



Appeal Decision

Site visit made on 9 May 2024

by E Worthington BA (Hons) MTP MUED MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 24 June 2024

Appeal Ref: APP/M4510/W/24/3338539

The Old Glassworks, Lemington Road, Newcastle Upon Tyne, NE15 8SX

- 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 Mandale Investments Limited against the decision of Newcastle City Council.
 - The application Ref 2023/0314/01/DET, dated 16 March 2023, was refused by notice dated 21 December 2023.
 - The development proposed is described as 'erection of 16no. warehouse units for classes E(G), B2, and B8; associated external works; and the creation of a substation and meter rooms, and bin and bike stores'.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are
 - Whether the proposal provides a suitable form of development having regard to landscaping and green infrastructure; and
 - The effect of the proposal on biodiversity.

Reasons

3. The appeal site is an open area of land to the south of Lemington Road. It is adjacent to commercial units to the south and the wider Riversdale Way commercial and industrial area is beyond. Directly to the north west of the site are a number of employment units recently constructed by the appellant. The appeal site is reached via an access which slopes downwards from Lemington Road and serves the adjacent uses. It was previously used for vehicle storage, and the appellant refers to a recently granted Lawful Development Certificate (LDC) for the use of the site for storage and distribution. At the time of my visit it was vacant and ground works were being undertaken.
 4. Whilst the site is not allocated for any purpose in the Newcastle upon Tyne Development and Allocations Plan (DAP), it is part of the Strategic Green Infrastructure Network (River Tyne Corridor) (SGIN) and within the City West Wildlife Enhancement Corridor (WEC).
 5. Policy CS18 of the Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne (CS) concerns green infrastructure and seeks to secure a high quality and comprehensive framework of interconnected green infrastructure that offers ease of movement and an appealing natural
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environment for people and wildlife. The policy states that this will be achieved by (amongst other things) maintaining, protecting and enhancing the city's SGIN (1), and by the protection, enhancement and management of green infrastructure assets which include, biodiversity and geodiversity assets, including designated sites, designated wildlife corridors and priority habitats and species (2i).

6. Whilst the Council does not seek to prohibit development in the SGIN or the WEC, it requires development in these areas to contribute positively to maintaining and enhancing green infrastructure assets, to maximise multifunctionality, enhance connectivity and accessibility.
7. The proposal would introduce 16 industrial units to the site. These would be in six blocks, each comprising between two and four units, with car parking adjacent. A retaining wall would be built on the north western corner of the site and it would be re-contoured to create a level development platform. The units would be single storey double height with dual pitched roofs, red brick walls with dark grey profiled metal cladding and roller shutter doors.
8. The Council raises no objection to the principle of the development, which would make use of a previously developed site, contribute to employment land and result in economic benefits in line with the aims of the National Planning Policy Framework (the Framework) and the CS. However, it is concerned about the impact of the proposal on green infrastructure and biodiversity.

Landscaping and Green Infrastructure

9. In addition to CS Policy CS18, DAP Policy DM20 requires development to take a positive response to the built environment to deliver high quality and sustainable design incorporating hard and soft landscaping as an integral part of design, maximising tree planting, where appropriate. DAP Policy DM27 requires development to protect, maintain and enhance existing green infrastructure assets and contribute to delivering new green infrastructure assets. DAP Policy DM28 requires development to protect, enhance and manage existing trees and landscape features.
10. I have had regard to the appellant's arguments regarding the condition of the site given its use for vehicle storage and the LDC. The appellant has provided a series of aerial photographs which show the extent of greenery on the site over a number of years and refers to the effect of the storage activities there (including the churning of soft ground and compaction of the land). The appellant questions the role of the appeal site in the SGIN which is wide in extent and argues that it has not contributed to the SGIN for many years. Nevertheless, it is clear from the photographs that the appeal site has supported some areas of greenery, albeit that the location and extent of these have fluctuated over time.
11. The appellant also refers to the nature and role of the wider area in the SGIN. Reference is made to the use of the adjacent site to the south for caravan storage, the existing industrial estate to the north, the ongoing development to the west, and the road to the east. I appreciate that the area is industrial in nature with much built development. That said, the site is also adjacent to Lemington Gut Local Wildlife Site to the east, and to an area of woodland and grassland in the Mandale Court Industrial Estate to the west.

12. In any event, it remains that the appeal site has been assessed and identified as part of one of thirteen strategic corridors which make up the SGIN. As such, it is subject to CS Policy CS18 which seeks to maintain, protect and enhance the integrity, connectivity multifunctionality and accessibility of the network.
13. The re-development of the site provides an opportunity to take a positive response to the built environment, and to deliver high quality and sustainable design incorporating hard and soft landscaping as an integral part of its design (as required by DAP Policy DM20). It should also protect, maintain and enhance existing green infrastructure assets (such as the SGIN) and contribute to delivering new green infrastructure assets (in line with DAP Policy DM27).
14. An arboricultural assessment has been provided which confirms that the existing trees on the site would not be affected. The landscaping scheme proposed would introduce 15 new trees (including 4 heavy specimens), shrub beds, grasses, wildflower grass and three lengths of native hedgerow.
15. That said, in practical terms, the proposed layout of the site provides only limited opportunities for soft landscaping. The appellant's Planning, Design, Access and Heritage Statement indicates that the proposed layout allows for incidental areas of soft landscaping in order to soften the scheme. It includes limited areas of trees, hedge and shrubs and herbaceous plants which would be provided in small pockets. Although these would to some extent break up the areas of hardstanding, overall the amount of landscaping would not be great. It would also be somewhat confined to the fringes and corners of the site so as to provide only limited connectivity through it and would not be an integrated part of the design of the scheme. The Council indicates that less than 6% of the site area would be soft landscaped, and the appellant does not dispute this.
16. Taking all these factors into account, I find that the proposal would provide inadequate soft landscaping and would not demonstrate a positive response to the site's context. It would not enhance existing green infrastructure assets, or contribute to the delivery of new green infrastructure (that would have the potential to address gaps and connectivity within the SGIN), and in doing so would fail to maintain, protect or enhance the integrity, connectivity, multifunctionality and accessibility of the SGIN.
17. I therefore conclude on this main issue that the proposal would fail to provide a suitable form of development having regard to landscaping and green infrastructure. Thus it would be contrary to CS Policy CS15 which requires development to contribute to good place-making. It would also conflict with CS Policy CS18, and DAP Policies DM20, DM27 and DM28 as considered above.

Biodiversity

18. The appeal site is also within a WEC. The WEC designations overlap with, but are distinct from the SGINs and provide an inter-connecting ecological network of habitats which allow the movement of species between urban and rural areas, helping to maintain species, habitat richness and variety.
19. The appellant argues that the WEC designation is wide in terms of its geographical extent, and I have seen nothing to suggest the appeal site's inclusion is intrinsic to the designation which includes other development sites. Nevertheless, the Council is clear that WECs do not preclude development coming forward, rather they provide an indication of where development

proposals are required to assess the role and route of the WEC on or adjacent to the development site and take account of any habitats and features, including stepping stones, which contribute to the function of the corridor. The appeal site is within a WEC which follows the river Tyne and the wider area includes a Local Wildlife Site to the east at Lemington Gut.

20. DAP Policy DM29 concerns protecting and enhancing geodiversity, biodiversity and habitats. It requires development which may affect any designated site to be supported by up to date ecological assessment to ensure the likely impact of the proposal can be assessed and mitigated (1). Development which would have an adverse effect on priority habitats and priority species will not be permitted unless adequate mitigation can be provided (4). Development which would have an adverse effect on the biodiversity value or connectivity and function of the WEC will only be permitted where adequate mitigation is secured (5). Development is also required to protect and enhance habitats and provide net gains in biodiversity (6).
21. Paragraph 180 of the Framework states that planning decisions should contribute to and enhance the natural and local environment by (amongst other things); protecting and enhancing sites of biodiversity (a); and minimising impacts on and providing measurable net gains for biodiversity (d). Paragraph 186 advises that if significant harm to biodiversity resulting from development cannot be avoided (through locating on an alternative site with less harmful impacts) adequately mitigated, or, as a last resort compensated for, then planning permission should be refused (a).
22. Given the appeal site's previous and lawful use, the appellant questions its contribution to the WEC. Nevertheless, as set out above in relation to the issue of green infrastructure, it is clear from the aerial photographs provided that the appeal site has successfully supported some areas of greenery, albeit that the location and extent of these have fluctuated over time.
23. The appellant has submitted a Preliminary Ecological Appraisal based on a survey undertaken on 15 March 2023 which found the site to comprise derelict land undergoing the early stages of ecological succession. An Ecological Impact Assessment dated 30 August 2023 has also been provided and identifies three habitats within the survey area, one of which is u1a Open Mosaic Habitat on Previously Developed Land (OMH). This is a priority habitat listed in the Natural Environment and Rural Communities (NERC) Act 2006. Priority habitats cover a wide range of semi-natural habitat types and are identified as being the most threatened and requiring conservation action under the UK Biodiversity Action Plan.
24. The appellant's reports find the OHM on the appeal site to be in a moderate condition and note that the species there are common and would be typically found on any site left to succession over a short period of time. Additionally the site displays a larger than ideal amount of bare ground and hardstanding. Buddleia and bramble are present which will quickly encroach on the habitats there such that they would be succeeded by scrub. As such, the reports find overall that the appeal site is not an ideal example of this habitat.

25. Even so, it remains that the five criteria for this priority habitat type are met on the appeal site. The OMH priority habitat is concentrated in former industrial landscapes and is under threat from development pressures. Characterised by the presence of a mosaic of early successional vegetation such as mosses, lichens and ruderals and grass lands with areas of bare ground, it can appear sparsely vegetated.
26. A Biodiversity Net Gain Report (dated 1 September 2023) has also been provided. This assesses the impacts of the proposed development on the biodiversity net gain (BNG) value of the site. It considers the ecological functionality of the site as a whole, pre and post-development.
27. The appellant's BNG Report calculates the biodiversity score for the site from the Biodiversity Metric 4 and gives a value prior to the development of 12.16 units (primarily arising from the OMH). Post-development, the value would drop to 0.27 units which would represent a reduction of 97.81%. The introduction of native species rich hedgerow would be gained through the landscaping scheme, but would represent only 0.85 biodiversity units.
28. I appreciate that the national requirement for BNG commenced for planning applications made on or after 12 February 2024 and so post-dates the appeal application. I note the appellant's view that the Council's assessment of BNG relies on the Biodiversity Metric which did not have to be used at that time, and is not a requirement of the DAP. Nevertheless, the presence of the OMH is identified in the appellant's Ecological Impact Assessment which is independent of the BNG Report and the use of the Biodiversity Metric. Besides, since the appellant in any case provided a BNG report and a Biodiversity Metric score, I do not consider it unreasonable of the Council to take this into account.
29. The appellant considers that due to the classification of the site as OMH it was not possible to achieve a Biodiversity Metric calculated BNG, even if some of the units were removed and the extent of built development dramatically reduced (and soft landscaping substantially increased). I have seen no further information as to such an alternative layout for the site or explanation as to why it was ruled out. In any event, regardless of the site's Biodiversity Metric score, I am conscious that the appellant's assessments nevertheless indicate a considerable net loss in biodiversity.
30. The BNG Report suggests that whilst the OMH priority habitat scores relatively highly in the Biodiversity Metric, realistically due to the isolated nature of the site from other similar habitats, the functionality of the site is limited. That said, it is adjacent to Lemington Gut Local Wildlife Site to the east, and to an area of woodland and species rich grassland in the Mandale Court Industrial Estate to the west. As such, the mosaic of habitats within the appeal site has the potential to contribute towards providing a functional corridor.
31. The appellant advises that since it was surveyed in March 2023, archaeological investigations have destroyed a large proportion of the habitats within the site. The Council indicates that degradation has occurred in some parts of the site through its use as a compound for the neighbouring development, and I saw at my site visit that ground works are underway. Even so, I concur with the Council that the sensible baseline for considering the biodiversity value of the site is from the condition when the biodiversity assessments were provided.

32. Paragraph 6 of Schedule 14 of the Environment Act 2021 concerns BNG and refers to pre-development biodiversity value. This advises that, from 30 January 2020, if activities have taken place on the site which lower its biodiversity value, the BNG calculation must consider the habitats that were present immediately before those activities took place. In this case, that should be taken to be the survey undertaken in March 2023.
33. As set out above, the appellant's survey finds that the site supports OMH which is a priority habitat. This important habitat would be removed from the site as a result of the appeal proposal. As well as having an adverse effect on a priority habitat, the proposal would also compromise the biodiversity value, connectivity and function of the WEC.
34. Additionally, the Council's Planning Committee Addendum report indicates that the proposed road widening works associated with the scheme would remove a further four metre strip of land along the north/eastern side of the access road which comprises amenity grassland, ruderals and scrub habitats. This area is not considered in the BNG Report. As such, there is a possibility that the loss of this area would add further to the proposal's impacts on biodiversity. The appellant does not dispute this matter and whilst not determinative, it adds to my concerns in this regard.
35. As set out above, DAP Policy DM29 states that development which would have an adverse effect on priority habitats or the biodiversity value or connectivity and function of the WEC, will only be permitted where adequate mitigation is provided. The supporting text explains that biodiversity and habitat enhancements to provide net gains and mitigation for any habitats that are harmed or lost should be provided on-site. Where this is not possible, planning obligations will be required to secure off-site enhancements and mitigation.
36. In terms of on-site provision, the soft landscaping proposed as part of the appeal scheme is considered above in relation to green infrastructure. The appellant refers to increased shrub, modified grassland and trees. Native hedgerows would be introduced which would provide functionality for invertebrate species as well as reptile species and bats and habitat for hedgehogs. There would also be an increase in the number of trees which would be better connected across the site and provide functionality to nesting birds and roosting bats. Bat and bird boxes would also be provided.
37. However, as set out above the proposed landscaping would be limited in extent, and would fail to provide connectivity around or through the site. This being so, notwithstanding the incorporation of sensitive lighting, the proposal would provide limited opportunities for any meaningful on-site mitigation.
38. In terms of off-site provision, the appellant engaged with Urban Green who were unable to identify any projects locally. Instead, the appellant is willing to make an off-site BGN contribution and has submitted a Unilateral Undertaking offering £10,000 to be used towards the provision of biodiversity net gain in the local area. This would allow a number of years for the Council to identify a suitable project and spend the money.
39. Paragraph 57 of the Framework sets out the tests for planning obligations, and indicates that they must only be sought where they are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development.

40. The Council indicates that it has no formula to calculate the required value of any such off-site contributions. Nor does it have any suitable or available land within the vicinity of the site which could accommodate the type of habitat required, or a current project to assign any contribution to.
41. Although a sum of money would be provided to the Council, it has not been explained how the size of the contribution has been determined and I cannot be content that it is an appropriate amount to resolve the problem specifically resulting from the proposed development. Furthermore, I have seen nothing to explain where the contribution would be spent, on what, when or how. This means I cannot determine if it would be directly related to the proposed development or whether it would compensate for the specific impacts resulting from the proposed development and therefore be effective.
42. The appellant considers the Council's approach to be unusual and inflexible, and that it has penalised the appellant for failing to land bank. Even so, it remains that on the basis of the evidence before me, it has not been demonstrated that the obligation is necessary or meets all the three tests as set out in the Framework. As such, I am unable to take it into account as a reason for granting permission. This being so, in the absence of adequate compensation, it remains that the proposal would fail to protect and enhance habitats on the site, and would have an adverse impact on the biodiversity value and connectivity of the WEC.
43. Bringing matters together, for the reasons given, the proposal would fail to provide measures to compensate for the harm identified and so would result in an unacceptable loss of priority habitat land and biodiversity value to the site and WEC. I therefore conclude on this main issue that the proposal would be harmful to biodiversity. It would thus be contrary to CS Policy CS18 and DAP Policies DM27 and DM29.
44. In coming to this view I have had regard to the appellant's reference to a 115.33% BNG at the adjacent site, which is greater than the loss that would arise in the appeal scheme. However, that development is not before me for consideration and does not form part of the appeal proposal. I am not aware of the circumstances which led to that nearby development so cannot be sure that they are the same as in the case of the appeal proposal. I note in any case that the Council confirms that that application concerns land separate to the appeal site which, in contrast to it, had a low baseline of 0.5 biodiversity units. As such, I am not persuaded that this lends any weight in favour of the appeal proposal which I have in any event considered on its own merits.

Other matters and planning balance

45. As considered above, I appreciate that the site has a longstanding use for vehicle storage and ongoing lawful use for storage and distribution. The appellant confirms that part of the site is now set to be used by a national car dealership to store cars. I note that the use of the land for vehicle storage can occur without the need to enhance the existing green infrastructure on the site and does not preclude its removal. I also accept that there is a real prospect of this fallback position being implemented.
46. That said, I am conscious that the use of the site for storage differs from the built development proposed. Despite the tarmacked areas and the ability of the appellant to occupy much of the site with vehicles, in practical terms a

storage use would be more likely to still allow the opportunity for some vegetation to grow on parts of the site than the appeal scheme. As such, in terms of its impact on green infrastructure and biodiversity, I am not convinced that this fallback position would necessarily have a worse effect than the appeal scheme. As such it does not justify development that would be harmful and in conflict with the development plan.

47. The site is previously developed and the Framework aims to make the effective use of land. Paragraph 124 indicates that planning decisions should give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs (c), and that they should promote and support the development of under-utilised land and buildings (d). This counts in favour of the appeal scheme.
48. The Framework also states that planning decisions should help create the conditions in which business can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity. CS Policy CS1 seeks to create and sustain thriving communities and a more prosperous economy. CS Policy CS5 seeks to achieve economic growth in the city, by attracting and supporting a skilled labour force and improving skills and access for local people to job opportunities.
49. The appeal proposal would provide flexible employment floorspace to cater for the needs of small to medium businesses operating in a range of sectors and uses. The Council refers to a high level of demand on nearby sites and the appeal site's advantageous location outside the Clean Air Zone. The appeal proposal would contribute to creating and sustaining jobs and stimulating economic development. There would also be job creation through the construction and operational phases.
50. I agree that the proposal supports the aims of both the Framework and the Core Strategy in these regards. However, I am mindful of the possibility that economic benefits could arise from locating the proposed development on an alternative brownfield site with less harmful impacts, or by an alternative scheme on the appeal site. Thus, despite the substantial/significant weight I attach to them, I find that the benefits of the proposal in these regards are insufficient to outweigh the harm that would arise in relation to the main issues in this case.
51. The appellant considers that the biodiversity improvements that would result from the proposed landscaping are also benefits of the scheme which count in its favour. However, these are considered above, where I have found that they are insufficient to compensate for the harm that would arise to biodiversity overall. As such, I do not regard them to be a reason to grant planning permission.
52. It is also argued that the existing use of the site detracts from the appearance of the site and the surrounding area, and that the appeal proposal and its proposed landscaping would enhance its appearance. Nevertheless, as an open site in an industrial area, as things stand the appeal site's current appearance and use does not appear unduly at odds with its surroundings. Whilst I accept that the proposed comprehensive development of the site would improve its appearance, in this context I am not persuaded that the benefits to the character of the site and the surrounding area would be sufficient to outweigh the harm I have identified in relation to the main issues.

53. The Council is content with the design of the units and their effect on the significance of nearby heritage assets including the Grade II* listed Lemington Cone, and the Grade II listed Manager House and Office of Former Iron Works. Additionally, subject to the imposition of conditions, no concerns are raised in relation to flood risk, highway safety, land contamination, the living conditions of nearby occupiers, noise or archaeology. Furthermore there are no objections from the Climate Change Team or in terms of the Energy Statement submitted. I see no reason to come to a different view to the Council on these matters. However, the absence of harm in these regards adds no weight in favour of the proposed development.
54. Taking all these factors into account, I find that on balance, even when taken together, the benefits of the proposal are insufficient to outweigh the harm that I have identified in relation to the main issues and the conflict with the development plan that would arise.

Conclusion

55. For the reasons set out above, and having regard to all the other matters raised, I conclude that the appeal should be dismissed.

E Worthington

INSPECTOR