



Appeal Decision

Site visit made on 4 January 2024

by J Downs BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 February 2024

Appeal Ref: APP/B2002/W/23/3321184

Land at Roundhill and Fairfield Plantations, Hatcliffe DN37 0SN

- 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 Dan Brown of Lincolnshire Flow against the decision of North East Lincolnshire Council.
 - The application Ref DM/0240/21/FUL, dated 4 March 2021, was refused by notice dated 13 December 2022.
 - The development proposed is mountain bike trails area with proposed associated landscaping and parking.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant has indicated that they agree to the amended description used by the Council in their decision notice. I have amended the description of development to remove references to it being a retrospective application as this does not describe development and to remove other extraneous wording. At my site visit, I observed that the trails are in place, however the parking area has not been provided. I have assessed the proposed development on the basis of what I observed with respect to the trails area and as shown on the plans for the parking and landscaping.
3. On 22 November 2023 all designated Areas of Outstanding Natural Beauty (AONB) in England and Wales became National Landscapes. The legal designation and policy status of AONBs are unchanged, but I have replaced references, including those in policy and guidance, to the AONB with National Landscape (NL) in my decision to reflect this change.
4. On 19 December 2023, a revised National Planning Policy Framework (the Framework) was published. Those parts of the Framework most relevant to this appeal have not been materially amended. As a result, I consider that there is no requirement for me to seek further submissions and I am satisfied that no party's interests have been prejudiced by my taking this approach. I will refer to the updated paragraph numbers in this decision.

Main Issues

5. The main issues are the effect of the proposed development on:
 - the character and appearance of the area with respect to the landscape character of the Lincolnshire Wolds NL including its geological interest;

- biodiversity and protected species; and
- highway safety.

Reasons

Landscape Character

6. The site falls within the Lincolnshire Wolds NL which is designated for the purposes of conserving and enhancing natural beauty and section 85(1) of the Countryside and Rights of Way Act 2000 (CRoW) places a duty on me to have regard to these purposes. This duty is reflected in the policies of the Framework. Paragraph 182 confirms that great weight should be given to conserving and enhancing landscape and scenic beauty of the NL, and that the scale and extent of development should be limited.
7. The Management Plan 2018-2023 (MP) for the NL identifies that the chalk landscape has been extensively modified by glaciations. This has given rise to steep-sided and open-ended combs such as the Round Hill Valley Local Geological Site (LGS) within which the site lies.
8. I have not been provided with sectional drawings showing how the valley side has been altered to provide the trails area. However, it was clear from my site visit that some areas have been altered to provide the features along the trails. Inevitably this will have altered the profile of the valley side, particularly with the creation of clearly artificial obstacles such as the table close to the valley floor.
9. The Council has not disputed the appellant's evidence that the features have all been formed above ground, with no excavation. However, this nonetheless has altered the topography of the valley within an area of geological conservation importance which contributes to the landscape character of the NL as well as being of geological importance in its own right. Consequently, it has not conserved and enhanced the landscape and scenic beauty of the NL.
10. The MP also identifies peace and tranquillity as a special quality of the NL, particularly away from main roads and in sheltered combs. The appeal site is such a location. It is possible that there would be some noise arising from the use of the trails such as shouting and cheering by participants. However, there is no substantive evidence to demonstrate that this is particularly likely, or that the level of noise would be so significant as to materially harm the tranquillity of the NL. It is also unlikely that this, and the general activity associated with the trails, would harm the living conditions of surrounding residents, given the closest properties are identified as being 240m from the appeal site.
11. Recreational uses in the NL are not inherently uncharacteristic. The table feature at the foot of the valley would likely be visible to people using the Wanderlust Way which follows the highway at the site boundary in glimpses through gaps in the hedgerow or in winter when vegetation is more sparse. The jumps closest to the road may result in riders appearing above the hedge line. However, such glimpses would likely be of short duration both in terms of time and the distance across which they would be visible. Unexpected movements are not unusual either in the countryside or on the highway and it is reasonable to assume that horses being ridden on the highway would likely be handled by experienced riders who could respond appropriately if a horse was startled.

12. The application indicates there would not be staff on site, so there would be no means of limiting the number of visitors. It is also not clear in such circumstances how the zero-tolerance policy to littering would be enforced. While no toilet facilities are proposed, this is not uncommon for outdoor activities in rural areas. There is no substantive evidence before me to demonstrate the likelihood of pollution from users would be so significant as to harm the surrounding environment. No temporary toilet facilities are proposed therefore it is not incumbent on me to consider the effects of any such development.
13. The proposal would overall have a harmful effect on the landscape character of the Lincolnshire Wolds NL including its geological interest. It would be contrary to North East Lincolnshire Local Plan 2018 (NELLP) Policies 5, 41 and 42 which, inter alia, require landscape character to be given due consideration in the location of development proposals, the protection and enhancement of the landscape character and natural beauty of the NL and the protection, and enhancement of sites of geological conservation importance.

Biodiversity and Protected Species

14. The appeal site includes land within the Round Hill Valley Grassland Local Wildlife Site (LWS). The Preliminary Ecological Appraisal (PEA) also identifies the woodland on site as Deciduous Woodland priority habitat. No impacts to the woodland are anticipated and no tree felling is proposed.
15. The proposed car park would be sited on the grassland for which the site is designated. The PEA considered that the quality of the grassland had deteriorated since the 2009 survey, with only one scoring species noted although the survey was not carried out at the optimal time. The PEA recommends mitigation to restore the quality of the grassland but it does not make any reference to providing compensation for the loss of the habitat within the LWS to the car park. Furthermore, there is no robust evidence to establish a baseline against which any compensation and mitigation could be secured as the ecological survey was, by the report's own admission, not carried out during the optimum season for undertaking botanical surveys. I therefore could not be certain that effective mitigation and compensation could be secured.
16. The PEA noted the deterioration of the site was likely due to a lack of management and the appellant has identified that the proposal would bring management to the site that is not currently present. It would not be necessary for development to be carried out for the site to be appropriately managed therefore this would not weigh in support.
17. The PEA noted evidence of badger activity and assessed the effect of the works to install the bike trails. However it does not contain an assessment as to the effect of the use of the trails on badgers. I therefore cannot be certain that their use would not cause a disturbance to badgers.
18. Furthermore, the supporting ecological report was carried out in October 2020. The report itself notes that advice issued by the Chartered Institute of Ecology and Environmental Management advises that an ecological report remains valid for 12-18 months and that October was not the optimum season for undertaking botanical surveys. While I acknowledge the application took some considerable time to determine, the survey was some 30 months old at the

time the appeal was submitted. I cannot be certain it remains an accurate baseline upon which to assess the development.

19. I therefore cannot conclude that the development would not have an adverse effect on biodiversity and protected species. It would be contrary to NELLP Policy 41 which seeks to minimise the loss of biodiversity features and ensure appropriate mitigation and compensation where biodiversity may be harmed by development.

Highway Safety

20. The proposed car park area would provide for 10 parking spaces. The appellant has set out that there would be at the most 10 cars given the reduced scale of the proposal when compared with that originally submitted to the Council. However, there is no explanation or justification for how this figure was arrived at. Furthermore, it is not clear if the estimated visitor numbers refer to the original or amended application. It therefore has not been demonstrated that the proposed car park makes adequate provision for parking to serve the needs of the development.
21. The appellant acknowledges it would be potentially restrictive to the operation of the highway and visually undesirable for there to be parking along the verge on Ravendale Road. This would also increase the potential for conflict with horse riders, and to a lesser extent pedestrians using the Wanderlust Way, who would be more likely to use the verge as a refuge when vehicles are passing. I therefore cannot be certain that there would not be an adverse effect on the safe operation of the highway.
22. The appellant suggests that the site would be managed through rules for members. However it is stated elsewhere that the site would not be staffed, therefore it is unclear how these rules would be monitored or enforced. It is also not clear how non-members would be prevented from using the site which could encourage further visitors to the site.
23. The development would therefore have an unacceptable effect on highway safety. It would therefore be contrary to NELLP Policy 5 which requires development to be suitable with respect to access and traffic generation.

Other Matters

24. Planning permission can be granted for a temporary period. The Planning Practice Guidance¹ advises that the circumstances where this would be appropriate include where a trial run is needed in order to assess the effect of the development on the area or where it is expected that the planning circumstances will change in a particular way at the end of that period. While this would allow issues such as parking and the effect on the character and appearance of the area to be assessed, it would not overcome the harms I have identified with respect to the NL, geodiversity and biodiversity. Such a condition would therefore not be appropriate.
25. The provision of the trails would provide opportunities for recreation and exercise which in turn can promote wellbeing among users. It could be used by a range of the population and provide opportunities for families to spend time together. I accept it may be some distance to the next similar facility therefore

¹ Use of planning conditions Paragraph: 014 Reference ID: 21a-014-20140306 Revision date: 06 03 2014

the trails would reduce travel time and could bring some economic benefits into the area. There is no substantive evidence to show that users would be anything other than considerate of their environment, however equally there is no substantive evidence that the proposal would reduce any demand for illegal trails or that there would be crime reduction benefits arising. The site is in private ownership so there is no requirement for public access for walking. I have been referred to another decision of the Council but have not been provided with full details. In any event, I have determined this appeal on its own planning merits.

26. Section 149(1) of the Equality Act 2010 is that a public authority must, in the exercise of its functions, have due regard to the need to eliminate discrimination, harassment, victimisation and any other prohibited conduct, advance equality of opportunity and foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
27. There is the potential for my decision to affect persons with the protected characteristic of age. The negative impacts of dismissing this appeal will arise from a lack of opportunity to pursue mountain biking as a hobby. However, having due regard to this, and to the principles set out in s149, in my view the adverse effects of dismissing the scheme on those with protected characteristics would be proportionate, having regard to the potential adverse effects of allowing the development.

Conclusion

28. The appeal proposal would conflict with the development plan when read as a whole. There are no material considerations of sufficient weight, including the policies of the Framework, to suggest the decision should be made other than in accordance with the development plan. Therefore for the reasons given, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

J Downs

INSPECTOR