



Appeal Decision

Site visit made on 18 November 2024

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 29 November 2024

Appeal Ref: APP/Q3115/W/24/3342328

Land North of Nosworthy Way, Mongewell, Oxfordshire OX10 8DD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Thomas against South Oxfordshire District Council.
 - The application reference is P23/S2127/FUL.
 - The development proposed is change of use of land to EV charging facilities.
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Decision

1. The appeal is dismissed, and planning permission is refused.

Preliminary Matters

2. The Council failed to determine the application within the required timeframe. The Council has however produced a draft officer report and reasons for refusal which I have taken into account in assessing the appeal.
3. I have edited the description of development in the banner heading above, removing superfluous text describing information supporting the proposal.
4. Though the description refers only to a change of use, it would also include the works required to provide the proposed facilities. Within this context the proposed site plan marks plant and equipment as 'indicative'. They are however critical components of the development for which permission has been sought. I have therefore assessed the appeal based on the details shown, and it appears that the Council has done the same.
5. The site lies within what was the Chilterns Area of Outstanding Natural Beauty (the AONB), but which has now been rebranded the Chilterns National Landscape. Existing legislation and policy however continue to refer to AONBs. As this remains applicable to areas now known as National Landscapes, references to the AONB and AONBs below should be interpreted accordingly.

Main Issues

6. The main issues are the effect of the development on:
 - highway safety;
 - archaeology;
 - ecology and biodiversity; and
 - the Chilterns National Landscape.

Reasons

Highway safety

7. The site is a triangular piece of land located adjacent to and at a lower level than the A4130. The latter is a busy road with a 60-mph speed limit, which is easily attained by vehicles passing the site. A band of tree and shrub covered land separates the site from the carriageway, with the 2 linked by a narrow access which drops steeply into the site. The access is only wide enough to allow comfortable passage of a single vehicle, and visibility from the access is severely restricted by a combination of relative ground levels and vegetation to either side. Visibility of the access from the carriageway is similarly limited, and apparent only in close proximity. It does not appear that the access itself sees any regular use at present, and I have been presented with no evidence to suggest that it ever has.
8. The site could accommodate 20 vehicles. Further vehicles might also enter. Indeed, it has not been explained how drivers would know whether space was available prior to entry. The likely number and frequency of vehicle movements is also unclear as no modelling has been provided. The development would nonetheless result in a significant intensification in use of the access.
9. According to the plans, the appellant does not control the land between the site and the carriageway. It is therefore unclear how visibility could be improved. Nor could the gradient of the access be easily altered. Whilst alteration is nonetheless suggested within the appellant's statement of case, no details of the significant engineering that this would require have been provided. The appellant additionally suggests that the Highways Authority should implement a reduction in the speed limit, provide signage to control access to the site, and construct a small traffic island. However, whether or not it may have done so in other cases, the Highways Authority has not indicated its agreement to any of these measures. It is otherwise unclear how they would be funded. This is not therefore a matter which can be properly addressed by imposing conditions.
10. Given the above, drivers entering and exiting the site might seek to use both the east and westbound carriageways, resulting in vehicle movements across the flow of traffic. This would be hazardous given the speed at which vehicles using the road travel. The resulting risk would be intensified by limited visibility from and towards the access. Even where vehicles turned into the site from the westbound carriageway, limited visibility of the access might also cause drivers to brake abruptly on the approach. The narrowness and screening of the access could otherwise give rise to conflict between vehicles seeking to enter and exit, which could be exacerbated at times when the site was full. All of the above could cause significant collision risks, jeopardising safe use of the highway.
11. For the reasons set out above I conclude that the development would have an unacceptable impact on highway safety. It would therefore conflict with Policy TRANS5 of the South Oxfordshire Local Plan 2011-2035 (the Local Plan) which requires developments to provide safe and convenient access for all users of the highway network.

Archaeology

12. Grim's Ditch is a linear earthwork, which originally comprised a discontinuous deep ditch and bank. This was constructed across a significant part of the

landscape of what is now South Oxfordshire during the Iron Age. In places the bank and ditch are no longer clearly visible. Maps have long suggested that one such section of Grim's Ditch runs directly to the north of the site. Lidar data, and the results of an excavation undertaken prior to construction of the adjacent section of the A4130, however now suggest that it runs through the site itself. Part of Grim's Ditch towards the east has been designated as a Scheduled Ancient Monument. As the scheduling record provides no explanation for the designation, the reason for this partial scheduling is unclear. However, it appears likely to simply reflect greater visibility of the bank and ditch on the surface in that location.

13. I have been provided with little explanation of the significance of Grim's Ditch, and again, the scheduling record provides little assistance. In broad terms however, it is apparent that its significance resides partly in its age, its impressive scale, and the evidence that it provides about the society which built it. Within this context it clearly fulfilled some important function within the landscape. Though only part is scheduled and not all is clearly visible at the surface, it can only be properly understood as a whole. The excavation noted above furthermore demonstrated survival below ground. There appears to be no reason to suppose that the situation differs on site, and no clear evidence to indicate that survival was compromised during construction of the A4130.
14. As the unscheduled and scheduled sections of Grim's Ditch are ultimately parts of the same archaeological asset, I share the County Archaeologist's view that footnote 72 of the National Planning Policy Framework (the Framework) is applicable. This states that non-designated heritage assets of archaeological interest, which are demonstrably of equivalent significance to scheduled monuments, should be considered subject to the policies for designated heritage assets.
15. Little detail has been provided of the works necessary to provide drainage and cabling for the proposed development, or how large tree stumps would be removed. It is also unclear whether the surface of the site would require reprofiling, particularly given the appellant's suggestion that the gradient of the access would be modified. All such works could cause the disturbance of and damage to subsurface archaeology. The likely extent, nature and acceptability of this damage cannot be known or properly judged in the absence of information relating to the works in question and to the archaeology itself. In this regard the matter cannot be appropriately addressed through a watching brief, given the acceptance of potential destruction that this implies. The strength of the evidence in this case, as too the significance of the asset in question, indicates that more detailed archaeological investigation is required. As matters stand the proposed development has not been informed by such an investigation.
16. I can only assume that the development could cause damage to Grim's Ditch. It would additionally seal a section of the asset beneath a car park, thus further obscuring the ability to understand it as a feature within the landscape. The harm caused to the significance of Grim's Ditch as a whole would be less than substantial. Such harm attracts great weight. In accordance with paragraph 208 of the Framework it is necessary to weigh this harm against the public benefits of the scheme.

17. The scheme has been promoted as supporting the transition to 'net zero' and the decarbonisation of car and van transport. This clearly requires an increase in the provision of charging facilities, and is broadly supported by Local Plan policy. But why the site should be considered a desirable or suitable location for the proposed facility is unclear, and so too is the means by which drivers would be made aware of its existence. It is not directly located on any major route, within a settlement, or adjacent or near to any facilities which drivers might make use of whilst charging their vehicles. Nor would the development provide such facilities. Though the appellant suggests that it might be used by walkers, it appears that this would defeat the object of providing rapid charging points, as vehicles would be parked for long periods. The plans do not in any case show any formal connection to adjacent rights of way. The above suggests that use of the facility would be neither attractive nor convenient for drivers, or suitable for use by walkers. I have furthermore already established that access to the site would be hazardous. Whilst the proposal would thus entail development which could be considered publicly beneficial in principle, in practice the benefits would be doubtful in nature, and could not be delivered without harm to public safety. That being so I attach no more than negligible weight to the public benefits of the scheme. This is insufficient to outweigh the harm that it would cause. Having further regard to the Framework, this finding provides an indication that permission should be refused.
18. For the reasons set out above I conclude that the development would harm the significance of on-site archaeology. It would therefore conflict with Policy ENV9 of the Local Plan which requires development to protect the site and setting of nationally important designated or undesignated archaeological remains; Policy DES9 of Local Plan, whose support for renewable and low carbon energy generation and associated infrastructure is, amongst other things, subject to this not having a significant adverse effect on the historic environment; and Policy CRP4 of the Crowmarsh Parish Neighbourhood Development Plan 2020-2035 (the Parish Plan) which requires development to conserve or enhance the local historic environment.

Ecology

19. Notwithstanding the appellant's claim to the contrary, the site was until very recently wooded and had been since the C19th. Within this context it formed part of a nationally identified lowland mixed deciduous woodland priority habitat. This in turn formed the baseline adopted within the appellant's own biodiversity net gain assessment, which concluded that there would be a 91.5% loss of biodiversity as a result of the development.
20. Most of the trees previously on site were felled without license, and stumps remain on site. It is apparently only because ownership of the site then changed that the Forestry Commission did not issue a Restocking Notice.
21. Amongst the few mature specimens remaining on site there are now numerous saplings. It can be reasonably assumed that if allowed to do so the woodland would fully regenerate. In time this would address the loss of integrity caused to the surrounding priority habitat by the previous felling. The harm caused would however be made permanent, and in some ways accentuated were the development to proceed. Indeed, further loss of mature trees would be required, and likely harm would be caused to the roots of off-site trees.

22. Aside from some limited and unspecified tree planting on site, the appellant has proposed to mitigate the loss of woodland through off-setting. The feasibility of this has not however been demonstrated. Given the nature of the habitat lost, the net gain assessment acknowledges that mitigation would require 'hectares' of land managed for in excess of 30 years. In the Council's estimation those hectares would number 20.75, which is roughly equivalent to 51 acres. Given the significant amount of land required, and the fact that the duration of management would exceed the minimum term applicable to registered off-setting sites, it is doubtful whether the appellant's solution is either practical or achievable. For these reasons, off-setting could not be properly secured by condition.
23. Similar applies to the proposal to mitigate the loss of on-site habitat for bats, birds, insects, and reptiles by installing boxes, loggeries and refugia off-site at Watermead Nature Reserve. Indeed, it has not been demonstrated that agreement for this exists or that such an agreement could be reached, or how provision of the proposed mitigation could be properly secured.
24. Insofar as Policy ENV2 of the Local Plan sets out criteria to assess the acceptability of any loss of priority habitats, I have been provided with no evidence that the development is incapable of being sited elsewhere. I have otherwise established the unsuitability of the location proposed. Having also considered the benefits of the scheme, I have found them to attract negligible weight. This would again not outweigh the harm caused, particularly given the appellant's failure to demonstrate that mitigation could be both achieved and properly secured.
25. For the reasons outlined above I conclude that the development would have an adverse effect on ecology and biodiversity. It would therefore conflict with Policy ENV2 of the Local Plan as considered above; Policies ENV3 of the Local Plan and CRP5 of the Parish Plan which each seek to secure net gains in biodiversity; and in the case of Policy ENV3 further reiterate the requirement for impacts on biodiversity to be avoided, mitigated, or compensated for.

Character and appearance

26. The site is located in the Chilterns National Landscape, within which there is a duty to have regard to the purpose of conserving and enhancing natural beauty. Paragraph 182 of the Framework further states that great weight should be given to conserving and enhancing landscape and scenic beauty within AONBs. It further notes that the conservation and enhancement of wildlife and cultural heritage are important considerations, each of which I have dealt with above.
27. As previously outlined, the site was until recently covered by trees, and is otherwise located within a band of woodland. Though the immediate setting also features the A4130 and a small housing estate, the broader setting is that of open countryside. Within this context the site is directly exposed to view both from passing vehicles and from public rights of way, including a national trail, and a bridleway which runs close to the western boundary of the site.
28. Even prior to the felling of trees, the contribution made by the site to the broader landscape, scenic and natural beauty of the National Landscape would have been modest; both visually and spatially constrained, and compromised by its position between the A4130 and a housing estate. Based on the visual

quality of surviving adjacent woodland, that contribution would nonetheless have been positive. Insofar as the site continues to be perceived with reference to adjacent woodland, it appears as a clearing in the process of regeneration. In this way it continues to make a modestly positive contribution. The most obvious way in which this could be conserved and enhanced would be to allow regeneration to continue.

29. As outlined above, the scheme would instead see the further felling of trees, damage to the roots of off-site trees, and the intrusive construction of a car park within the woodland setting. This would neither conserve nor enhance landscape, scenic and natural beauty. Though the harm caused in relation to the broader National Landscape would be limited, such harm nonetheless attracts great weight. Alongside my findings in relation to the issues above, this provides a further indication of the unacceptability of the scheme.
30. For the reasons outlined above I conclude that the development would harm the landscape, scenic and natural beauty of the Chilterns National Landscape. It would therefore conflict with Policy ENV1 of the Local Plan which seeks to secure development which conserves and where possible enhances the character and natural beauty of the AONB, and the contribution made by trees to South Oxfordshire's landscape.

Conclusion

31. For the reasons set out above the effects of the development would be unacceptable, giving rise to conflict with the development plan taken as a whole. There are no other considerations which alter or outweigh these findings. I therefore conclude that the appeal should be dismissed.

Benjamin Webb

INSPECTOR