



Appeal Decision

Site visit date 23 May 2023

By Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 May 2023

APP/F0114/W/22/3310955

Knoll Farm, White Ox Mead Lane, Peasedown St John, Bath BA2 8PL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
 - The appeal is made by Knoll Farm LLP against the decision of Bath and North East Somerset Council.
 - The application Ref 22/01398/COND dated 30 March 2022, sought approval of details pursuant to condition No5 of a planning permission Ref 20/02480/FUL, granted on 26 November 2020.
 - The application was refused by notice dated 24 May 2022.
 - Planning application 20/02480/FUL granted development for the '*Erection of 3no agricultural buildings including Cattle Barn, Workshop/Feed Store, Farmyard Manure/Straw and Hay Shed along with associated yard areas and access track from Knoll Farmhouse, and other associated works.*'
 - The details for which approval is sought are a hard and soft landscaping scheme.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal follows the refusal by the Council to approve hard and soft landscaping details required by condition 5 of planning permission reference 20/02480/FUL (the planning permission). Hence, the appeal is seeking approval for the submitted details, it is not within the remit of this procedure to reconsider the planning permission, nor is the appeal one against the condition itself.
3. Condition 5 of the planning permission states: '*Prior to the occupation of the site a hard and soft landscaping scheme shall be submitted to and approved in writing by the Local Planning Authority showing details of all trees, hedgerows and other planting to be retained; a planting specification to include numbers, size, species and positions of all new trees and shrubs, details of existing and proposed levels, walls, fences including protective stock proof fencing and other boundary treatment and surface treatment of the open parts of the site and a programme of implementation.*'
4. The reason for the condition states '*to ensure that adequate mitigation for the landscape, ecological and arboricultural impacts of the proposals and the provision of appropriate mitigatory/compensatory/enhancement planting has been agreed prior to the commencement of the development in accordance*

with Policies NE2, NE3 and NE6 of the Bath and North East Somerset Council Local Plan.'

5. The Council's decision letter states that the submitted drawing number P21-1656_01 Rev A (hereafter referred to as the landscape proposals) does not meet the requirements of the condition and 'would not satisfy the requirements of Policies G1 or NE2 for protection and enhancement of landscape character and visual amenity within the Green Belt'. The information before me does not show that there is a policy G1 in the development plan that pertains to the visual amenity of the Green Belt. Nevertheless, there is a policy GB1 in the Bath and North East Somerset Local Plan 2011-2029, Placemaking Plan, July 2017 (PP) that would do so. Given that in their planning appeal statement, the appellant assumed that this was the policy to which the Council intended to refer, no party would be prejudiced if I take a similar approach.
6. I observed at my site visit that some planting had taken place, and the appellant states that the landscaping scheme has already been implemented. Nevertheless, I observed some differences between the number and position of trees and line of new hedgerow on site with those shown on the landscape proposals. I have made my decision in relation to the submitted landscape proposals.

Main Issues

7. The main issues are:

- Whether the proposals submitted address the requirements of condition 5 of planning permission 20/02480/FUL, and;
- If so, what the effect of the proposed hard and soft landscaping scheme would be on the landscape character and appearance of the area.

Reasons

Whether the proposals submitted address the requirements of condition 5

8. The appellant summarises¹ condition 5 as a generic condition typical of planning permissions requiring the finer detail of the proposed hard and soft landscaping to be submitted and agreed. I broadly agree with that description.
9. Amongst the requirements listed in condition 5 is one for a planting specification to include the numbers, size, species and positions of all new trees and shrubs. The appellant considers that the submitted landscape proposals fulfil that requirement² in part owing to the section entitled 'Planting Specification' included on the drawing. However, the section is prefaced by the statement that *'These guidelines are for planning purposes only to indicate the level of workmanship to be specified and do not constitute a detailed specification'*.
10. Ostensibly this would at least in part defeat the object of condition 5 in seeking to agree the finer details of a planting specification. It follows that such a caveat would undermine the certainty of the methodology and timing of the works contained within the sections relating to grass, tree planting and native hedge planting. Moreover, I am not persuaded that such guidelines would

¹ Paragraph 6.12.1 Appellant's Planning Appeal Statement

² Paragraph 6.14 Appellant's Planning Appeal Statement

amount to a definite programme of implementation in relation to the development that has been approved, which is a further requirement of condition 5.

11. My attention is drawn to two annotations on the landscape proposals. The first refers to a new hedgerow to be offset about 13m from the farmyard edge and extending to other areas of the farm. This is described as a mixed species hedgerow compliant with BN11 of the Countryside Stewardship Scheme for mid-tier hedgerows, and would consist of a minimum of 70% hazel, blackthorn and hawthorn. The second refers to 30no. new standard trees planted within the hedgerow line at about 20m apart to allow for canopy growth which would consist of native tree species.
12. Notwithstanding that these annotations provide some insight, they fail to provide sufficient precision such that it is clear as to the numbers, size, species and positions of all new trees and shrubs proposed pursuant to condition 5. Eight new standard trees are shown on the drawing, but the remainder of the 30 mentioned in the note are not shown. Whilst the covering letter dated 30 March 2022 refers to wider hedgerow and tree planting across Knoll Farm, the distinction between specific landscaping proposals pursued in relation to condition 5 and other measures is confused. Moreover, the species of the eight trees shown on drawing no, P21-1656_01 Rev A are not provided. Neither full species details, numbers or method of planting have been set out for the proposed new hedgerow.
13. Taking these factors together, I find that the submitted landscape proposals would not fully address the requirements of condition 5 as they lack necessary detail.

Effect on landscape character and appearance

14. A judgement on the merits of the hard and soft landscape scheme submitted pursuant to condition 5 is contingent upon it first meeting the requirements of the condition. This is self-evident as such an assessment relies upon having clarity in relation to the finer details in order to properly consider their effects. Given that the submitted landscape proposals fail to fully address the requirements of condition 5, this would inhibit the proper consideration of the effects upon landscape character and appearance irrespective that some planting has already been undertaken. In these circumstances, the attempted further consideration of such effects is rendered unnecessary as it would not be determinative.

Other Matters

15. The appellant contends that there is nothing in condition 5 that requires a particular scheme of mitigation to be included and points out that no mention is made in relation to the Green Belt. Had such a scheme been a requirement then the Council ought to have specified that within the condition wording as illustrated in condition 19 of appeal reference APP/C3105/W/21/3278536³.
16. I acknowledge that the wording of condition 5 is not as specific as the example given but it is not shown that such a detailed approach is obligatory in all cases. The more generic scope of the condition wording in this case would allow for greater flexibility as to the particular substance of the hard and soft

³ Appendix 4, Appellant's Planning Appeal Statement

landscaping scheme to be agreed, a quality often valued by developers when pursuing schemes. As already mentioned, this appeal procedure is not against the condition itself and consequently does not demand an assessment as to whether it meets the requisite tests in paragraph 56 of the National Planning Policy Framework.

17. Instead, the pertinent issues are those set out in the main issues above. This includes the respective merits of a hard and soft landscaping scheme provided the submitted details meet the information requirements of the condition. The reason given for the condition is likely to be of considerable relevance to that question.
18. Nevertheless, no explicit mention is made in relation to the Green Belt or policy GB1 of the PP in either the body of, or reasoning given for condition 5. The Council concedes⁴ that as policy GB1 was not cited in the reason for condition 5 it should not be considered. As such, this policy has had little bearing on my determination.
19. In addition, the appellant contends that it was unfair of the Council not to extend an opportunity to discuss or amend the submitted details prior to making their decision. However, the behaviour of the Council is a matter that lies outside the scope of this determination.

Conclusions

20. Amongst other matters, policy NE2 of the LP supports development where it conserves or enhances local landscape character and seeks to avoid or adequately mitigate any adverse impact on landscape. It is reasonably clear from the committee report⁵ for the planning permission that there were reservations expressed relating to various aspects of the development regarding its impact on the character and appearance of the landscape.
21. To an extent these were reinforced by the findings in the Landscape and Visual Impact Assessment⁶ accompanying the approved scheme, whereby moderate to adverse harm was identified in relation to some viewpoints from nearby public footpaths. Even so, the Council considered that the imposition of planning conditions would secure compliance with policy NE2 of the PP, amongst others. This is consistent with the reference to policy NE2 of the PP in both the reasoning for condition 5 and the decision letter for the landscape proposals that are the subject of this appeal.
22. I have found that the landscape proposals fail to address all the requirements of condition 5 and are therefore, unsatisfactory. In turn, this prevents a proper assessment of the effects on the landscape character and appearance of the area, which undermines a fundamental purpose for imposing the condition. Consequently, it is not shown that the landscape proposals submitted would ensure compliance with policy NE2 of the LP. Therefore, I conclude that the appeal should be dismissed.

Helen O'Connor

INSPECTOR

⁴ Paragraph 2.3 Council's Statement of Case

⁵ Appendix 2, Appellant's Planning Appeal Statement

⁶ Appendix 5, Appellant's Planning Appeal Statement