

Appeal Decisions

Site visit made on 5 September 2023

by A James BSc (Hons) MA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd November 2023

Appeal Ref: APP/W0340/W/22/3304951

Lake House, West Woodhay, Newbury RG20 0BU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr C Brown against the decision of West Berkshire Council.
 - The application Ref 21/02793/FUL, is dated 1 November 2021.
 - The development is installation of two ponds and retrospective permission for the retention of an existing pond.
-

Decision

1. The appeal is allowed and planning permission is granted for three ponds at Lake House, West Woodhay, Newbury RG20 0BU in accordance with the terms of the application, Ref 21/02793/FUL, dated 1 November 2021, subject to the conditions set out below:
 - 1) The development hereby permitted shall be retained in accordance with the following approved plans: 6038/PL01 Rev G: Site Location Plan; 6038/PL03 Rev A: Site Plan as Proposed; and, 6038/PL04 Rev. A: Site Sections as Existing & Proposed.
 - 2) Within 3 months from the date of this decision, details of a landscaping scheme shall be submitted to and approved in writing by the local planning authority. The details shall include schedules of plants/trees noting species, plant sizes, proposed numbers/densities and details of how they will be planted and protected. The landscaping/tree planting shall be carried out in accordance with the approved details, within the first planting and seeding season following the discharge of this condition. Any trees or plants which within a period of 5 years from the implementation of the landscaping scheme die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species.

Applications for costs

2. A cost application has been made by Mr C Brown against West Berkshire Council, which is the subject of a separate Decision.

Preliminary Matters

3. At the time of my site visit, all three ponds had been completed. The scheme is therefore retrospective, and I have determined the appeal on the same basis, amending the description of the development accordingly in my formal decision above. In the interests of precision, I have taken the site address from the appeal form.

4. During the course of the planning application process, a revised site location plan was submitted (Rev G). For the avoidance of doubt, I have taken this amended plan into account in the determination of this appeal.
5. The appellant has applied for planning permission for three ponds. The application form and appellant's statement are clear that the scheme does not seek consent for an access. I have therefore determined the appeal on this basis.

Background and Main Issues

6. The Council failed to determine the application within the prescribed period. Based on the evidence before me, the main issues are the effect of the development on:
 - the character and appearance of North Wessex Downs Area of Outstanding Natural Beauty (AONB);
 - surface and groundwater drainage; and,
 - biodiversity.

Character and appearance

7. The site lies within the AONB. Section 85 of the Countryside and Rights of Way Act 2000 (as amended) requires all relevant authorities to have regard to the purpose of conserving and enhancing the natural beauty of AONBs. The area is characterised by sporadic residential development, rolling agricultural land and areas of woodland. The appeal site includes 3 ponds, which are surrounded by grassland and clusters of trees.
8. Given that the ponds are surface and below ground features, they are not prominent in the wider landscape. Nevertheless, ponds are characteristic features within the AONB and I find that they conserve and enhance the landscape and scenic beauty of the AONB. The primary objective of the ponds is to enhance biodiversity, which is consistent with the objectives of the West Berkshire Core Strategy (2006 – 2026) Development Plan Document (CS) adopted July 2012, North Wessex Downs AONB Management Plan 2019 – 2024 (the AONB Management Plan) and the Framework. It was clear from my site visit that any spoil from the ponds has either been taken off site or disposed of in a sensitive way within the site and results in no harm to the character and appearance of the area.
9. For the reasons given above, I conclude that the development conserves and enhances the character and appearance of the AONB and would accord with Policies ADPP5, CS14 and CS19 of the CS. These policies among other matters seek to conserve and enhance the local distinctiveness and sense of place of the AONB and require that developments respond positively to the local context and respect identified landscape features and components of natural beauty.
10. The development also complies with Policy DE01 of the AONB Management Plan, which requires that new development conserves and enhances the natural beauty of the AONB. Furthermore, the development accords with the Framework, which requires that development is sympathetic to local character, including the surrounding landscape; that development protects and enhances valued landscapes; and that development conserves and enhances the landscape and scenic beauty of AONBs.

Drainage

11. The appeal site lies within an area of surface water flood risk. During the course of the application, the appellant submitted a hydrogeological report. The Lead Local Flood Authority (LLFA) considers that as the ponds are below ground, they are unlikely to increase flood risk off-site.
12. The ponds are sited away from the watercourse and are not physically connected to it. The hydrogeological report finds that the location of the ponds would not interfere with surface water flow routes towards the watercourse or adversely affect the recharge of the groundwater aquifer that supports water supply boreholes in the local area. There is no substantive evidence from the Council or third parties that there has been an issue with flooding, drainage or groundwater and borehole water supply since the ponds were constructed in the Autumn of 2022. Based on the evidence before me and my site visit, I have no reason to reach a contrary conclusion to the Council and LLFA on this matter.
13. For the reasons given above, I conclude that the development does not have a harmful impact on surface and groundwater drainage. The development accords with Policy CS16 of the CS, which seeks to minimise flood risk and not have a detrimental impact on the flow of fluvial and surface water.

Biodiversity

14. The appellant's Biodiversity Impact Assessment (BIA) states that the habitats that have been lost are lower in value than those created, which comprise of new waterbodies and species diverse grassland. The BIA concludes that the scheme would result in a biodiversity net gain of 44.06%. Although there is some suggestion that this figure does not include tree loss, subject to conditions, the Council does not raise any objections in this regard. Based on the evidence before me and my site visit, I have no reason to reach a contrary conclusion, particularly given that the primary objective of the ponds is to enhance biodiversity. I turn to the issue of conditions later in my decision.
15. For the reasons given above, I conclude that the development is not harmful to biodiversity. The development therefore complies with Policy CS17 of the CS, which seeks to protect and enhance biodiversity on site and achieve an overall net gain in biodiversity. The development also complies with the Framework, which requires that new development provides a net gain for biodiversity.

Other Matters

16. The ponds have already been constructed and the spoil has been disposed of. There is no evidence before me that construction traffic has caused any damage to the rural lanes. The ponds are not expected to generate any vehicular movements. Consequently, the ponds have no impact on the local highway network and are not harmful to highway safety.

Conditions

17. The development has been carried out and the standard time limit condition is therefore not required. In the interests of certainty, a condition specifying the approved plans is necessary. To ensure that biodiversity is enhanced in accordance with that proposed in the submission, a landscaping condition is required.

18. I have concluded that the ponds are not harmful and would enhance biodiversity, a condition requiring a LEMP is therefore not needed. A condition requiring the stopping up of the access track is not necessary to make the ponds acceptable.
19. As the works have already been completed and spoil disposed of, a Construction Environment Management Plan is not necessary. The LLFA recommends conditions in respect to the maintenance and operation of the ponds and health and safety risks associated with the depth of the water. The ponds are sited on an area of private, agricultural land. The appellant has a duty of care to those entering the land; a condition in respect of health and safety is therefore not necessary. Given my conclusions on drainage, there is no evidence that controlling the maintenance and operation of the ponds is required and in the public interest.

Conclusion

20. For the reasons given above, having regard to the development plan as a whole and all other relevant material considerations, I conclude that planning permission should be granted, subject to conditions.

A James

INSPECTOR