



Appeal Decision

Site visit made on 7 February 2023

by E Worley BA (Hons) Dip EP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd April 2023

Appeal Ref: APP/V0510/W/22/3297758

Land at Mepal, Engine Bank, Mepal CB6 2AX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr T Gowing, Mr DJ Gowing, Ms M Gowing & Ms J Hardingham against the decision of East Cambridgeshire District Council.
- The application Ref 21/01208/FUL, dated 12 August 2021, was approved on 11 November 2021 and planning permission was granted subject to conditions.
- The development permitted is the change of use of reservoir, woodland and open space to private recreational use, and construction of outbuildings - Retrospective.
- The conditions in dispute are No 2 which states that: *"The use of the site hereby granted planning permission shall be for personal use of the applicants. For the avoidance of doubt the site shall not be used subsequently for commercial leisure uses and events including letting to or operated by third party groups or individuals without the written authorisation of the Local Planning Authority."*, No 5 which states that: *"No external lights shall be erected within the site (either freestanding or building-mounted) other than those expressly authorised within this application."* and No 8 which states that: *"The site shall not be used for the shooting of animals or birds."*
- The reasons given for the condition 2 is: *"In the interests of highway safety and to ensure the amenities of neighbouring properties in accordance with policies ENV2, COM7 and COM8 of the East Cambridgeshire Local Plan 2015."*, condition 5 is: *"To protect and enhance species in accordance with policies ENV1, ENV2 and ENV7 of the East Cambridgeshire Local Plan 2015 and the Natural Environment SPD, 2020."* and condition 8 is: *"To protect and enhance species in accordance with policies ENV1, ENV2 and ENV7 of the East Cambridgeshire Local Plan 2015 and the Natural Environment SPD, 2020."*

Decision

1. The appeal is dismissed.

Preliminary Matters/Background

2. Planning permission was granted for the private recreational use of the land, which includes a reservoir, an area of woodland and open space, and the construction of outbuildings. The site lies in an area of open countryside and the permission includes conditions to control the use, including the 3 disputed conditions. Condition 2 restricts the recreational use of the site to private use by the appellants only, in order to limit traffic visiting the site in the interest of highway safety and to safeguard the amenities of the occupiers of neighbouring properties. Condition 5 limits external lighting to that approved as part of the planning permission and condition 8 prevents the use of the site for shooting of animals or birds, in the interest of protecting and enhancing species.

3. The proposal before me is to remove all 3 of the disputed conditions, which the appellants consider not to be necessary.

Main Issues

4. Taking the above into account the main issues are whether the conditions are reasonable and necessary in the interests of highway safety; the living conditions of the occupiers of neighbouring properties, having regard to noise and disturbance; and biodiversity.

Reasons

Highway Safety

5. Planning permission was sought for the use of the land by the appellants and their friends and family for amenity and leisure purposes. They have indicated that while there is no intention to use the land for commercial purposes, they wish to enable others to enjoy the benefits of the site, such as charities and local groups by allowing them limited use of the land for fishing and camping for example.
6. I observed at my visit that vehicular access to the site from Engine Bank is via a single track driveway with limited opportunities for vehicles to pass. Crooked Drain, a wide ditch, runs parallel with it on one side and agricultural land adjoins the other side. The appeal submissions indicate that the track is currently used by dog walkers and agricultural vehicles and that in light of the volume and intermittent traffic flow the existing passing places are rarely needed.
7. It is suggested that the removal of the condition would not materially alter the current situation and would therefore not pose an increased risk to highway safety. However, whilst the road may currently be lightly trafficked, an unfettered permission would potentially allow the site to be used more intensively and in an uncontrolled manner. With an unknown number of vehicular movements and potential conflict between passing vehicles, this may harm highway safety. This reflects the view of the Highway Authority that, as the access is not suitable for vehicles to pass, an increase in the use of the access would be harmful to highway safety.
8. I note the appellants suggestion that a condition to allow 12 events during a 12 month period where they could invite non family and friends to use the property would be a reasonable compromise. However, there is insufficient information before me to demonstrate that such events would not attract a level of trips that would cause conflict between all users of the highway. Moreover, I have not been presented with an alternative condition that would meet the tests set out in the Framework to ensure that such arrangements would be acceptable having regard to highway safety.
9. I therefore conclude that an element of control is reasonable, as set out in condition 2. Accordingly, I find that condition 2 is reasonable and necessary in the interests of highway safety, in accordance with Policy COM7 and COM8 of the East Cambridgeshire Local Plan 2015 (the LP). Together these Policies require development to accommodate the level/type of traffic generated without detriment to the local highway network to provide adequate levels of parking.

Living conditions

10. Planning permission was granted on the basis that the level of activity in association with the use of the land would not harm the living conditions of the neighbouring properties. Whilst the Council's Environmental Health Team concluded noise impacts may not be significant, there is no substantive evidence before me which sets out details of the types and scale of activities other uses by different groups may involve. Consequently, I cannot be definitive as to the effects in terms of this aspect and as such the removal of the condition in the absence of these details would cause harm to the living conditions of the occupiers of neighbouring properties in terms of the level and types of activities taking place.
11. I therefore conclude that condition 2 is reasonable and necessary in the interests of protecting the living conditions of neighbouring properties. The development without the disputed condition would fail to comply with Policy ENV2 of the LP. This policy sets out, amongst other things, that new development will be expected to ensure there is no significantly detrimental effect on the residential amenity of nearby occupiers.

Biodiversity

12. I note the appellants' desire to protect and enhance species and in that regard that they have no intention to erect further external lighting at this time. However, the appeal submissions indicate that this may change in the future given that the site is located in a rural area where it is very dark, and lighting for safety reasons for example may be required, however the details of which are not before me.
13. Moreover, I have not been presented with an alternative condition that would provide a precise and enforceable mechanism to ensure future lighting would be appropriate. As such, a condition to prevent any further lighting on the site, without the approval of the Council, is justified.
14. My attention is drawn to the nearby extraction site which the appeal submissions indicate benefits from external lighting. In the absence of full details of that scheme I cannot be certain that it is directly comparable to the proposal before me and therefore it does not alter my view. In any event, each proposal must be considered on its own merits.
15. I note that the appellants have no desire to shoot animals or birds on the appeal site and that the land has not been purchased for that purpose. Nevertheless, they have indicated that there may be occasion when the shooting of deer or rabbit is necessary to support farming practices.
16. Condition 8 stems from advice provided by Natural England, due to the proximity of the site to The Ouse Washes SPA, RAMSAR, SSSI and the Sutton and Mepal Pumping Station Drains County Wildlife Site, and concerns regarding the effect of the shooting of animals and birds at the appeal site on species supported by these protected sites. There is no substantive evidence to dispute these potential effects. Whilst the site may benefit from Sporting Rights, the appellants have stated that they do not wish to shoot wildlife on the land, and shooting could continue on the surrounding land, it has not been shown that the use of land for recreational purposes, would not lead to an increased likelihood that this may occur. Adopting a precautionary approach, it has

therefore not been adequately demonstrated that the condition is not necessary or reasonable.

17. I therefore conclude that conditions 5 and 8 are necessary to ensure that the development would comply with Policy ENV7 of the LP, which seek to protect biodiversity.

18. The reasons for conditions 5 and 8 also refer to Policies ENV1 and ENV2 of the LP. However, on my reading these policies relate to landscape character and design, and it has not been demonstrated in the Council's submissions as to the relevance of these policies to biodiversity.

Conclusion

19. For the foregoing reasons, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

E Worley

INSPECTOR