



Appeal Decision

Hearing held on 22 October 2024

Site visit made on 22 October 2024

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 November 2024

Appeal Ref: APP/V3120/W/24/3346046

**Land To The West Of Great Western Park (Valley Park), Didcot,
Oxfordshire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) (the Act) against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
 - The appeal is made by Mr Daniel Milward (Persimmon Homes (Wessex)) against the decision of Vale of White Horse District Council.
 - The application Ref P23/V2247/DIS sought approval of details pursuant to condition No 28 of a planning permission Ref P14/V2873/O, granted on 21 February 2022.
 - The application was refused by notice dated 12 December 2023.
 - The development proposed is "Outline planning application for a residential development of up to 4,254 dwellings, mixed-use local centres, primary schools, sports pitches, community and leisure facilities, special needs school, open space and extensive green infrastructure, hard and soft landscaping, attenuation areas, diversions to public rights of way, pedestrian and vehicular access and associated works (as amended by drawings and information accompanying letter from Agent dated 10 March 2016, 21 August 2019, 24 January 2020, 30 March 2020, 20 May 2020, 14 December 2020, 6 May 2021 and 15 June 2021)".
 - The details for which approval is sought are: Scheme detailing the number, location and design of the crossings over the retained watercourse(s).
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Decision

1. The appeal is dismissed.

Applications for costs

2. Applications for costs have been made by Mr Daniel Milward (Persimmon Homes (Wessex)) against Vale of White Horse District Council (the Council) and the Environment Agency (the EA). These applications are the subject of a separate decision letter.

Preliminary Matters and Main Issue

3. Condition number 28 attached to outline planning permission reference number P14/V2873/O (hereafter referred to as the parent planning permission) reads as follows:-

"No development shall take place within a phase or sub-phase requiring a crossing over a retained watercourse (as identified on Drawing 0153-04 'Illustrative Masterplan with Retained Watercourses Identified') until a scheme detailing the number, location and design of the crossings over the retained watercourse(s) in that phase or sub-phase has been submitted to and approved in writing by the Local Planning Authority. Crossings over retained watercourses shall be designed to protect the watercourse habitats and the wildlife corridor they provide. Thereafter the development shall be carried out in accordance with the approved scheme.

Reason: In order to protect the watercourse habitats in accordance with Development Policy 30 of the adopted Local Plan 2031 Part 2 and the NPPF."

4. The application leading to this appeal seeks approval for details of 4 crossings over a stream referred to as watercourse A (hereafter referred to simply as the watercourse). The details on the submitted plans and in table 16 of the appellant's Watercourse Report To Inform Culvert Crossings by ACD Environmental (the ACD Report) refer to a fifth crossing, identified as culvert C5. The appellant's representatives confirmed at the hearing that the application does not seek approval of the details in relation to culvert C5. Also, the Council's representatives confirmed that the application had been considered on this basis. As such, I have disregarded the submissions on culvert C5 in my assessment.
5. In light of the Council's refusal reasons, the EA's objections as well as the wording and reason of condition 28, I find the main issue with this appeal is whether the proposed crossings would be designed so as to protect the watercourse habitat and associated wildlife corridor.

Reasons

The condition and value of the watercourse.

6. The watercourse flows for a significant distance through fields that form most of the site subject of the parent planning permission. The statement of common ground (the SOCG) identifies the watercourse as having a varied width and depth as it crosses the site. On some stretches, there are trees on the banks whereas on other parts the stream is bounded by grasses and other lower level vegetation. The parts of the watercourse affected by the proposals are open and tend to have vegetated banks, albeit without trees.
7. The SOCG states the watercourse is in a poor state of repair due to historic straightening and deepening in the upper reaches. Also, factors such as erosion, overshadowing from trees and blockages with a build-up of silt have affected its condition. However, notwithstanding these issues, paragraph 3.1 of the appellant's Brookbanks Technical Note 47 revision 3 (the Brookbanks Report), states the watercourses across the development site provide an

important habitat and resource of value to a diversity of flora and fauna. Also, the appellant's Ecosupport Report at paragraph 4.2 recognises the watercourse as a wildlife corridor, albeit one that only functions within a cut off and so a localised farmland context.

8. The Council and the EA contend the watercourse is a headwater and so it is a priority habitat as defined under section 41 of the Natural Environment and Rural Communities Act 2006. However, the straight stretches and angled turns indicate the stream has been significantly altered. Therefore, it fails to qualify as a headwater under the terms of the relevant criterion as set out in the UK Biodiversity Action Plan Priority Habitat Descriptions for Rivers 2011. Also, there is no substantive evidence to show the watercourse should be classed as a chalk river as advanced by the EA's officers at the hearing. As such, the watercourse does not currently qualify as a priority habitat.
9. It is noted in the ACD Report and the subsequent Ecosupport Report that the watercourse habitat is of moderate suitability for water voles, a species protected under section 9 of the Wildlife and Countryside Act 1981. Indeed, previous surveys in 2014 and 2017 confirmed the presence of this species. A 2022 survey of the watercourse at the proposed crossing points found no evidence of water voles. However, there was signs of mink, a predator of water voles, so suggesting that the local population has been adversely affected. Nonetheless, the Ecosupport Report recommends a precautionary approach should be taken and that it should be assumed water voles could still be present or could return in the future based on habitat suitability. I find no reason to depart from this advice.
10. In summary, I find the watercourse is not a priority habitat but nonetheless it provides a natural linear habitat that is of value, particularly in terms of providing suitable conditions for water voles that may be present. Therefore, Core Policy 46 of the Vale of White Horse District Council Local Plan Part 1 adopted 2016 (LP1) is relevant and applicable, either because the watercourse supports water voles or because it has good potential to act as a corridor for the species.

The effects of the proposed crossings.

11. It is proposed to provide box culverts at all 4 crossing points. These would be similar in design although they would vary in terms of width, height and length.
12. Development Policy 30 of the Vale of White Horse District Council Local Plan Part 2 adopted 2019 (LP2) states that the culverting of a watercourse is unlikely to be considered acceptable. Paragraph 3.249 of LP2 sets out reasons why culverts should be avoided and only used as a last resort. The policy does not entirely preclude new culverts. Nevertheless, the presumption against culverting is supported by the Planning Practice Guidance (the PPG), which states that new culverts are likely to have adverse impacts on various issues including ecology¹. In these regards, LP2 Development Policy 30 is consistent with national planning policy guidance and so it should be afforded considerable weight.

¹ Planning Practice Guidance Flood Risk and Coastal Change, Paragraph: 067 Reference ID: 7-067-20220825
Revision date: 25 08 2022.

13. The submitted cross section drawings show how the introduction of the culverts would require significant alterations to the profiles of the banks and the bed of the watercourse. Such works are bound to require the removal of vegetation from the banks. Also, the culverts would create enclosed tunnels, which would have little access to natural sunlight apart from at each end. Even if banks form within the culverts, these are unlikely to become vegetated due to the lack of light. In these respects, the proposed crossings would harm the natural, vegetated qualities of the watercourse.
14. Also, the cross section drawings indicate how each of the culverts would be wider than the bank to bank distance of the watercourse. Moreover, the culverts' straight vertical sides would replace the existing sloped banks. At the hearing, the EA's representatives explained how such changes could alter the water flow dynamics with subsequent knock-on effects on the form of the stream and the fauna and flora it supports. The floor of the culverts would replicate the slope of the watercourse bed and substrate would be provided to mimic the consistency of natural gravel and pebble. Even so, it is likely that the changes to the profile of the watercourse as a result of the culverts would affect water flows.
15. The Water Vole Mitigation Handbook 2016 (the WVMH) explains how water voles are known to use culverts of certain types and sizes. The proposed culverts would include mammal ledges and would be designed to meet the characteristics of box culverts known to be effective in allowing water vole movement. However, the WVMH recommends against culverting watercourses. When read as a whole, it offers no support for the use of culverts as a method of protecting water voles, even if designed to facilitate their movement. Indeed, it is likely that the fragmentation of the natural banks as well as the loss of potential burrow sites and vegetation as a result of the crossings would have a negative, albeit minor effect on water voles and habitat that is suitable for the species.
16. It is not proposed to include screens at the ends of the culverts and their floors would be set at a similar height to the existing bed of the watercourse. Consequently, the culverts would not obstruct the movement of fish and other aquatic species. Moreover, the crossings would affect only a small part of the overall length of the watercourse as it passes through the development site.
17. Even so, for the above reasons, I conclude the culverts would not be designed to protect the watercourse habitat and associated wildlife corridor as required under the terms of condition number 28. Indeed, the 4 crossings considered together would cause significant harm to the natural qualities of the watercourse and its biodiversity value.

Proposed enhancement and mitigation measures.

18. The application includes 4 landscape proposal drawings that indicate various mitigation and enhancement measures. These include works to the watercourse banks, management of existing vegetation, proposed vegetation, the creation of buffer areas along the stream and the construction of ponds near the location of culvert 1. Table 16 of the ACD Report provides more details on the proposed works.

19. It is the appellant's claim that these proposals would provide significant benefits to the condition and ecological value of the watercourse. The Council has not sought to dispute the appellant's contentions in these regards. The appellant suggests the proposed enhancement and mitigation works could only be secured by allowing this appeal and approving the submitted details. The Council disagrees and considers the proposed enhancement works cannot be secured by allowing this appeal.
20. I tend to favour the Council's position on this matter for a number of reasons. Firstly, condition number 28 is worded to require the submission and approval of "*a scheme detailing the number, location and design of the crossings over the retained watercourse(s)*". These requirements are restricted specifically to watercourse crossings and to no other matter. The proposed enhancement works go way beyond that which could reasonably be classed as design details of the crossings. The works would extend for significant distances in either direction away from each of the culverts and the various measures represent earthworks or landscape proposals on or near the banks of the watercourse rather than crossings. As such, condition number 28 does not explicitly allow the approval of the mitigation and enhancement measures.
21. I take support on this matter from conditions numbered 15, 18 and 19 of the parent planning permission. These require the approval of matters such as soft landscaping, biodiversity enhancement measures including habitat creation and a landscape and ecology management plan. It is these conditions, rather than condition number 28, that require the approval and implementation of enhancement works such as those indicated on the landscape proposal drawings. The appellant suggests that through the requirements of conditions such as 15, 18 and 19 the Council could secure the proposed mitigation and enhancement measures. However, I cannot be certain that such measures would be proposed or approved.
22. Secondly, condition number 28 includes the requirement that "*crossings over retained watercourses shall be designed to protect the watercourse habitats and the wildlife corridor they provide*". When considering the issue of the design of the culverts, I have already found that in themselves they would not meet this requirement. To approve the details contrary to this conclusion would lead to a conflict between the approved scheme and the requirements of condition number 28 when read as a whole.
23. LP2 Development Policy 30 allows development that is detrimental to the function or setting of a watercourse provided harm can be appropriately mitigated. As such, the policy allows consideration of mitigation measures whereas the wording of condition number 28 does not. However, the issue as to whether condition number 28 is reasonable in light of the development plan context is not an issue for consideration with this appeal.
24. Thirdly, the Council raises doubts over whether in granting an approval as required by condition number 28, the implementation of the enhancement and mitigation measures can also be secured through the imposition of further conditions. The PPG advises that the only conditions which can be imposed when reserved matters are approved are those which directly relate

to those reserved matters². The same paragraph states that conditions relating to anything other than reserved matters can only be imposed when granting outline planning permission. There is no mention of the potential to impose additional conditions when approving details required by planning conditions that do not relate to reserved matters.

25. In this case, the details required under condition number 28 are not identified as reserved matters under the terms of the parent planning permission. Also, a condition that seeks to secure the proposed enhancement and mitigation measures would not directly relate to condition number 28 and the details of the watercourse crossings. Therefore, in light of the PPG advice, it would be inappropriate to impose a condition on any grant of approval that requires the implementation of the proposed mitigation and enhancement measures.
26. At the hearing, the appellant suggested the enhancement works could be secured by planning obligations set out in an agreement or undertaking under section 106 of the Act. However, no such agreement or undertaking is before me. As such, I fail to see how the works as shown on the landscape proposal plans could be secured. Therefore, the identified detriment caused by the proposed culverts cannot be appropriately mitigated as required under LP2 Development Policy 30 and LP1 Core Policy 46.

Overall summary of findings.

27. To summarise, I conclude the proposed crossings would not protect the watercourse habitat and associated wildlife corridor. In such circumstances, condition number 28 when read as a whole does not allow the approval of the details. Also, the terms of the condition do not allow approval of the proposed mitigation works to address the identified harm. I find the enhancement and mitigation works could not be secured through allowing this appeal and so the detriment that would be caused to the watercourse and its biodiversity value would not be appropriately addressed. For these reasons, I conclude the scheme detailing the proposed crossings would not accord with Development Policy 30 of LP2 and Core Policy 46 of LP1.

Other Matter

28. The development allowed under the parent planning permission would bring significant social and economic benefits. However, it is highly probable that such benefits would still be delivered, even if this appeal is dismissed. Therefore, these factors do not affect my overall conclusion.

Conclusion

29. For the reasons given above, I conclude the appeal should be dismissed.

Jonathan Edwards

INSPECTOR

² Planning Practice Guidance, Use of Planning Conditions, Paragraph: 025 Reference ID: 21a-025-20140306.
Revision date: 06 03 2014

APPEARANCES

FOR THE APPELLANT:

John Litton KC	Counsel
Nigel Jarvis	Director at Luken Beck Limited
Dean Swensson	Managing Director and Principal Ecologist, Ecosupport.
Adam Jessop	Director and Principal Ecologist, Ecosupport.

FOR THE LOCAL PLANNING AUTHORITY AND ENVIRONMENT AGENCY:

Tracy Smith	Principal Appeals Officer, Vale of White Horse District Council.
Edward Church	Senior Ecologist, Vale of White Horse District Council.
Georgia Henry	Environment Agency
Sarah Green	Environment Agency
Faye Hudson	Environment Agency