



Appeal Decision

Site visit made on 16 April 2024

by Nick Bowden BA(Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 May 2024

Appeal Ref: APP/A2470/W/23/3329311

New Quarry Farm, Holywell Road, Clipsham, Rutland LE15 7SQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr T Fiducia (Fiducia Enterprises Ltd) against the decision of Rutland County Council.
 - The application Ref is 2023/0502/FUL.
 - The application sought planning permission for removal of condition 11 (access track shall not be brought into use until the grain store has been fully constructed) attached to 2022/0440/FUL (Proposed grain store and access track).
 - The condition in dispute is No 11 which states that: The access track hereby approved shall not be brought into use until the grain store has been fully constructed in accordance with the details shown on Drawing Number: FIDUCIA D1 20-01.
 - The reason given for the condition is: The justification for the access track of this construction and in this position, which may otherwise be considered unacceptable, is for the use of it to serve the grain store.
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Decision

1. The appeal is allowed and planning permission is granted for proposed grain store and access track without complying with condition 11 attached to planning permission Ref 2022/0440/FUL, dated 7 April 2022 at New Quarry Farm, Clipsham, Rutland LE15 7SQ in accordance with the terms of the application, Ref 2023/0502/FUL, subject to the conditions in the attached schedule.

Preliminary Matters

2. The application form did not provide a description of development and referred to the supporting statement. The supporting statement did not provide a description of development. The Council's decision notice reasonably encapsulated the proposed development although I have amended the description of development to the one above such that it accords with the wording of S73 of the Town and Country Planning Act 1990.

Background and Main Issue

3. The appeal site and associated land in the vicinity has a long and varied history relating to the conversion of former farm buildings to dwellings, construction of new agricultural buildings and associated access issues.
4. Insofar as it is pertinent here, permission was originally granted under ref 2022/0440/FUL for the construction of a grain store and access track. The grain store was, at the time, required to replace an ageing grain store on

another part of the holding. Since then, some, or part of the land has been disposed of and therefore there is no longer a requirement for it to be built. The access track has, however, largely been completed.

5. Although it is not explicitly stated in the Council's reasons for refusal, the Officer's Report confirms that the ultimate concern relating to the formation of the access track are its visual impact including laying of hardcore, its widening and passing bays. As the grain store is no longer deemed necessary by the applicant or new landowner, the purpose of the access track has become somewhat diluted. For much of its length it is also contiguous with bridleway E134.
6. The main issue, therefore, is whether the access track would be harmful to the character and appearance of the area and, if so, whether there are any other considerations which justify this and make the condition reasonably required or necessary.

Reasons

7. The site is set to the east of the village of Clipsham in an area that is characterised by rolling open fields with hedgerow boundaries, areas of woodland and copses. There are a limited number of small villages and clusters of farm buildings in the locality giving the general impression of a fairly remote, tranquil and undeveloped rural area.
8. The visual impact of the access track, due to its width and use of materials, is harmful to this rural character and appearance. The benefits it provides are from improved surfacing with passing places along the bridleway. The original intent for this was to mitigate the effects of the use of larger vehicles to access the grain store and potential conflict with users of the bridleway. However, if the store is not constructed, the potential conflict from additional vehicles using the track will be much reduced, excepting for other agricultural access requirements.
9. Even so, the removal of condition 11 is, to all intents and purposes, of nil effect having regard to the visual impact. This is because this condition only requires that the access track shall not be brought into use until the grain store is completed. There is no requirement for it to be removed if the grain store is not built, only that it may not be used. Its harmful visual effects will therefore endure irrespective of its function.
10. There is no requirement for the access track to be removed, and there has been no suggestion that the operational development carried out to form the access track is unlawful. The only benefits that can be derived from it are enhancements to the experience of people using the bridleway or its use in accordance with condition 10 of the permission. Therefore, whilst I agree with the Council's assessment in terms of its visual effects, the implications of not removing condition 11 are that the track will become somewhat idle and have minimal purpose. Therefore, no matter what its purpose may be, having some function is better than having none.
11. I have been mindful of the circumstances that have led to the grain store no longer being required, particularly the change of ownership. Nevertheless, regardless of this, there will no doubt be a requirement to access nearby fields and areas beyond so the track can still be used. I recognise that the

construction of the grain store was fundamental to the granting of the original permission, however the conditions of planning permission 2022/0440/FUL did not reflect this.

12. Overall, I recognise the harm to the countryside that has been created through the formation of the access track and that its intended purpose has effectively been nullified. However, as it has not been suggested that the operational development involved in the access track is unlawful, it may therefore remain and as such should, at least, serve a purpose. The condition is therefore unnecessary. Accordingly, I conclude that the development complies with policy SP1 of the Rutland Local Plan Site Allocations and Policies Development Plan Document 2014 and provisions of the Framework.

Conditions

13. The appeal is to be allowed and condition 11 of planning permission 2022/0440/FUL is to be deleted in its entirety. As this proposal will create a new planning permission for the development that has been constructed, I have re-imposed the remaining conditions of planning permission 2022/0440/FUL. This is except for the time limit condition, given that the development has already, in part, commenced.
14. Conditions 7 and 13 of planning permission 2022/0440/FUL are pre-commencement conditions. The guidance in the Planning Practice Guidance makes it clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. As I have no information before me about the status of these conditions, or other conditions imposed on the original planning permission, I shall apply all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.

Conclusion

15. For the reasons given above the appeal should be allowed.

Nick Bowden

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans, numbers: FIDUCIA D1 20-01, FQF/BB21/079 100_04, FQF/BB21/079 100_05 and FQF/BB21/079 100_06.
2. There shall be no mechanical drying equipment allowed within the grain store hereby approved.
3. The development hereby approved shall be carried out in accordance with Sections 7, 8 and 9 of the Preliminary Ecological Appraisal and Impact Assessment dated June 2021 by Eco-Check Consultancy Ltd.
4. No external lighting for the building hereby approved is permitted unless the details are submitted to and approved in writing by the local authority. Any such lighting shall meet the E2 as specified Guidance Note 1 for the reduction of obtrusive light 2020.
5. The development shall not be brought into use until all areas indicated to be used for vehicles and pedestrians on the approved plan have been laid out with a hardened, sealed and drained surface. Provision shall be made to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the development. Such areas shall be retained as such for the lifetime of the development.
6. Prior to commencement on site a scheme shall be submitted to and approved in writing by the Local Planning Authority detailing the method of cleaning wheels and chassis of all HGV's, plant and delivery vehicles leaving the site and the means of keeping the site access road and adjacent public highway clear of mud and debris during site demolition, excavation, preparation and construction. The scheme shall be implemented in accordance with the approved details and shall be installed and operational before any development commences and retained in working order throughout the duration of the development. No vehicles shall leave the site in a condition whereby mud, clay or other deleterious materials shall be deposited on the public highway.
7. The development shall not be brought into use until the visibility splays as indicated on the approved plan in which there should be no obstruction to visibility exceeding 1.0m in height above the adjacent carriageway channel line have been completed. The full visibility envelope must be wholly contained within land under the control of the applicant and/or highway land. The visibility splays shall thereafter be retained for the lifetime of the development.
8. No part of the development shall be brought into use until all existing redundant accesses have been permanently closed and the footway/verge crossings removed and the footway/verge reinstated.
9. The access track hereby approved shall be used in relation to agriculture only and to serve the grain store and associated agricultural land.
10. The grass verge as shown on Drawing Number: 100_04 shall be provided and maintained (to include grass cutting to allow acceptable access) at a minimum 5.0m width at all times. The grass verge shall also remain unobstructed at all times.

11. Before commencement of the use of the track and the grain store hereby approved, final details of signs warning drivers of horses and requiring them to give way shall be submitted to and approved in writing by the local authority. These details shall also include the position of the signage.

End of Schedule