



Appeal Decision

Site visit made on 9 January 2024

by David Reed BSc DipTP DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 February 2024

Appeal Ref: APP/F2605/W/23/3320656

Land adj Starbucks, A11 Southbound, Besthorpe, Norfolk NR17 2PU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Ms Rosanna Wiseman against the decision of Breckland District Council.
 - The application Ref 3PL/2022/1364/F, dated 30 November 2022, was approved on 23 March 2023 and planning permission was granted subject to conditions.
 - The development permitted is the change of use from an agricultural field to a dog walking field with the retention of crop cricket bat willow trees and associated parking and footpath.
 - The conditions in dispute are Nos 3, 5 & 7 which state that:
 - 3. Prior to the first use of the dog walking field hereby approved, a scheme demonstrating how net gains for biodiversity are being secured as part of the development, shall be submitted to and approved in writing by the Local Planning Authority. This would need to include the lifting and replanting of the two willow trees lost to the proposed car park. The development shall be carried out in accordance with the approved details, prior to the first use of the development.
 - 5. No trees or hedges shall be cut down, uprooted, destroyed, lopped or topped, other than the two willow proposed to be removed to make way for the proposed hardstanding, and in accordance with the approved plans and particulars, without the previous written approval of the Local Planning Authority. Any trees or hedges removed without consent shall be replaced during the next planting season November/March with trees of such size and species as agreed in writing with the Local Planning Authority.
 - 7. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order) (with or without modification), no fences, gates, walls or other means of enclosure as defined within Class A of Part 2 of Schedule 2 of that Order shall be carried out on the land unless an appropriate planning application is first submitted to and approved in writing by the Local Planning Authority.
 - The reasons given for the conditions are:
 - 3. To ensure the retention of significant trees and a net gain in biodiversity and to mitigate for the loss of trees on site, in accordance with Policy ENV02 of the Breckland Local Plan (adopted 2019).
 - 5. To ensure that the trees and hedges are retained in the interests of the visual amenities of the area and the satisfactory appearance of the development in accordance with Policy ENV06 of the Breckland Local Plan (adopted 2019).
 - 7. In the interests of the satisfactory appearance of the development and in accordance with Policy COM3 of the Breckland Local Plan (adopted 2019), and to ensure Highways Safety in accordance with Policies TR01 and TR02 of the Breckland Local Plan (adopted 2019).
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Decision

1. The appeal is allowed and the conditions attached to planning permission Ref 3PL/2022/1364/F dated 23 March 2023 are varied and supplemented as follows:
 - i) Condition no. 3 is reworded to state: Prior to the first use of the dog walking field hereby approved a scheme to deliver net gains for biodiversity as part of the development shall be implemented in accordance with details to be submitted to and approved in writing by the local planning authority. The development shall then be carried out in accordance with the approved details prior to the first use of the development.
 - ii) Condition no. 5 is reworded to state: Other than crop trees, no trees or hedges shall be cut down, uprooted, destroyed, lopped or topped, other than in accordance with the approved plans and particulars, without the previous written approval of the local planning authority. Other than crop trees, any trees or hedges removed without consent shall be replaced during the next planting season November/March with trees or shrubs of such size and species as are agreed in writing by the local planning authority.
 - iii) Condition no. 7 is retained unchanged.
 - iv) A new condition no. 8 is attached as follows: Prior to the first use of the dog walking field hereby approved the deer fencing, reed fencing screen and gates shall be erected as shown on the approved plans and shall be maintained in a sound and effective form throughout the period of use as a dog walking field.
 - v) A new condition no 9 is attached as follows: Within three months of the cessation of the use as a dog walking field the deer fencing, reed fencing screen and gates around the site shall be removed in accordance with details to be submitted to and approved in writing by the local planning authority.

Application for costs

2. An application for costs was made by Ms Rosanna Wiseman against Breckland District Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue is whether condition nos 3, 5 and 7 are necessary, relevant to the development, precise and reasonable in all other respects, and whether any other conditions are necessary to make the development acceptable.

Reasons

4. In March 2023 planning permission for the change of use from an agricultural field to a dog walking field with the retention of crop cricket bat willow trees was granted on the site adjacent to the A11 next to the southbound services between Wymondham and Attleborough. The officer report concluded that the proposal would complement the existing service area, respect the character of the countryside, not prejudice highway safety and would include satisfactory

parking arrangements. Amongst several conditions which were attached, three are disputed, nos 3, 5 and 7.

Condition No 3

5. Condition no 3 requires, prior to first use of the site, approval of a scheme to deliver a net gain for biodiversity which 'would need to include the lifting and replanting of the two willow trees lost to the proposed car park'. The appellant argues that this is effectively a pre-commencement condition and that agreement to impose it was not given as required by the relevant regulations¹. However, this is a matter for the courts as opposed to an appeal which relates to the merits of the condition.
6. In terms of its merits, the appellant considers the condition to be unnecessary and not reasonable in relation to the development. The appeal site – a group of three fields alongside the A11 – contains rough grassland and a regular grid of medium sized cricket bat willow trees which are a commercial crop and due to be felled in about 15 years time. The fields themselves are surrounded by hedgerows with trees. Two of the willow trees need to be removed to lay out the car parking area and lifting and replanting these was suggested by the Council's tree and countryside consultant. The request was then included as a positive requirement in the condition.
7. The practicality of lifting and replanting is unclear but in any event the reason for the condition is to secure a biodiversity net gain and a scheme to achieve this should be matter of negotiation as it could be done in many ways. The lifting and replanting of the trees is not essential to improving biodiversity on the site and the requirement is thus unreasonably prescriptive and should be deleted. However, apart from this, the condition is necessary and reasonable to ensure compliance with Policy ENV02 of the Breckland Local Plan 2019 which requires all development to demonstrate how net gains for biodiversity are being secured.
8. The appellant's final comments appear to accept this and include additional plans showing potential biodiversity enhancements which may satisfy the condition. However, the discharge of the condition is a matter for the Council not this appeal.

Condition No 5

9. Condition no 5 is a fairly common condition seeking to protect the existing trees and hedgerows on the site and to require their replanting if lost. The issue in this case is that the wording includes the cricket bat willow trees which are a commercial crop of trees involving management whilst growing and felling in due course. This restriction is unreasonable as lopping and topping may be necessary during the growth phase and the decision as to whether the crop trees are replanted is a commercial one to be taken at the time of felling. The condition should therefore be revised to exclude the crop trees. However, apart from this, the condition is necessary and reasonable to protect the hedgerows and trees around the boundaries of the three fields as these are important in the wider landscape.

¹ The Town and Country Planning (Pre-commencement Conditions) Regulations 2018.

Condition No 7

10. Condition no 7 removes permitted development rights to erect further fencing, gates or means of enclosure without planning permission. The scheme involves the erection of post and wire deer fencing about 1.83 m high around the periphery of the site and between the fields, with the fencing alongside the A11 also including a reed fencing screen to prevent dogs escaping onto the road. Whilst these details are approved as part of the planning permission, the needs of the scheme may vary over time and adaptations may be required. Given the impact of the fencing on the character of the countryside and the need for security alongside the A11 it is important that any future alterations to the fencing or additional fencing is controlled. Condition no 7 which requires any such changes to be approved in advance is therefore necessary and reasonable in the particular circumstances of this case.

Additional conditions

11. Following consultation with the parties, two additional conditions are necessary to make the development acceptable. In view of the need to secure the site a condition is necessary to ensure the deer fencing, reed fencing screen and gates are erected as approved prior to first use of the dog walking site and, equally importantly, maintained in a sound and effective form throughout the period of use. Secondly, whilst screened to some extent, the tall boundary fencing and gates will have a significant visual impact on the character of the countryside which would not be justified in the absence of the dog walking use. The fencing and gates should therefore be removed on cessation of the use and three months is considered sufficient for this purpose.

Conclusion

12. For these reasons conditions 3 and 5 should be revised as set out above to ensure they are necessary, relevant to the development, precise and reasonable in all other respects. Condition no 7 should be retained unchanged and two further conditions 8 and 9 should be attached as these are necessary to make the development acceptable.
13. Having regard to the above the appeal should be allowed.

David Reed

INSPECTOR