



Appeal Decisions

Site visit made on 10 February 2025

by **L N Hughes BA (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 18 February 2025

Appeal A Ref: APP/D3505/W/24/3347762

West End Farm, The Common, Mellis, Suffolk IP23 8EF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Haag of Haags Norfolk and Suffolk Farms against the decision of Mid Suffolk District Council.
 - The application Ref is DC/24/01863.
 - The development proposed is construction of open-sided agricultural building.
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Appeal B Ref: APP/D3505/W/24/3349343

West End Farm, The Common, Mellis, Suffolk IP23 8EF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
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Decision

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Applications for costs

3. An application for a full award of costs for each appeal was made by Mr Haag of Haags Norfolk and Suffolk Farms against Mid Suffolk District Council. These are the subject of separate linked Decisions.

Preliminary Matters

4. I have dealt with each appeal on its own merits, but as both had the same reasons for refusal I have primarily dealt with them together in my reasoning to avoid duplication. The Appeal A building lies to the west, and the Appeal B building lies to the east.
5. The Council is no longer seeking to defend the first reason for refusal relating to ecology. I address this in other matters below.
6. The Government published a revised version of the National Planning Policy Framework ('the Framework') in December 2024, plus minor amendments in February 2025. I have considered this against the December 2023 version which was extant for the parties in their appeal evidence, but the changes are not substantive or determinative.

Main Issue

7. The main issue for both appeals is whether the proposed developments would provide sufficient Biodiversity Net Gain (BNG).

Reasons

8. West End Farm consists of arable cropping, mixed woodland, permanent grass, and a finish unit with capacity for 3600 pigs. The farm is farmed in hand and identifies the importance of their organic fertiliser use. This manure is currently stored on an uncovered concrete base within retaining walls, in a long line on part of the hardstanding area in front of the series of pig barns.
9. The proposals are to erect two open sided buildings off the same existing access, adjacent to each other and on the same alignment. The Appeal B building would be slightly longer. They would cover the existing manure area, and the edge of the field to its south, which does not form part of the cropped area but is used as the access track to other fields. There would be no additional hardstanding, and the manure would remain in the same location behind replacement retaining walls. There would be no herd size increase, and so no increase in the overall amount of manure. The part of the buildings covering the former field edge would be used for general storage associated with the wider agricultural unit.
10. BNG is a way of creating and improving biodiversity by requiring development to have a positive biodiversity impact. BNG is required under a statutory framework introduced by Schedule 7A of the Town and Country Planning Act 1990 (inserted by the Environment Act 2021). Every relevant planning permission is deemed to have been granted subject to the condition that the biodiversity gain objective is met, for development to deliver at least a 10% increase in biodiversity value relative to the pre-development biodiversity value of the onsite habitat. The Framework paragraph 187(d) also requires BNG, as do Policies SP09 and LP16 of the Babergh and Mid Suffolk Joint Local Plan – Part 1 (JLP), which together require development to protect and enhance biodiversity, equivalent of a minimum 10% increase for biodiversity.
11. During my site visit the field edge was very muddy and churned up, although the photographs show than in dryer periods it comprises grassed strips with some bare earth under the wheel tramlines. The appellant considers that less than 25sqm of this area would be affected per building, being only the area around each of support post. I disagree with this approach, even with a preclusion against any new permanent flooring. This is because the entire field edge area would no longer receive the same level of rainfall and sunlight, and would have items stored upon it. It would not be the same growing environment as at present.
12. The appeal proposals are therefore required to demonstrate 10% BNG in mitigation. The land's existing poor condition does not negate this requirement, as land condition is taken into account in the baseline calculations. The Planning Practice Guidance (PPG) advises that if it is clear the development proposal is not exempt, the pre-development biodiversity value will need to be provided for the application.¹
13. No such information was before the Council at the time of its decision. The appellant's Final Comments stage included a Statutory Biodiversity Metric (October

¹ Paragraph: 005 Reference ID: 74-005-20240214

- 2024). However, this only identifies the habitat for 'building 2' under Appeal A. The same Metric labelled building 2, was also submitted for the Appeal B building. No bespoke Appeal B information was provided.
14. The Metric identifies the total site area for Appeal A as 0.19ha, of which 0.044ha is of modified grassland of low distinctiveness in poor condition. The remainder is hardstanding. However, this does not correlate with the overall site area of 902sqm stated on the application form, nor with the Council's calculation of a grassland area of 294sqm for Appeal A. There is no to scale habitat plan. I also note that the Layout Plan reference PL04 submitted for both applications, does not match the red line plan for either, as the footprints are sited much closer to the existing buildings.
 15. Were the appeal proposals submitted as new applications in their current form, they should not be validated due to a lack of the 'minimum information requirements' identified by the PPG from Article 7 of The Town and Country Planning (Development Management Procedure) (England) Order 2015.² No convincing explanation as been provided as to why I should allow a proposal which is lacking such information.
 16. Furthermore, even if 0.19ha is accurate, no replacement BNG habitat has been identified for the loss of the 0.09 total habitat units established by the Metric as the biodiversity baseline. The required action to meet trading rules is the provision of habitat of the same distinctiveness or better.
 17. I could infer that only minimal habitat enhancements would be required to an equivalent plot of land off-site within the farm or elsewhere in order to achieve 10% BNG. However, there is no objective pre-development biodiversity value presented for either appeal to compare this against. Nor is there any evidence at all of where such a gain could take place. Although the Council has suggested potential conditions, as is required under the appeals procedure, these are not an appropriate approach to address the statutory biodiversity gain condition under paragraph 13 of Schedule 7A of the Town and Country Planning Act 1990.
 18. Overall therefore, the proposals demonstrate insufficient BNG provision. They would conflict with the statutory BNG requirements, the Framework paragraph 187(d), and the JLP Policies SP09 and LP16 as outlined above.

Other Matters

Benefits

19. The Framework Paragraph 88 confirms the desire to support a prosperous rural economy, whereby planning decisions should enable the sustainable growth and expansion of all types of business in rural areas. The proposals are supported in principle.
20. Manure stores are a major source of emissions of ammonia which is directly toxic to vegetation and especially to the lower plants of mosses, liverworts, and lichens. Ammonia is also a major contributor to the deposition of nitrogen, which reduces habitat biodiversity by promoting the growth of a relatively small number of the more vigorous plant species which then out-compete the other species present.

² Paragraph: 011 Reference ID: 74-011-20240214

21. The buildings relate to a Catchment Sensitive Farming capital grant scheme application for RP28 Roofing over Manure Storage Area, under the Department of Environment, Food and Rural Affairs (DEFRA) acting through the Rural Payments Agency (RPA). Roofing over the manure storage would thus contribute towards Goals 2 and 3 of the DEFRA Environmental Improvement Plan 2023, for clean air and for clean and plentiful water.
22. This is based on the manure's current lack of cover, which risks polluting watercourses from runoff after heavy rainfall, in breach of Environmental Permitting Regulations as it represents an uncontrolled discharge of polluting material. Roofing of such a large manure store would result in a substantial reduction in slurry. It would then be easier to manage, store, and spread slurry more efficiently. This would all contribute to a greater reduction in risk of pollution/contamination of water courses and ammonia emissions. Natural England identifies that these proposed measures, including a wider project of a slurry infrastructure grant for a slurry bag, represent a considerable improvement and benefit to the environment, and beneficial for biodiversity.
23. The proposals would in this regard be supported by the JLP Policy LP15, with particular regard to reducing pollution and enhancing groundwater quality, as well as being the efficient and effective use of resources and land. I note that the farm would have to make an extremely large investment as part of the grant funding. The intention to provide such environmental benefits is to be commended, and such benefits provide moderate cumulative weight in support of the appeals. The buildings would also use a rainwater harvesting system, intended to provide the entirety of the farm's water non-drinking water usage, to which I give minor weight.

Ecology

24. The Council originally refused the applications due to a lack of ecology information, and a failure to demonstrate that the sites would be suitable for the proposals in the context of identifying the presence or otherwise of protected species. Following correspondence between the parties, Natural England and the Council's Ecology team have withdrawn their objections. Had I been minded to allow the appeals, this matter could be dealt with via a condition to require a scheme of ecological enhancement, in order to comply with the JLP Policy LP16. This is a separate ecological requirement to the BNG discussed above.

Heritage Assets

25. The farm's access, frontage, and farmhouse buildings lie within the Mellis Conservation Area (CA), and so I have a statutory duty under section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing its character or appearance. I also have a statutory duty under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to consider the impact of the proposal on the special architectural and historic interest of listed buildings and their settings. Section 16 of the Framework requires great weight to be given to the conservation of designated heritage assets. The JLP Policies SP09 and LP19 are consistent with these duties.
26. The significance of West End Farm House as a Grade II listed building is its historic form dating from the 17th century and possibly earlier, and its functional relationship with the farmstead. The significance of the CA lies in its evident origins as an

agricultural settlement with a collection of farms that encircled the Common. West End Farm lies outside of the main settlement at the most westerly extent of the CA.

27. There are no changes proposed within the CA. The new buildings would be appropriately scaled and open sided, minimising their landscape impact. They would be in a relatively sheltered location on an existing farm, and would lie outside of the CA itself and not in direct sight line of the Farm House. Overall, the significance of the CA and of the listed building would be unaffected. The Council made the same conclusion.

Fallback and Other Examples

28. The proposal would not fall under any relevant permitted development rights, and therefore I give the similarities in this regard only very minor weight as a material consideration in support. The appellant's comparison example from Park Farm³ is materially different because that was entirely on hardstanding, whereby no BNG Metric was required. The JLP Policies SP09 and LP16 encourage the provision of biodiversity enhancements even where development is BNG exempt, which is why it was appropriate in that instance to use a condition to require specific bird boxes, bat boxes, and bee bricks.

Planning Balance and Conclusion

29. The proposals would result in clear ecological and biodiversity benefits from the reduction in manure run-off. However, these benefits would not directly mitigate the physical habitat loss in quantifiable biodiversity terms. There is insufficient evidence relating to BNG, and how the required 10% statutory increase could be achieved. The PPG states that the statutory provisions are an important material consideration, which represents the appropriate national approach towards, and benchmark for, biodiversity gains in planning.⁴
30. There is no general exclusion from the BNG requirement for new farm buildings, or for where a proposal would also create other ecological and biodiversity benefits. If this had been intended, then it would have been specified within the legislation. There is a statutory and development plan conflict in this regard, and I give this matter significant weight. This is not outweighed by the cumulative weight I give those benefits I have identified above.
31. I therefore conclude that overall, the proposals would conflict with the development plan as a whole. With no other material considerations outweighing this conflict, for the reasons given above I conclude that both Appeal A and Appeal B are dismissed.

L N Hughes

INSPECTOR

³ DC/24/01843

⁴ Paragraph: 020 Reference ID: 74-020-20240214