harm due to the potential for flood risk, so this neither weighs for or against the scheme. The collective weight of the benefits in favour of the scheme would be insufficient to outweigh the harm I have identified.
40. My conclusion does not take into account the failure of the scheme to address biodiversity concerns. Factoring this into the planning balance would result in further weight against the scheme.

Conclusion

41. I have found that the proposal would not accord with the development plan as a whole, and other material considerations do not outweigh this conflict. Therefore, for the reasons given, and having regard to all relevant matters raised, I conclude that the appeal should be dismissed.

M Woodward

INSPECTOR

¹⁹ Section 38(6) of the Compulsory Purchase Act 2004

APPEARANCES

FOR THE APPELLANT:

Mark Jackson BSc (Hons) MRTPI	Town Planner
Jimmy Russo	Director (Valley Grown Salads)
Vince Russo	Director (Valley Grown Salads)
Mark Geddes	Engineer

FOR THE LOCAL PLANNING AUTHORITY:

Sukhi Dhadwar BA (Hons) Dip MRTPI	Senior Planning Officer
Theresa Park	Administrator

INTERESTED PARTIES:

Becki Ingram	Environment Agency
Claire Martin	Lee Valley Regional Park Authority
Gemma Castle	Resident
Susan Sharp	Resident
Dave Flanagan	Resident
Louise Stanyer	Resident
Michael Hunt	Resident
Brenda Hunt	Resident
Ronda Pugsley	Ward Councillor Lower Nazeing
Thomas Field	Resident