



Appeal Decision

Site visit made on 18 July 2023

by C Rose BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 September 2023

Appeal Ref: APP/N1730/W/22/3313600

Land at Yateley Lakes, Reading Road, Yateley

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Nikolai Fenyk, Yateley Lakes Village Limited against the decision of Hart District Council.
 - The application Ref 22/01061/FUL, dated 6 May 2022, was refused by notice dated 10 August 2022.
 - The development proposed is erection of a 1.99 metre high palisade fence around the lakes.
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Decision

1. The appeal is allowed and planning permission is granted for erection of a 1.99 metre high palisade fence around the lakes at Land at Yateley Lakes, Reading Road, Yateley in accordance with the terms of the application, Ref 22/01061/FUL, dated 6 May 2022, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plan: Location Plan (1191-LDC-01 Rev A).
 - 3) The development hereby approved shall be carried out in accordance with the avoidance, mitigation and enhancement recommendations outlined within section 5 of the Preliminary Ecological Appraisal carried out by David Archer Associates (dated October 2022).

Applications for costs

2. An application for costs was made by Mr Nikolai Fenyk, Yateley Lakes Village Ltd against Hart District Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues in relation to the appeal are the effect:
 - on the green infrastructure network with particular regard to any fragmentation and severance of its functionality;
 - on the character and appearance of the area with particular regard to trees and hedges; and,
 - on habitats and protected species.

Reasons

Green Infrastructure Network

4. The site lies in the open countryside comprising of two lakes within a partly wooded setting separated by a causeway. The site forms part of a Ravine Environment and is located within a gap between settlements forming part of a wider area of Green Infrastructure (GI) and a designated Site of Importance for Nature Conservation. There is an area of Suitable Alternative Green Space broadly following the site boundary to the west, but outside of the site.
5. The appeal proposal seeks to construct a fence around the site to prevent public access into the land to reduce opportunities for crime and anti-social behaviour and in the interest of public safety.
6. Whilst the proposed fence would physically prevent public access, the appeal site is privately owned with limited evidence provided demonstrating any right of access for the public or dedicated public right of way crossing the site. In light of this, the sites function as private GI and its contribution to the wider network of GI and space would not be altered through the construction of the fencing. The sites contribution to human health through biodiversity, the landscape (I deal with these matters in more detail below) and decreasing the impact of climate change would not be changed. There would be no loss of use or associated benefit to the public as they do not have a right of access at present.
7. I appreciate that the Legal Agreement accompanying a planning permission granted by Hampshire County Council¹ requires the provision of a permissive path roughly along the southern side of the river broadly forming the northern boundary of the site. I also appreciate that the appeal proposal would result in the fencing crossing and restricting use of a path in two places. However, from the information before me, the requirements of the legal agreement only come into force when the associated use of the lakes within the appeal site for angling or canoeing commence. I have no evidence that these uses have commenced and there was no evidence of these uses taking place at the time of my site visit. In light of this, and as I have not been made aware of any current requirement for the permissive path to be provided, there is no public access within the site for the route of the proposed fencing to restrict.
8. Considering the lack of permitted public access to the appeal site, the proposal would not add to the fragmentation of the GI with regard to restricting the movement of people through it. The GI would be unchanged and remain physically linked to the remainder of the Ravine Environment and retain the green gap between settlements. There would therefore be no harmful loss of any GI, no severance from the remaining GI and no significant impact on the function of the network.
9. In conclusion on this matter, the development would not harm the green infrastructure network with particular regard to any fragmentation and severance of its functionality. As such, it would not conflict with Policy INF2 of the Hart Local Plan (Strategy and Sites) 2032 (April 2020) (LP) or with the National Planning Policy Framework (the Framework). Amongst other things, these seek to ensure that development will be supported provided it protects

¹ 07/02026/CMA

the green infrastructure, avoiding any loss, fragmentation or significant impact on the function of the network and conserving and enhancing the natural environment.

Character and Appearance

10. The proposed fence would be routed through trees and hedges and as a result there would be the potential for the fence to cause harm to the health of trees and hedges with resultant harm to the character and appearance of the area. The site is covered by a blanket Tree Preservation Order².
11. The Tree Survey and Assessment accompanying the application states that the majority of mature trees to the site are along the northern boundary where no fencing is proposed with the remainder of the trees on the site mainly immature, scrubby trees of no amenity value. It goes on to state that there would be minimal digging required spread out at several metre intervals between the trees.
12. The appellant references a 'fallback' position by means of a granted Lawful Development Certificate³ (LDC) within the appeal site for a 2-metre-high fence. The route of this fence roughly follows the line of the fence forming part of this appeal broadly to the sites eastern and southern boundaries. However, the appeal proposal does not comprise any fencing running along the northern boundary with a significant deviation to follow the broadly western site boundary. It is particularly relevant to note that the fence the subject of the LDC is approximately 100 metres longer than that proposed as part of the appeal proposal.
13. The principle established by the grant of the LDC could represent a genuine 'fallback' position. There is every prospect that the fencing forming part of the LDC would be constructed should this appeal fail. The appellant has already gone to the effort of submitting applications and an appeal which demonstrates a clear intent to construct a fence on the site. In addition, fencing has already been constructed on other parts of the site. The prospect of the 'fallback' being developed is therefore greater than theoretical.
14. In light of the fence the subject of the 'fallback' being 100 metres longer than that proposed as part of the appeal, running close to the northern boundary where the majority of protected trees are located, and given that there would be minimal digging to construct the fencing with the associated posts several metres apart, it is reasonable to assume that the 'fallback' would result in largely the same, or greater, impact upon trees and hedges on the site.
15. The fence forming part of the appeal would be partly screened by retained trees and hedges and is of a suitable design and height not too dissimilar to the existing fencing within the site.
16. In conclusion on this matter, the proposal would not have a harmful effect on the character and appearance of the area with regard to trees and hedges. As such, it would not conflict with Policy NBE2 and NBE9 of the LP or saved policy CON8 of the Hart Local Plan (Replacement) 1996-2006 (LPR) or with the Framework. Amongst other things, these seek to ensure that development proposals respect and wherever possible enhance the landscape, ensure no

² HDC336

³ 20/01572/LDC

adverse impact on trees, woodlands and other landscape features, achieve a high quality design incorporating any on-site landscape features such as trees and hedgerows, retain trees, woodland and landscape features, and conserve and enhance the natural environment.

Habitats and protected species

17. The Council has advised that the updated Preliminary Ecological Appraisal (PEA) accompanying the appeal confirms that the development can proceed with minimal impact to habitats and protected/notable species if the avoidance and mitigation measures outlined are followed. As a result, the Council no longer disputes reason for refusal 2. Based on the evidence before me, and subject to a condition to secure the avoidance and mitigation measures should I allow the appeal, I find no reason to take a different view to that of the Council on this matter.
18. Whilst the PEA does not address the impact upon deer, it is reasonable to assume that the 'fallback' would result in largely the same, or greater, impact upon any deer using the site. The PEA includes the overseeing of vegetation clearance and construction to ensure the protection of habitats and species.
19. I therefore conclude that the appeal proposal would not cause any greater harm to habitats and protected species than the 'fallback' position. As such, it would not conflict with Policy NBE4 of the LP, saved Policy CON7 of the LPR or with the Framework. Amongst other things, these seek to conserve and enhance biodiversity, not result in the loss or deterioration of habitats, ensure development does not have a significant adverse effect on nature conservation, and protects and enhance biodiversity.

Other Matters

20. I acknowledge that Condition 8 to planning permission reference 12/02195/MAJOR removes permitted development rights on part of the appeal site. However, this does not apply to the part of the site covered by the 'fallback' position and simply requires that within the area covered by the condition an application for planning permission be submitted for consideration before any fencing is erected.
21. Whilst there may be limited evidence accompanying the appeal demonstrating anti-social behaviour across the site, this is not required in light of the private ownership of the site, no public right of access, and given the lack of relevant planning policy requiring this. Similarly, there is no planning requirement for the appellant to employ a park/game keeper or provide life buoys/rings. As such, these matters are neutral in my consideration. Although the existing trees and hedges provide a barrier to access to the site in places, generally the wider site is accessible by foot.
22. I note that the fence would be of a permeable design to enable water to flow through it to minimise flood risk. It is noteworthy that the Council came to a similar conclusion in this regard.
23. The avoidance, mitigation and enhancement measures proposed will adequately ensure suitable construction at any time of the year. Securing suitable means of access for construction is a matter for the appellant.

24. Once constructed, the proposal would not result in any significant increase in traffic.

Conditions

25. I have had regard to the tests in the Framework in relation to conditions, and the planning conditions suggested by the Council, appellant, and Environment Agency. In addition to the standard time condition, it is necessary for a condition to confirm the approved plan in the interests of certainty.
26. A condition is necessary to secure the avoidance, mitigation and enhancement measures outlined in section 5 of the Preliminary Ecological Appraisal carried out by David Archer Associates (dated October 2022) in the interests of the protection and enhancement of ecology.
27. As the application is seeking permission for the construction of fencing only, with suitable avoidance, mitigation and enhancement measures secured by condition, and a 'fallback' in place, I do not find it reasonable to further condition the provision of a wider landscape and ecological management plan for the site as suggested by the Environment Agency.
28. In light of the permeable design of the fence raised off the ground with posts several metres apart, I do not find it reasonable to condition the submission of further plans of its design to prevent the collection of debris as suggested by the Environment Agency.

Conclusion

29. For the reasons given I conclude that the appeal should succeed.

C Rose

INSPECTOR