



Appeal Decision

Site visit made on 4 January 2023

by A Price BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 January 2023

Appeal Ref: APP/X2220/W/21/3285435

Land south of White Mill, Ash Road, Sandwich CT13 9JB

- 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 A Smith of Sandwich Leisure Ltd against the decision of Dover District Council.
 - The application Ref 21/01212, dated 30 July 2021, was refused by notice dated 23 September 2021.
 - The application sought planning permission for the construction of access road and two dyke crossings without complying with a condition attached to planning permission Ref 19/01178, dated 30 July 2021.
 - The condition in dispute is No 3 which states that: *'Within 6 months of the date of this permission, details shall be submitted to and approved in writing by the local planning authority, demonstrating how the existing vehicle access to Sandwich Leisure Park shall be permanently closed and shall include a schedule and timetable for these works (apart from emergency use and pedestrian access). These works shall be carried out in accordance with the approved details within 1 year of the date of this permission and be fully retained thereafter.'*
 - The reason given for the condition is: *'In order to justify the harm the proposal would cause to the countryside and to justify approval contrary to policies within the Core Strategy (2010).'*
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Decision

1. The appeal is allowed and planning permission is granted for the construction of access road and two dyke crossings at Land south of White Mill, Ash Road, Sandwich, CT13 9JB in accordance with the terms of the application Ref 21/01212, dated 30 July 2021, without compliance with condition number 3 previously imposed on planning permission Ref 19/01178 dated 30 July 2020 and subject to the conditions appended to this decision.

Preliminary Matters

2. At the time of my site visit, some construction work had been undertaken. However, it was not clear the extent to which this related to the scheme before me. Regardless of what has been constructed to date, my assessment is based on the plans before me.

Applications for costs

3. An application for costs was made by Mr A Smith against Dover District Council. This application is the subject of a separate decision.

Background and Main Issues

4. Planning permission was granted under reference 19/01178 for the construction of a new access road to Sandwich Leisure Park.
5. The planning permission included a condition (condition 3) requiring the submission of details in respect of the permanent closure of the existing vehicular access to the site, apart from emergency use and pedestrian access. This would have the effect of directing all traffic to and from the leisure park via the new access route, whether or not related to the delivery of holiday chalets. The Council sets out that this approach was taken to justify the harm identified in respect of development in the countryside and ecological habitats.
6. The appellant wishes to remove the condition to allow the existing access to remain open, as at present, in addition to the new access.
7. Therefore, the main issues are:
 - whether condition 3 is necessary or reasonable having regard to the character and appearance of the landscape, including the loss of countryside; and
 - whether condition 3 is necessary or reasonable having regard to ecology.

Reasons

Character and appearance

8. The appeal site comprises a parcel of open land, positioned to the south of Ash Road, and is readily visible from the highway. At present, the holiday park is accessed via a private road off Woodnesborough Road. The existing stretch of access road is short and is surrounded by established development, including the residential development at Alexander Close.
9. Removing the condition would allow the continued use of the existing access off Woodnesborough Road, in addition to the approved access from Ash Road. The Council sets out that the closure of the existing access would form an overriding public benefit that sufficiently outweighs the identified harm to the countryside, albeit they consider it to conflict with Policy DM11 of the Dover District Core Strategy (CS, 2010), which seeks to limit increases in travel demand to within settlement confines. From that perspective, the Council acknowledges that access roads to the site through the town centre are narrow and constrained and inappropriate for larger vehicles.
10. Details requested in respect of the closure of the existing access would likely be in the form of a gate, bollards or similar. A road or access would need to be retained in order to allow emergency and pedestrian access. As such, the existing access would broadly appear as it does at present. There is nothing before me to indicate that those required measures would be of benefit in respect of the character or appearance of the landscape or countryside.
11. I accept that the closure of the existing site access may provide some benefit in relieving the town centre from some tourist and delivery traffic. Nevertheless, the Council accepts that there would be a benefit in re-routing the larger vehicles to the approved access.

12. For the reasons above, I conclude that the disputed condition is not reasonable or necessary in the interests of protecting the character or appearance of the landscape. I find no conflict with the relevant provisions of CS Policies DM1, DM15 and DM16. These policies, amongst other things, seek to restrict development where outside urban boundaries and rural settlement boundaries, unless it functionally requires such a location, and to protect the countryside and landscape character. This is in a similar vein to the objectives of paragraphs 174, 180 and 182 of the Framework insofar as conserving and enhancing the natural environment is concerned.

Ecology

13. The development passes through open countryside. It was identified previously that the proposed dyke crossings, forming part of the proposed access works, would have an impact on ecological habitats of protected species, in particular water voles. However, the Council set out that this impact would be relatively minor and that the initial concerns of ecology officers had been largely overcome.
14. In any case, I note that the Council imposed a condition on the original planning permission, which requires the implementation of all habitat enhancements, mitigation and compensation measures shown within approved documents within the first planting/seeding season following completion of the access road. The reason for this is explained as to protect and enhance existing species and habitats on the site in the future. Therefore, habitats would be maintained and any harm mitigated by incorporating those measures.
15. Details requested in respect of the closure of the existing access would likely be in the form of a gate, bollards or similar. There is nothing before me to indicate that those measures would be of ecological benefit or otherwise.
16. Consequently, I have no substantive evidence before me to demonstrate that the removal of condition 3 and the continued use of the existing access would result in harm to ecology, which in any case would be protected by the requirements of originally imposed condition 4.
17. I conclude that the disputed condition is not reasonable or necessary in the interests of ecology. The development without the disputed condition would accord with the relevant provisions of CS Policy DM15 which, amongst other things, seeks to protect ecological habitats. This is in a similar vein to the objectives of paragraphs 180 and 182 of the Framework insofar as habitats and biodiversity are concerned.

Other Matters

18. I have considered the comments received from neighbours and others. These include comments relating to alleged unauthorised works, requests to remove and tidy up debris on and near the site and reservations about the long term intentions for the site and holiday park. As set out above, I have determined the appeal based on the evidence before me. Any works carried out not in accordance with any planning permission would be a matter between the Council and the appellant.
19. In respect of comments relating to highway safety, no objections are raised by the highway authority from a highway safety perspective. I have no reason to disagree with those findings. In addition, there is no substantive evidence

before me that demonstrates that existing levels of traffic in the town centre associated with the leisure park, other than larger vehicles, are problematic, including in respect of living conditions.

20. I note the suggested use of a planning obligation in lieu of a condition if this is to be removed. However, the appeal is focussed on whether or not the condition is necessary and reasonable. Ultimately, the matters above, do not lead me to an alternative conclusion on the main issues.

Conditions

21. The guidance in the Planning Practice Guidance makes it 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.
22. As I have no information before me to demonstrate that the other conditions should not be reimposed, 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.
23. Given that the development has commenced, the originally imposed condition 1 in respect of standard time limits is not necessary and has not been reimposed.
24. Condition 1 is imposed for certainty. Condition 2 is imposed in the interests of ecology. Condition 3 is imposed in the interests of the character and appearance of the area. Conditions 4 and 5 are imposed in the interests of highway safety.

Conclusion

25. For the reasons given above, I conclude that the appeal should succeed. I will vary the planning permission by deleting the disputed condition and by restating those conditions that continue to have effect.

A Price

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Additional Culver Details received 16 June 2021, 201/P01A and P02A received 23 April 2021, Water Vole Assessment and Methodology Statement received 29 March 2021, Planning Statement received 2 December 2019, 878-102A received 18 October 2019 and 878-200B, 201, 301A, 302 and Flood Risk Assessment received 26 September 2019.
- 2) All habitat enhancements, mitigation and compensation measures shown on approved drawings 201/P01A and P02A received 23 April 2021 and in the Water Vole Assessment and Methodology Statement received 29 March 2021 shall be fully implemented within the first planting/seeding season following completion of the access road hereby approved.
- 3) Any spoil/road planings not used within or resulting from the works hereby approved shall be removed from the land upon completion of the works.
- 4) Before the development is first used, visibility splays of 215m x 2.4m x 215m as shown on approved drawing 878-201 received 29 September 2019, within which there shall be no obstruction in excess of 0.9m in height above the carriageway edge, shall be provided and shall thereafter be maintained at all times.
- 5) Prior to the implementation of the visibility splay, details of any alterations to the existing gates and boundary treatments (fences and planting) to Ash Road resulting from the provision of the improved visibility splay, shall be submitted and approved in writing by the local planning authority. The works shall be carried out in accordance with the approved details prior to the first use of the vehicle access road and retained as such thereafter.