



Appeal Decision

Site visit made on 4 July 2024

by **E Catcheside BA (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 5 August 2024

Appeal Ref: APP/Z1510/W/23/3330555

Board Barn Farm, Drapers Green, Helions Bumpstead, Essex CB9 7AU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Andrew Gage (Ramsey Gage Partnership) against the decision of Braintree District Council.
 - The application Ref 23/01092/FUL was approved on 1 September 2023 and planning permission was granted subject to conditions.
 - The development permitted is the expansion of existing stock pond to create a lake.
 - The condition in dispute is No 6 which states that: *Prior to the first use of the development hereby approved, a Landscape and Ecological Management Plan (LEMP) shall be submitted to, and be approved in writing by the Local Planning Authority. The content of the LEMP shall include the following:*
 - a) *Description and evaluation of features to be managed.*
 - b) *Ecological trends and constraints on site that might influence management.*
 - c) *Aims and objectives of management.*
 - d) *Appropriate management options for achieving aims and objectives.*
 - e) *Prescriptions for management actions.*
 - f) *Preparation of a work schedule (including an annual work plan)*
 - g) *Details of the body or organisation responsible for implementation of the plan.*
 - h) *Ongoing monitoring and remedial measures.**The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented, so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The development shall be implemented in accordance with the approved details.*
 - The reasons given for the condition is: *To allow the LPA to discharge its duties under the UK Habitats Regulations 2017, the Wildlife & Countryside Act 1981 as amended and S40 of the NERC Act 2006 (Priority habitats & species).*
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal site straddles the boundary between Braintree and South Cambridgeshire Districts. This appeal relates only to the planning permission referenced in the banner heading above issued by Braintree District Council.
3. Since the planning permission was granted, the statutory framework for securing biodiversity net gain (BNG), as introduced by Schedule 7A of the Town and Country Planning Act 1990 (inserted by the Environment Act 2021), has

come into force. However, the statutory BNG provisions do not apply to the appeal scheme, which was determined before the legislation came into effect. I have considered the appeal on this basis.

Background and Main Issue

4. Planning permission was granted on 1 September 2023 for the expansion of an existing stock pond to create a lake. The development would necessitate the loss of some trees. However, the planning application proposed significant additional and replacement landscaping, which would include planting over 800 new trees. A calculation of BNG was also provided with the planning application, which concluded that the proposal would result in a 19.46% increase in habitat units and a 59.58% increase in hedgerow units.
5. The planning permission was granted subject to conditions, including condition 6, which requires the submission and approval of a Landscape and Ecological Management Plan (LEMP) prior to the first use of the development. Although the reason given for Condition 6 refers only to legislative provisions in relation to biodiversity, the evidence also makes reference to the need to secure the aims and objectives of the biodiversity metric calculation tool submitted with the application. The appellant is seeking to have Condition 6 removed.
6. The planning permission also includes other conditions relating to landscaping and ecology. Condition 3 secures the implementation of tree protection measures to ensure retained trees, shrubs and hedges are protected. Condition 4 requires the implementation of the landscaping scheme and the replacement of any trees or plants which die, are removed, or become seriously diseased within a period of five years from the completion of the development. Condition 5 requires ecological mitigation measures to be implemented in order to conserve and enhance protected and priority species.
7. The main issue is whether Condition 6 is necessary and reasonable, with particular regard to securing landscaping and biodiversity enhancements.

Reasons

8. Policy LPP63 of the Braintree District Local Plan 2013-2033 Section 2 (LP), and the Framework, require development proposals to protect and enhance the natural environment, habitats, and biodiversity. This applies to all development proposals, not just those related to large-scale developments and housing. Therefore, it is a requirement of national and local planning policy that the natural environment is protected and enhanced as part of development proposals, including the appeal scheme.
9. The Development Plan does not specify a particular percentage increase in BNG. However, the landscaping and tree planting proposals nonetheless formed part of the planning application as it was submitted to the Council. Consequently, the Council took account of these matters, and the significant BNG arising, when it made its decision on the application. It is, therefore, entirely appropriate that the Council should seek to secure those benefits through condition. Indeed, the Planning Practice Guidance states that planning conditions may be appropriate to provide for monitoring and or biodiversity management plans where these are needed. This means that Condition 6 is relevant to planning and to the development permitted.

10. I have had regard to the other conditions on the planning permission which relate to the natural environment, including those which secure the protection of retained trees and the safeguarding of protected species. However, these conditions do not secure landscaping or biodiversity net gain. Therefore, they do not serve the same purpose as Condition 6 and renders the disputed condition necessary.
11. Moreover, given the scale of tree planting proposed, it would take more than 5 years for the landscaping scheme to become fully established, and for the biodiversity net gains to be achieved. Therefore, that Condition 4 requires the tree planting to be carried out and maintained for a period of five years, does not negate the need to secure the maintenance and monitoring of the planting over a longer duration. It follows that Condition 6 is necessary to ensure that the landscaping and biodiversity enhancements put forward in the planning application can be secured in the longer term.
12. I recognise the concerns put forward by the appellant that the requirements of Condition 6 impose unnecessary costs and regulatory burdens on a small, family farming business. However, whilst the condition includes a list of matters that must be covered in the LEMP, it is not overly prescriptive or onerous in terms of how those criteria could be fulfilled. It is therefore entirely feasible that the condition could be discharged without undue cost and unnecessary bureaucracy. Therefore, I am not persuaded that the requirements of Condition 6 would prohibit the development from being implemented. In consequence, Condition 6 is precise and reasonable.
13. Furthermore, whilst I note the potential for future development proposals to come forward on the site, any such proposals are only speculative at this stage and there is very limited information before me about any potential schemes. In any event, any future planning applications would need to be considered on their own merits. Therefore, there is no substantive evidence before me to indicate that the long-term management of the landscaping proposals would prevent future development proposals from coming forward on the site.
14. Overall, I conclude that Condition 6 is necessary and reasonable in order to secure the proposed landscaping and biodiversity enhancements. Its removal would be contrary to Policy LPP63 of the LP, and the Framework, which require development proposals to protect and enhance the natural environment, habitats and biodiversity.

Other Matter

15. The appellant has referred to a previous approval for three shepherd's huts with no condition for a LEMP. However, the shepherd's huts permission appears to predate the adoption of the LP, and I have not been provided with the relevant, historic, policies. Therefore, the shepherd's hut permission has not been determinative to my decision.

Conclusion

16. For the reasons given above the appeal should be dismissed.

E Catchside

INSPECTOR