



Appeal Decision

Site visit made on 23 January 2024

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 January 2024

Appeal Ref: APP/X0360/W/23/3324184

1 Hill House Cottages, Milley Lane, Hare Hatch RG10 9TH

- 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 Daniel Nash against the decision of Wokingham Borough Council.
 - The application Ref 223239, dated 28 October 2022, was refused by notice dated 16 December 2022.
 - The development proposed is landscaping work to amenity/garden land.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. From the submissions, it is clear the scheme includes the infilling of indentations in ground levels on the appeal site. The submitted drawing titled "Landscaping Works – Site and Landscape Plan" splits the appeal site into 2 separate parts. The northern element is called The Dip and the plan shows this area has already been infilled ready for final levelling. On my visit I saw that this area has been filled to roughly correspond with the ground levels on the adjacent land. The infilling of the southern part of the site referred to as "former pond" has not commenced.
3. On 19 December 2023, a revised National Planning Policy Framework was published. There is no need to invite further comments from the Council or the appellant on the revisions as they do not affect policies pertinent to this appeal.

Main Issue

4. The main issue is the effect on great crested newts (GCNs).

Reasons

5. The Conservation of Habitats and Species Regulations 2017 (as amended) impose a duty on me to consider whether European Protected Species would be affected by the development and whether associated mitigation measures would be effective. GCNs are so protected.
6. Policy CP3 of the Wokingham Borough Core Strategy 2010 (CS) allows development that maintains the ability of a site to support protected species. Under CS policy CP7, development that may harm species of importance will only be permitted if mitigation to prevent damaging impacts or appropriate compensation measures are provided. Paragraph 99 of the Office of the Deputy Prime Minister Circular 06/2005 states it is essential that the presence or

- otherwise of protected species, and the extent they may be affected by a proposal, is established before planning permission is granted.
7. I am advised the site lies within 150m of an identified GCN breeding pond. It is also in an area where the habitat is highly suitable for GCNs with appropriate terrestrial links to 12 local ponds. These factors indicate that GCNs may be present on the site.
 8. Moreover, the depressions on the plot itself have only partly been infilled. The appellant suggests that a pond on the site has dried up over recent years. However, I saw a pool of water that covered most of the southern part of the site and a small pond on The Dip. My visit followed a period of wet weather but even so it is clear the site sometimes holds water. This is also borne out by the presence of plant species that are suited to wet conditions. The evidence of standing water indicates the site may be used by GCNs as a breeding location.
 9. The appellant has provided a letter from consultant ecologists, Derek Finnie Associates, which describes the site as observed on 13 June 2022. It is evident that at this time the southern part of the site was dry. A small area of open water on The Dip was deemed to be unsuitable to support breeding amphibians. In addition, the appellant has submitted an environmental DNA (eDNA) analysis report of pond water samples taken from the site. The eDNA test results found no evidence of GCNs.
 10. However, it is unclear as to whether the samples tested were of water taken only from the small pond on the northern part of the site, particularly as the southern part of the plot is described as being dry in Derek Finnie Associates' earlier letter. If samples from the southern pool were tested, it seems unlikely these would have been taken from the whole of the perimeter of the pond at its greatest extent due to the lack of water it contained at the time. The uncertainty on these matters raises doubt on the claim that the eDNA results prove the southern water body is of negligible value to breeding GCNs.
 11. In any event, the potential for the site to support GCNs lies with its terrestrial habitat as well as its ponds. The development has and would destroy vegetation and refugia on land that could support GCNs and where there is a significant likelihood of the species being present. The Derek Finnie Associates' letter states the land surrounding the site is of little value to amphibians but there is no explanation as to why this is the case. Also, there is no evidence to show a search for GCNs on the site has been carried out.
 12. The proposal to provide wildflower planting and fruit trees after completion of the earthworks could enhance the biodiversity value of the plot. However, I am not satisfied such measures would provide suitable mitigation or compensation for harm to GCNs in the absence of a clear understanding on the extent the site is being used by the species. In light of paragraph 99 of the Office of Deputy Prime Minister Circular 05/2006, the mitigation issue could not be addressed through the imposition of a planning condition.
 13. As such, I conclude there is insufficient information to show the development has avoided or would avoid a harmful effect on GCNs. In these regards it would go against CS policy CP3. Furthermore, it has not been shown that any harm caused to GCNs could be mitigated against or compensated for. Therefore, the development does not and would not accord with CS policy CP7 and policy TB23 of the Wokingham Borough Managing Development Delivery Local Plan

2014. Also, there is insufficient information before me to carry out my regulatory duty to consider whether protected species would be harmed by the development and if so, whether mitigation measures would be effective.

Other Considerations

14. I agree with the main parties that the scheme would not be inappropriate development in the Green Belt. Acceptability in these regards is a neutral factor in my assessment.
15. The nearby Hill House is a listed building and Hill House Cottages are described by the Council as non-designated heritage assets. These gain their significance by virtue of their age and architectural interest. The site is seen with these buildings and so the development would affect their settings. However, the groundworks would not obstruct views of the properties and they are compatible with the semi-rural feel of the location. As such, the development does not and would not harm the significance of the heritage assets.
16. The scheme would reduce the likelihood of stagnant water collecting in the depressions. However, the site is away from the nearest dwellings and there is little evidence to suggest it is the source of smells that cause unacceptable living conditions at these residences. Accordingly, this factor attracts no more than limited weight in my assessment.
17. The filling in of The Dip and proposed filling in of the southern part of the site would remove a potential hazard of people falling into the depressions and into any water being held. This includes children who may play on the surrounding land. In these regards, the development would be in the best interests of children. This is a primary consideration in my assessment of the appeal.
18. At the same time, there is little evidence to show that alternatives to the development have been considered that would retain the existing habitat and also prevent falling accidents from occurring. For example, it is unclear why access to the site could not be restricted by fencing. Moreover, the sizeable garden area provides plenty of scope for play away from the appeal site. Therefore, the need to prevent children from gaining access to the site does not significantly restrict the potential for children's outdoor recreation.
19. Within this context, I find the overall benefits of the scheme are of insufficient weight to justify granting planning permission contrary to the development plan policies that prevent harm to protected species. The appellant has asked me to consider issuing a split decision so that planning permission is granted for the works already carried out on The Dip. However, the evidence fails to show that this element of the scheme has avoided a harmful effect on GCNs or habitat that is suitable for the species. Also, it is unclear how the works carried out may have affected the levels and quality of water on the southern part of the site and so its suitability for breeding amphibians. Therefore, a split decision as suggested would not be appropriate.

Conclusion

20. For the reasons given above I conclude the appeal should be dismissed.

Jonathan Edwards

INSPECTOR