



Appeal Decision

Site visit made on 8 March 2024

by S Rawle BA (Hons) Dip TP Solicitor

an Inspector appointed by the Secretary of State

Decision date: 9th April 2024

Appeal Ref: APP/P0240/W/23/3331470

Land off Eastern Way, Heath and Reach LU7 0AA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Richard Walpole against the decision of Central Bedfordshire Council.
 - The application Ref is CB/23/01187/FULL.
 - The development proposed is a new access and new internal access track.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have used the address included on the appeal form as it more accurately defines the location of the appeal site.

Main Issues

3. The main issues are:
 - the effect of the proposal on the character and appearance of the area; and
 - the effect of the proposed development on ecology and protected species.

Reasons

Character and appearance

4. The appeal site comprises an area of agricultural land which forms part of a larger area of land that is predominantly used for grassland. The appeal site and the surrounding agricultural land are rural in character. A mature hedge is located along the south-west boundary where the appeal site meets Eastern Way. Notwithstanding that the appellant considers that it is of poor quality it complements the rural green appearance of the area and makes a significant contribution to the character and appearance of the area. There is an existing access with a traditional field gate (with wire fencing above) and post and rail fencing on either side located in the far eastern part of the appeal site. Given its modest proportions and use of traditional materials the existing access has a neutral impact on the character and appearance of the area.
5. The proposal would also involve the introduction of a significant new access that would have new automatic timber gates set back from Eastern Way by an

area of macadam and block paving. The proposal would also involve the blocking up of the existing access.

6. As outlined above the existing hedge that runs along Eastern Way makes a significant contribution to the character and appearance of the area. The proposal would require the removal of part of this important feature. Some elements of the proposal, such as the use of livestock wire fencing and the planting of native species hedgerow would be compatible with this setting. However, due to the design of the automatic timber gates and the introduction of a significant area of block paving the proposal would have a domestic and urbanising appearance in this countryside setting. This, combined with the removal of part of the existing hedge would unacceptably harm the existing rural green character and appearance of the area. I am not satisfied that the harm would be ameliorated by the proposed landscaping or the imposition of conditions.
7. I accept that the proposal would result in the blocking up of the existing access which is located further on the bend of the road than the proposed access which would result in an improvement in terms of highway safety. It would also reduce the need for large machinery and vehicles from passing along the narrow Gig Lane and using another access which is currently shared with a residential property. Further, the solid timber gates would provide security. However, I am not satisfied that any benefits associated with these matters would outweigh the harm the proposal would have on the character and appearance of the area.
8. I have also taken account of the other existing accesses along Eastern Way, including Heath Farm and Quarry Rise. However, those examples differ from the proposal before me as they relate much more closely to existing buildings on their plots that are located close to the road and so their relationship with their surroundings are materially different from the proposed development. As a result, the existence of these other examples does not justify harmful development at the appeal site.
9. I therefore conclude that the proposal would result in unacceptable harm to the character and appearance of the area. It follows that the proposal would conflict with Policies HQ1, EE4 and EE5 of the Central Bedfordshire Local Plan 2015-2035, July 2021 (CBLP) which among other things seeks to ensure that development is of the highest possible quality, responds positively to its context, has regard to the key characteristics of the site and its setting and any removal of hedgerows to accommodate the development is justified. The proposal would also conflict with the Framework which seeks to ensure development is sympathetic to local character.

Ecology and Protected Species

10. The appellant has undertaken a preliminary ecological appraisal and great crested newt scoping survey (ecological appraisal). This confirmed that the site, adjacent pasture and mature trees to the south of the existing dwelling could offer suitable habitat for protected species in particular great crested newts and bats.
11. Generally, I accept that the ecological appraisal provides a competent preliminary assessment and is up to date. However, there is some ambiguity between the appeal site boundary shown on the submitted appeal drawings

and the appeal site boundary shown on some plans in the ecological appraisal. This has led to the Council's ecologist expressing concern that the surveys could have missed some habitats suitable for great crested newts. They have also highlighted that as 2022 was a year of severe droughts the ponds shown in the ecological appraisal as being dry may not be permanently dry. As a result, they suggested that it would be sensible for the appellant's ecologist to revisit the site to ensure that all relevant habitats had been surveyed and to check if the nearby ponds were holding water. They pointed out that if ponds were holding water, then additional surveys would be necessary to determine whether any great crested newts may be present.

12. In the circumstances this is a reasonable approach as in light of the missing information, particularly in relation to the ponds, the proposed development's impact on ecology, including protected species, cannot be determined. The appellant has not taken up the suggestion to undertake further investigatory work, but rather have indicated that should there be a need for further surveys, this could be dealt with by condition.
13. However, I am mindful of the advice provided in Circular 06/2005 that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by a proposed development, is established before planning permission is granted. The circular further advises that the need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances.
14. Accordingly, the imposition of a planning condition requiring further investigation and/or mitigation, would not be reasonable and therefore would not meet the Framework tests and guidance in the Planning Practice Guide. Furthermore, without sufficient information to establish what appropriate guidance or measures could be put in place to mitigate possible ecological impacts I am unable to determine what would be the reasonable requirements of any condition.
15. As a result, based on the available evidence it has not been demonstrated that the proposal would not have any adverse effects on ecology, with particular regard to protected species. The proposed development would therefore conflict with Policy EE3 of the CBLP which among other things seeks to avoid negative impacts on biodiversity.

Conclusion

16. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. The appeal should therefore be dismissed.

S Rawle

INSPECTOR