



Appeal Decision

Site visit made on 24 May 2023

by Paul Griffiths BSc(Hons) BArch IHBC

an Inspector appointed by the Secretary of State

Decision date: 2 August 2023

Appeal Ref: APP/H1840/W/22/3308308

Lower End Farm, Great Comberton, Pershore WR10 3DU

- 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 Rhys Collingwood against the decision of Wychavon District Council.
 - The application Ref.W/22/00611/FUL, dated 7 March 2022, was refused by notice dated 15 September 2022.
 - The application sought planning permission for the excavation of three ponds, a flood retention area and a ditch meander in two pasture fields without complying with a condition attached to planning permission Ref.21/02258, dated 13 December 2021.
 - The condition in dispute is No.3 which states that: (A) No development shall take place until a programme of archaeological work, including a Written Scheme of Investigation, has been submitted to and approved by the local planning authority in writing. The scheme shall include an assessment of significance and research questions; and: (1) the programme and methodology of site investigation and recording; (2) the programme for post investigation assessment; (3) provision to be made for analysis of the site investigation and recording; (4) provision to be made for publication and dissemination of the analysis and records of the site investigation; (5) provision to be made for archive deposition of the analysis and records of the site investigation; (6) nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation. (B) The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under part (A) of this condition and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.
 - The reason given for the condition is: In accordance with the requirements of the National Planning Policy Framework 2021 and Policies SWDP 6 and 24 of the South Worcestershire Development Plan.
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Decision

1. The appeal is allowed and planning permission is granted for the excavation of three ponds, a flood retention area and a ditch meander in two pasture fields at Lower End Farm, Great Comberton, Pershore WR10 3DU in accordance with the application Ref.W/22/00611/FUL, dated 7 March 2022, without compliance with condition No.3 previously imposed on planning permission Ref.21/02258, dated 13 December 2021, but subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.

- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 1:5000 Scale Location Plan; 1:1250 Scale Proposals Plan; and 1:100 Scale Sections.
- 3) The development hereby permitted shall be carried out in strict accordance with the Supplementary Ecological Information document by Rhys Collingwood dated 9 December 2021 and shall be retained as such thereafter. On completion of the ecological mitigation and enhancement works set out in that document, a Statement of Compliance shall be submitted to the local planning authority confirming that the specified biodiversity measures have been completed.
- 4) Written notice shall be given to the local planning authority twenty-one days before any development is commenced which will result in any excavation within the site. The developer shall afford access at all reasonable times to any archaeologist nominated by the local planning authority for the duration of the excavations, and shall allow that person to observe the excavations, and record items of interest and finds.

Main Issue

2. The National Planning Policy Framework (the Framework) tells us in paragraph 56 that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise, and reasonable in all other respects.
3. With that in mind, the main issue in this case is whether condition No.3, attached to the original grant of planning permission (Ref.21/02258, dated 13 December 2021), meets those tests for conditions, having regard to matters archaeological.

Reasons

4. The reason for the application of condition No.3 to the original grant of planning permission is, with reference to the decision notice, somewhat imprecise. However, put briefly, the underlying purpose was to ensure that any archaeological remains that might be encountered in the course of the development could be inspected, recorded, and assessed through the vehicle of a Written Scheme of Investigation.
5. In response to the condition, the appellant carried out a geo-physical survey that covered an area well beyond that where the excavations to form the three ponds, the flood retention area, and the ditch meander, would take place. This showed up the presence of a double-ditch enclosure, most likely dating from the Iron Age, to the south of the areas where the excavations are proposed.
6. I appreciate that the geo-physical survey is not a substitute for a proper archaeological evaluation/investigation but on the other hand, the results of that survey cannot be ignored. In my view, those results have changed the manner in which the scheme should be approached in archaeological terms.
7. When planning permission was originally granted, a precautionary approach to archaeology was appropriate given that little or no information on the subject had been submitted. In that context, the standard condition requiring a Written Scheme of Investigation and so forth was a reasonable imposition.

8. What is now before me is different, in that I have the benefit of the results of the geo-physical survey. This identifies the double-ditch enclosure, but it is some distance away from the areas of excavation proposed. Moreover, it is located at a level raised above the levels of the ponds, the meander, and the flood water retention area. I am able to conclude therefore that neither the excavations associated with the development proposed, or its subsequent operation, would affect the archaeological value, or significance, of the double-ditch enclosure.
9. The question I must then ask myself, it seems to me, is whether the excavations associated with the development proposed, or its subsequent operation, is likely to affect the archaeological value, or significance, of any *other* remains. While the geo-physical survey showed no trace of anything in the vicinity of the proposed ponds, the flood retention area, or the ditch meander, that is not conclusive. There may be something that the geo-physical survey did not detect that may be affected. It seems to me, given the way that Iron Age settlement worked, and the proximity of the development to the double-ditch enclosure, that there is some potential for there to be buried remains, possibly associated with the double-ditch enclosure, in these areas.
10. However, that possibility must be approached in a proportionate manner, and I do not consider it to be one strong enough to justify the time and expense of a full investigation using trenches, and a subsequent evaluation. The Council has suggested an alternative 'watching brief' condition and I consider this to be a more reasonable approach, in general terms, in the circumstances.
11. However, bearing in mind the nature of the possibilities involved, the wording of the alternative condition suggested by the Council is in my view somewhat onerous. I say that because it requires the appellant to nominate the qualified person who is to undertake the 'watching brief' for the approval of the local planning authority and, presumably, fund that person's presence, and the recording of any remains that are found. As the appellant has set out, a condition of this sort is likely to make the development, which despite the benefits it would undoubtedly bring forward is relatively modest in scale, uneconomic. To my mind that is unreasonable.
12. Having said that, I consider it to be necessary to attach a condition that requires a lighter touch 'watching brief'. That can be secured by a condition requiring the appellant to give the local planning authority notice of the commencement of excavation and to allow access for the duration of the excavations to an archaeologist nominated by the local planning authority for the purposes of observation and, should any be required, recording. To my mind, placing the onus on the local planning authority represents a more proportionate, and reasonable, approach in the circumstances.
13. On that overall basis, I intend to allow the appeal and grant planning permission for the proposal with a different archaeological condition, while retaining the other conditions, which are not in dispute, unaltered.

Paul Griffiths

INSPECTOR