



Appeal Decision

Inquiry Held on 7 and 8 November 2023

Site visit made on 6 November 2023

by Mr Cullum Parker BA(Hons) PGCert MA FRGS MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 14 November 2023

Appeal Ref: APP/P0240/W/23/3325744

Land at Shenley Hill Country Park, Leighton Linlade

Easting 493406 Northing 227047

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (TCPA) against a refusal to grant planning permission.
 - The appeal is made by Ms Kate Groves of AWGeothermal Ltd against the decision of Central Bedfordshire Council.
 - The application Ref CB/22/04840/FULL, dated 8 December 2022, was refused by notice dated 20 April 2023.
 - The development proposed is described as '*Planning application for an ambient Ground Source Heat Pump (GSHP) network on land at the Shenley Hill Country Park, Leighton Linlade*'.
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Decision

1. The appeal is allowed and planning permission is granted for an ambient Ground Source Heat Pump (GSHP) network at Land at Shenley Hill Country Park, Leighton Linlade in accordance with the terms of the application, Ref CB/22/04840/FULL, dated 8 December 2022, subject to the conditions set out in Appendix A.

Procedural Matters

2. A Case Management Conference (CMC) was held on Wednesday 20 September 2023 relating to this appeal, and also an appeal under Sections 106A and B of the TCPA (reference 3320249). The latter appeal is the subject of a separate decision letter, albeit the two Inquiries ran concurrently.
3. At the CMC I set out clear instructions to the main parties in terms of them submitting 'position statements', an agreed Statement of Common Ground and other related documents. These were submitted in line with a timetable set out, and I have taken these into account in considering the proposal here.
4. It was also agreed at the CMC that the Inquiry would principally take the form of round table discussions led by the Inspector with a topic-based approach founded upon the submitted position statements.
5. I undertook an unaccompanied site inspection on Monday 6 November 2023. At the Inquiry neither main party requested a further site inspection; either during the Inquiry or after its close.

6. At the Inquiry, the main parties sought my position on the acceptance of drawing numbered 3917-4-6-DJA2-S5-P1¹. I considered its acceptance in light of the positions of the main parties (neither whom objected), the fact that it had been in the public domain prior to the Inquiry opening, that notification of the Inquiry had taken place, and that it represented a minor change to the scheme in way that would not prejudice the interests of any party. Considering the '*Wheatcroft Principles*' I found that this drawing could be taken into account in this instance and proceeded on this basis.

Application for costs

7. At the Inquiry an application for costs was made by AWGeothermal Ltd against Central Bedfordshire Council. This application is the subject of a separate Decision.

Background and Main Issues

8. At the opening of the Inquiry, I set out that the main issues were still those set out in the CMC. Namely:
- (i) Whether any potential risks to groundwater can be mitigated, and;
 - (ii) The effect of the proposal on the landscaping of the site and effect on the character and appearance of the area, and;
 - (iii) The effect of the proposed development on the local highway network.
9. The local planning authority refused permission for three reasons (which have informed the main issues above). In the Council's Position Statement (dated September 2023), it indicated that planning conditions could be imposed and/or obligations secured to overcome these reasons for refusal. Furthermore, they have suggested conditions which would overcome the objections of Natural England. At the point of writing the Position Statement such conditions and/or the wording of any obligations had not yet been agreed between the main parties.
10. Nonetheless, it is common ground between the main parties, set out in paragraphs 10.8 to 10.22 of the Statement of Common Ground dated 13 October 2023, that the reasons for refusal could be overcome in this manner. I see no reason to disagree with this logical approach in this instance and have therefore focussed my considerations on the acceptability or otherwise of the suggested conditions in addressing the main issues.

Reasons

11. The proposal would result in the creation of a closed loop ambient GSHP system. This would be filled with thermal fluid such as *Thermax DTX*, which the Appellant's evidence² indicates is a non-toxic and biodegradable product. I heard at the Inquiry from Mr Krol that its properties mean that should any leaks occur, it would degrade by approximately 90% within 10 days. It would be situated under a future Country Park, the freehold of which would be transferred to the Local Planning Authority as secured by means of separate legal agreement.

¹ Document 6

² See Appendix II of Mr Krol's Appeal Statement

Conditions

12. At the Inquiry, the main parties worked together to narrow the issues further. This resulted in the creation of a consolidated list of 18 suggested conditions³. Within this document remained conditions to which the main parties still disagreed. I have considered the suggested conditions in light of Paragraph 56 of the *National Planning Policy Framework* (the Framework) and the national Planning Practice Guidance (the Guidance) and the use of planning conditions.
13. A condition requiring three years for commencement is reasonable to provide certainty. Similarly, a condition requiring the development to be carried out in accordance with the submitted drawings is necessary and reasonable for the avoidance of doubt and to provide certainty.
14. A condition requiring the submission and agreement of a Preliminary Risk Assessment is necessary in order to reduce and minimise any risks to the local environment. A further condition relating to the finding of any contamination not previously identified on site, and the submission of a remediation strategy and an updated Ecological Impact Assessment is necessary and precise in order to ensure the development does not contribute to or is put at risk from unacceptable levels of water pollution or other such contaminants in line with Paragraph 174 of the Framework.
15. A condition has been suggested requiring 'sign off' from the Environment Agency for drilling methods. However, the Appellant pointed out that if a permit is required for such works, then there is an appropriate regime that would consider that matter. As such it is not necessary to duplicate any such controls here. Moreover, they point to the EA's own guidance which indicates that a permit is not required for this type of GSHP. On the basis of the evidence before me, I see no reason not to concur with that position. Accordingly, I have not imposed such a condition in this case.
16. A condition requiring the use of a 'closed loop' system and a thermal fluid such as *Thermox* is necessary to ensure that in the remote chance that a leak does occur, the impact on the local environment is minimised through the use of a non-toxic and biodegradable thermal fluid. Furthermore, the condition can also incorporate that the works are carried out with the MCS Specification for Ground Source Closed Loop Drilling document, which whilst not a British Standard, is recognised within the industry as a way of minimising risks to the local environment. As such, this part of the condition is related to the development proposed and reasonable.
17. A condition to require the broad location of the boreholes, pipework, and manifolds, whilst safeguarding the water main and other services, is submitted to the Local Planning Authority is necessary and reasonable in order to ensure that the location of such infrastructure is known and to assist in the long term use of both the Country Park and the GSHP infrastructure underneath it. The Council have suggested that all manifolds should be located in footpaths and cycle paths. However, an inclusion of words to that effect here would be onerous given that the installer of the GSHP network will be aware of the intending surface use of the land as a Country Park.

³ Document 4

18. The suggested condition requiring the submission of a further Ecological Impact Assessment is not necessary as this is covered by the PRA condition and the CEMP condition considered above and below.
19. A condition requiring noise levels not exceeding background levels is necessary and reasonable to ensure that users of the proposed Country Park and local residents are not affected by such noise pollution.
20. The submission and agreement of a Construction Environment Management Plan (CEMP), including the submission of an up-to-date Ecological Impact Assessment, and various other measures such as vehicle parking and soil management, is necessary, precise and reasonable in order to ensure that the living conditions of nearby dwellings are protected, to maintain highway safety, and to minimise the risk to local ecology arising from the development during the construction phase.
21. The submission of a Ground Source Heat Pump Array Management Plan secured by condition is necessary and reasonable in order to protect the amenity of nearby residents and in the interests of safety of all site users.
22. A condition requiring a tree survey and submission of Arboricultural Implications Assessment, Arboricultural Method Statement and Tree Protection Plan is necessary in order to safeguard trees within and/or close to the appeal site.
23. Through the use of the conditions above, I find that the proposal would address the three main issues identified namely; the risks to groundwater can be mitigated, there would not be an adverse effect on the landscaping of the site nor on the character and appearance of the area, and the proposal would not have a negative effect on the local highway network.

Planning Obligations

24. The Appellant has submitted a unilateral undertaking (or legal agreement) under s106 TCPA dated 9th November 2023. Put simply, in Schedule 1 the owner covenants with the Council to maintain the development once installed, to cause as little damage as possible to occupiers of the property, to remedy any damage to the property, to compensate the Council for any losses and damages in connection with the installation, use and/or maintenance of the installation and to comply with all laws governing the installation.
25. The obligation in this case is necessary in planning terms in order to ensure that the GSHP infrastructure, which would mainly be situated below the intended Country Park, is maintained and that any damage to the Country Park arising from the installation or maintenance of the GSHP infrastructure is made good. It is directly related to the development proposed, being an ambient GSHP network. It is also fairly and reasonably related in scale and kind to the development for which permission is sought. It does not, for example, seek to obligate the owner beyond the scope of potential damages arising to the Country Park from the installation and/or maintenance of the GSHP network sought. In achieving these, I find that the obligation secured by means of the unilateral undertaking would comply with CIL Regulation 122.
26. Furthermore, I find that the unilateral undertaking constitutes a reason for granting permission in this instance. It would ensure that the GSHP installation

sought is maintained over its operating life and would ensure that this falls upon the owner of the GSHP network and not the Local Planning Authority.

27. The Council raised a number of concerns at the Inquiry to the effect that they, as a public body, would be left to maintain the GSHP network were the operating company to cease operating. This included suggesting the use of a bond. However, there was no evidence put before me that suggests that the Appellant's operating group is at any greater risk of ceasing to operate than any other operating in a free-market economy. I acknowledge the Council's concerns but find no basis to agree with them in this case.
28. The obligation therefore is a reason for granting planning permission and weighs modestly in favour of it, thus complying with Clause 2.4 of the undertaking.

Conclusion

29. The proposed development would accord with the adopted development plan for the area and there are no material considerations which indicate a decision otherwise than in accordance with it. The proposal would also accord with national planning policy in the form of the Framework and other government policy documents which seek to support the transition to a low carbon and sustainable future. Indeed, the proposal would enable local residents to enjoy the Country Park above ground whilst also benefitting the local community and wider area from renewable energy creation from below it.
30. For the reasons given above, I conclude that the appeal should be allowed.

C Parker

INSPECTOR

Appendix A - Conditions imposed on 3325744

1. The development hereby permitted shall begin not later than three years from the date of this permission.
2. No development hereby permitted shall take place until a Preliminary Risk Assessment (PRA) has been submitted to and agreed in writing with the Local Planning Authority.

The PRA will include the following components:

- (a) Identification of all previous uses;
- (b) Identification of all potential contaminants associated with those uses;
- (c) A conceptual model of the site indicating sources, pathways and receptors; and,
- (d) Identification of any potentially unacceptable risks arising from contamination at the site.

Should the PRA identify any potentially unacceptable risks under (d) above, a site investigation shall be undertaken to provide a detailed assessment of risk to all receptors that may be affected, including those off-site, and thereafter a remediation strategy prepared as giving full details of the remediation measures required and how they are to be undertaken.

The remediation shall be carried out as approved and a verification plan provided on completion, along with any requirements for longer term monitoring and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these components require the written consent of the Local Planning Authority. The scheme shall be implemented as approved.

3. If during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until:
 - (a) a remediation strategy, detailing how this contamination will be dealt with, and
 - (b) an updated Ecological Impact Assessment considering the risk to all receptors, has been submitted to, and approved in writing by, the local planning authority. The remediation strategy shall be implemented as approved.
4. The development hereby permitted shall be carried out by way of a 'closed loop' system only and the thermal fluid used shall be *Thermox DTX* or equivalent non-toxic substance, and no other thermal fluid, unless agreed in writing with the Local Planning Authority. The drilling of the boreholes shall be undertaken in accordance with the 'Vertical Borehole Standard' contained within The MCS Specification for Ground Source Closed-loop Drilling document and/or any replacement or updated version of such document.

5. Prior to any phase of the development being brought into use, written details will be provided to the Local Planning Authority of the location of the boreholes, locations of pipework, manifolds, etcetera, and of the management system including monitoring and leak detection. The boreholes shall be located in general accordance with drawing number 3197-4-6-DJA2-S5-P1, whilst ensuring both the water main and any other services provided under the location of the appeal site, are safeguarded.
6. Any noise resulting from the operation of any external plant, machinery and equipment shall not exceed the existing background noise level inclusive of any penalty for tonal, impulsive or other distinctive acoustic characteristics when measured or calculated according to the provisions of BS4142:2014 and/or any equivalent or replacement Standard.
7. No development hereby permitted shall commence until a Construction Environment Management Plan (CEMP) has been submitted to, and approved in writing by, the Local Planning Authority. The CEMP shall include, where necessary, details relating to:
 - (a) Construction access and turning details including temporary turning;
 - (b) Parking of vehicles;
 - (c) Loading and unloading of plant and materials used in the development
 - (d) Storage of plant and materials used in the development;
 - (e) The erection and maintenance of security hoarding / scaffolding;
 - (f) Wheel washing facilities;
 - (g) Dust suppression measures;
 - (h) Measures on site to control the deposition of dirt / mud on surrounding roads during the development;
 - (i) Footpath/footway/cycleway or road closures needed during the development period;
 - (j) Traffic management needed during the development period;
 - (k) Times, routes and means of access and egress for construction traffic and delivery vehicles (including the import of materials and the removal of waste from the site) during the development of the site, including swept path diagrams and any temporary surfacing required;
 - (l) Construction operation hours;
 - (m) Timescales and governance for the removal of the temporary construction parking / compound, access works and reinstatement works;
 - (n) Timescales and governance for the reinstatement of any damage caused to the Country Park;
 - (o) soil management including soil compaction / mediation and reinstatement, and;
 - (p) up-to-date Ecological Impact Assessment and protected species surveys, including measures to safeguard the natural environment protected species during construction.

The approved CEMP associated with the development of the site shall be adhered to throughout the development process.

8. Prior to any part of the development hereby permitted being brought into use, a Ground Source Heat Pump Array Management Plan shall be submitted to, and agreed in writing by, the Local Planning Authority. The Management Plan shall include details related to:
 - (a) Access, egress and turning facilities for vehicles associated with maintenance, servicing, renewal, or removal works.
 - (b) Track mats, or other measures proposed to protect the Country Park from damage.
 - (c) Timescales and governance for the reinstatement of any damage caused to the Country Park.
 - (d) Any temporary site management, fencing, or other measures to separate users of the Country Park from machinery / equipment.
 - (e) Notice and agreement periods.

The approved Management Plan associated with the development of the site shall be adhered to throughout the lifetime of the development.

9. No development hereby permitted shall commence until a tree survey carried out in accordance with BS5837 2012, an Arboricultural Implications Assessment, Arboricultural Method Statement and Tree Protection Plan (or equivalent or replacement Standard), has been submitted to and approved in writing by the Local Planning Authority. The development shall only be carried out in full accordance with the approved details.
10. The development hereby permitted shall not be carried out except in broad accordance with the details shown on the submitted plan, numbers: 6935.002 Rev D; and 3917-4-6-DJA2-S5-P1.

****** END OF CONDITIONS ******

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Ed Grant
of Cornerstone Barristers

Instructed by Pathfinder Legal Services Ltd

He/She called

Benjamin Tracy, BSc(Hons) MA
Thomas Mead, BSc(Hons) MA
MRTPI

Principal Planning Officer
Senior Planning Officer

Peter Cook, BSc MRICS
Carol Newell, BA(Hons) DipLA
CMLI

Commercial Estates Manager (Assets)
Landscape Officer

Jethro Punter, HND MSc MCIHT

Team Leader Highways Development
Management

FOR THE APPELLANT:

Mr David Elvin KC
Of Landmark Chambers

Instructed by the Appellants

He/She called

Mr Bob Williams
Mrs Kate Groves
Mr Adam Krol
Mr Chris Groves
Mr Mark Schull
Mrs Jo Unsworth
Mr Tom Ryan
Mr Paul Gibbs

AW Group Ltd
AW Group Ltd
AWGeothermal Ltd
Gunnercooke LLP
Arrow Planning
Savills Planning
Savills Planning
David Jarvis Associates

DOCUMENTS

- 1 List of appearances for Central Bedfordshire Council
- 2 Opening Statement on behalf of Central Bedfordshire Council
- 3 Email from the Environment Agency dated 7 November 2023 at 14:34 confirming position on suggested conditions
- 4 Consolidated list of suggested conditions
- 5 Late email from local resident
- 6 Drawing 3917-4-6-DJA2-S5-P1
- 7 Highways Representation 3 November 2023
- 8 Environment Agency 3 November 2023
- 9 Natural England 6 November 2023