



Appeal Decision

Site visit made on 25 January 2025

by **J Somers BSocSci (Planning) MA (HEC) MRTPI IHBC**

an Inspector appointed by the Secretary of State

Decision date: 19th February 2025

Appeal Ref: APP/Q3115/W/24/3352165

5 The Row, Brightwell Baldwin, Watlington OX49 5NZ

- 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 Miss Amanda Hendricks against the decision of South Oxfordshire District Council.
 - The application Ref P24/S0096/FUL was approved on 22 May 2024 and planning permission was granted for an 'All weather riding arena (as amplified by Ecological Assessment Received 7 May 2024)' subject to conditions.
 - The condition in dispute is No.4 which states that: Prior to the commencement of the development hereby approved, a scheme for the planting of 13 trees within the blue edged area as depicted on drwgn0 LOC 001 including relevant tree locations, stock size, species and grazing protection measures, shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented no later than the first available planting season following the grant of planning permission.
 - The reason given for the condition is: To secure a net gain for biodiversity in accordance with Policy ENV3 of the South Oxfordshire Local Plan 2035.
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Decision

1. The appeal is dismissed.

Background and procedural matters

2. I note that the Council and the Appellant in their appeal documents reference the paragraphs of the National Planning Policy Framework 2023 (the Framework). Since the submission of the appeal, the 2023 version of the Framework has been superseded by the 2024 version which was published on the 12 December 2024. The wording of the relevant paragraphs of the new Framework remain unchanged from the 2023 version (except for new paragraph numbers) and therefore did not require to be reassessed by either party in relation to this appeal. Additionally, this 2024 version of the Framework was amended on 7 February 2025 to correct cross references to paragraph 155 and for the avoidance of doubt is not intended to constitute a change of policy. As such I have considered the appeal on this basis and refer only to the updated 2025 Framework within my decision.
3. This type of appeal that seeks the deletion of a condition means that the original grant of planning permission is opened for re-consideration in its entirety with the initial grant of permission therefore being at risk. Having reviewed the application, I have no reason to dispute the opinion of both parties that the proposed development is acceptable in principle (without detailed considerations) and is made in accordance with the Development Plan, having considered its policies and any other material considerations. Taking this into account, I will therefore only consider the elements in dispute which revolves around the details of the

application, particularly Condition No. 4. which relates to two components. The first component being procedural as to whether a pre-commencement condition was undertaken in accordance with the Town and Country Planning Act 1990 (TCPA) and the Town and Country Planning (Pre-Commencement Conditions) Regulations 2018. The second component is subsequent to the first and relates to whether the condition meets the tests of conditions in accordance with Paragraph 57 of the Framework and the National Planning Policy Guidance (NPPG).

Main Issue

4. The main issues are:

- Is the pre-commencement Condition No.4 procedurally correct, considering whether it has been undertaken in accordance with the provisions of Section 100ZA of the Town and Country Planning Act 1990 and the Town and Country Planning (Pre-Commencement Conditions) Regulations 2018;
- If yes, then does Condition No.4 meet the tests of conditions as prescribed by the Framework and the NPPG.

Reasons

Is the pre-commencement Condition No.4 procedurally correct, considering whether it has been undertaken in accordance with the provisions of Section 100ZA of the Town and Country Planning Act 1990 and the Town and Country Planning (Pre-Commencement Conditions) Regulations 2018.

5. Section 100ZA of the Town and Country Planning Act 1990 (TCPA) and the Town and Country Planning (Pre-Commencement Conditions) Regulations 2018 seeks that Planning permission for the development of land may not be granted subject to a pre-commencement condition without the written agreement of the Applicant to the terms of the condition.
6. The Council have submitted a copy of an email¹ from the Agent appointed by the Owner to the Council's Planning Case Officer. In the email the Council's Planning Officer details a proposed pre-commencement landscaping condition which is the same as written on Condition No.4 of the Decision notice (as detailed in the header to this letter). The Planning Officer then writes "*Please could you confirm whether you agree to this condition being used?*" The Agent then responds an hour later with "*Yes to the first condition regarding tree planting but as you say I strongly suggest you say no lighting so therefore no need to put that condition.*"
7. The Appellant in their Statement of Case (SoC) states that the Agent that was acting on their behalf did not have the authority to agree the pre-commencement condition and 'over-stepped their authority.' The planning system in England is such that one doesn't need to own or have an interest in land in order to apply and have planning permission granted for said land. In every planning application there is a declaration on the Application Form which is signed by the Agent/Owner/interested party whereby confirmation is sought that to the best of their knowledge, any facts stated are true and accurate and any opinions given are the genuine opinions of the person giving them. The Agent has signed the form on behalf of the Owner whereby in doing so the planning agent must adhere to the

¹ Email from Colin Crump (Appointed Agent) to Will Darlison (Planning Officer), Dated 22 May 2024, 09:11 and response from Colin Crump Will Darlison Dated 22 May 2024, 10:20.

professional codes of conduct of their professional institute and act in the best interest of their clients while complying with planning legislation. In this case the 'Applicant' as detailed in the provisions of the TCPA is the Agent who has applied for planning permission on behalf of the Owner and has signed the declaration. Having read the provisions of 100ZA of the TCPA and Town and Country Planning (Pre-Commencement Conditions) Regulations 2018, whilst the legislation does not define 'Applicant,' to me this is simply the party applying for the permission and who signed the declaration on the application form. I do not agree with the Appellant's suggestion that the Council requires additional approval of the owner in addition to the Agent in order to comply with the legislation.

8. Furthermore, the Council do not know and are not party to the terms of the relationship or contract between the Agent and the Owner. It would be unreasonable for the Council not to believe or take the word of the Agent who has signed a declaration that they are providing honest and truthful information on behalf of the client as outlined previously. If the Agent has 'overstepped their authority' as per the Appellant's SoC, the Council could not have reasonably known this. Any conflict regarding the Agent's authority in this respect is a matter between the Owner and the Agent and which is not part of this planning determination.
9. Taking the above into account and based on the information submitted as part of this appeal, the Council have obtained permission from the Applicant to place a pre-commencement condition on the planning permission and has followed the correct procedure for pre-commencement conditions in accordance with Section 100ZA of the Town and Country Planning Act 1990 and the Town and Country Planning (Pre-Commencement Conditions) Regulations 2018.

Does Condition No.4 meet the tests of conditions as prescribed by the Framework and the NPPG

10. Condition No.4 as described in the header to this letter is a pre-commencement condition that seeks the erection of 13 trees in the area marked as blue on the approved plan, and further details provided to the Local Planning Authority regarding the tree species, size etc. The reason given for applying this condition was to generate a net-gain in biodiversity in accordance with Policy ENV3 of the South Oxfordshire Local Plan (LP).
11. Paragraph 57 of the Framework as well as the NPPG provides that conditions on grants of planning permission should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. I turn to this assessment below.

Necessary

12. In order to pass the necessary test a condition must be essential in order for the development to proceed, as without the condition, the development would not be appropriate. Policy ENV3 of the LP relates to biodiversity and seeks that development conserve, restore and enhance biodiversity, and that all development provide a biodiversity net gain (BNG) where appropriate. The policy seeks that applications provide evidence to support this net gain in biodiversity and that planning permission will only be granted where impacts to biodiversity can be avoided, mitigated, or as a last resort, fully compensated.

13. The application involves the replacement of grassland for a riding arena consisting of a sand and fibre surface of dimensions of 20 metres x 40 metres and an access track. The original application is supported by an Ecological Assessment² which makes an assessment of the impact towards biodiversity as a result of the development. The report is written by a company that employs qualified ecologists and I have confidence in the competence and reliability of information presented within the report which gives an accurate consideration of the current and proposed situations with regards to biodiversity.
14. According to the report, the riding arena and access track would be unvegetated and would result in a net loss of biodiversity from the current situation calculated by the report as 0.16 Area Habitat Units (grassland and woodland). In order to provide no net loss in biodiversity, the report recommends the planting of 13 trees to compensate for the loss. The Council's Ecology Officer has reviewed the report and has concurred with the findings presented by the Appellant's Ecologist and supports the pre-commencement condition of 13 trees in order to satisfy Policy ENV3 of the LP. Given that two qualified ecologists have reviewed and concurred with the proposed mitigatory measures, I have no reason to doubt these findings and have not been presented with any evidence that disputes these qualified opinions.
15. I note comments by the Appellant that they feel that the new National BNG requirements that became mandatory from 22 February 2024 and applied to small sites from 22 April 2024 have been applied to the scheme. When the scheme was submitted, this was prior to when the new requirements were adopted and hence the National BNG requirements that make it mandatory to provide at least 10% BNG for all relevant developments is not applicable to this scheme.
16. Based on the appeal documents, I can see no evidence that the new national BNG requirements have been applied to the scheme. The BNG requirement comes from LP Policy ENV3 whereby a development needs to provide a net gain in biodiversity and this has been achieved.
17. I also note commentary within the Appellant's Statement of Case (SoC) that other sites in the locality³ have not required BNG in order to gain consent for development. Application Ref:P6/S0297/FUL was assessed against an older Local Plan and as such the policy position is not the same as the current application. Also the P24/S1999/FUL application was retrospective and the BNG could therefore not be calculated so I have discounted these two decisions from this determination. I have read the Council Officer Reports for each of the other specified applications, and I can empathise with the Appellant who feels that they have been unfairly treated as each of the grants of permission do not appear to consider LP Policy ENV3 within the officer report. In one of the applications a holding objection is made by the Council's ecologist, however there is no information as to what the objection is. With only the Officer report it is difficult to understand whether there have been prior discussions with the Ecology Officer or assessments with regards to being satisfied with BNG and therefore not seeking to require compliance with LP Policy ENV3. Based on the information before me, it would appear that the lack of detail or omission of discussion of LP Policy ENV3 within the Officer Reports of

² By GS Ecology Ltd, Ref: ECO3451, Dated 22 April 2024

³ South Oxfordshire Planning References P16/S0927/FUL, P21/S1775/FUL, P22/S1011/FUL, P23/S0304/FUL; P23/S1287/FUL, P24/S1999/FUL; and P24/S0070/FUL

these decisions does give the impression that the Council may have not fulfilled their duty under s38(6) of the Planning and Compulsory Purchases Act 2004 or s70 of the Town and Country Planning Act 1990⁴.

18. That said, the lack of consideration of LP Policy ENV3 in other cases does not make the policy invisible or not relevant to the determination of a planning application. The policy is clearly given full weight and is an adopted policy of the development plan and must be applied to any relevant planning application. As such, I can see no procedural error in the Council applying LP Policy ENV3, and whilst it is concerning that this policy appears to have been omitted from considerations of other schemes, the submitted schemes do not set a precedent or material consideration that would make LP Policy ENV3 not applicable.
19. Taking the above into account and in conclusion of this matter, it is clear to me that in order to comply with LP Policy ENV3 it is possible to plant 13 trees on the site adjacent which is under the control of the owner, and that this is a necessary requirement in order to satisfy Policy ENV3 of the LP. Without the pre-commencement condition, the scheme would not provide a net gain in biodiversity, and when assessed as a whole against the development plan and any other material considerations, and in conclusion of this matter, the condition is necessary in order to make the detail of the scheme acceptable.

Relevant to Planning and to the development to be permitted

20. Biodiversity and the natural environment is a planning issue and therefore the imposition of such a condition regarding trees is relevant to planning. The request for 13 trees is relevant to the development to be permitted as the number of trees requested are directly related to the loss of grassland as a result of the development. As such and in conclusion of this matter, Condition No.4 in question is relevant to planning and to the development to be permitted.
21. I note comments in the Appellant's SoC that revolve around proportionality, however this test is associated with relevance, rather than proportionality which is more suited to be incorporated into discussion under the 'reasonable' test.

Enforceable

22. To be enforceable it must be reasonable that a condition can actually be enforced by the LPA either by it being aware when it is not being implemented or by avoiding it being too vague for the LPA to know when it is being implemented.
23. Whilst it does not appear that the appeal documents question the enforceability of Condition No.4, for the avoidance of doubt, this element of the test will also be assessed. The condition is worded in a way that is specific and recommends the planting of trees and approval of details such as placement, age, species, and protection measures. Once details are approved by the Council, these would be easily enforceable as the compliance with the details would be readily observable. In conclusion of this matter, I find that the Condition No.4 as imposed would be enforceable.

⁴ The duty under both of the forementioned Acts requires a Local Planning Authority to have regard to the provisions of the development plan, unless material considerations indicate otherwise.

Precise

24. In order to be precise the condition must be specific in what it is asking an applicant to do to comply with the condition.
25. The main concern from the Appellant is that the condition in their opinion imposes an inflexible timeline that does not accommodate the appeal process. As such the Appellant argues that the language used does not allow a reasonably sufficient time in order to submit a scheme with agreement and the planting itself.
26. Having reviewed the Condition No.4 I am not of the same opinion. The Condition is precise in that it specifically directs the Appellant what they need to do in order to comply with the condition, for example the planting of trees and approval of details such as placement, age, species, and protection measures. The condition requests that the scheme shall be implemented no later than the first available planting season following the granting of planning permission. Given that an appeal has been lodged, there is sufficient flexibility in the condition as it suggests the 'first available' planting season, which in this case the first available opportunity post the granting of the decision would be after the decision made at appeal. In conclusion of this matter, I find that Condition No.4 is precise.

Reasonable in all other aspects

27. In order to be reasonable a condition should ensure that it makes sense and is fair on the applicant and others who will need to comply with the condition.
28. The imposition of 13 trees in order to generate a BNG is in compliance with LP Policy ENV3 and would be a reasonable, fair and proportionate amount in order to justify the requirement of BNG as per LP Policy ENV3. Whilst the previous discussion around other permissions being granted is also relevant in this discussion also, the Council were fully justified in requesting the 13 trees to be planted in order to comply with LP Policy ENV3. There is also the ability to plant 13 trees given the adjacent land indicated in blue is controlled by the owner. Whilst I can empathise with the Appellant that they feel that they have been subject to unfair treatment and discrimination, I do not find that this is the case. In conclusion of this matter, I find that Condition No.4 is reasonable in all other aspects.

Other Matters

29. I note that the Appellant has referred to the application process as contravening the Equality Act 2010 (EA10), via their opinion that the imposition of Condition 4 was discriminatory. Section 149(1) of the EA10 imposes the 'public sector equality duty' (PSED) on 'a public authority...in the exercise of its functions'. The PSED means that in the exercise of their functions a LPA needs to have due regard to three aims, namely to eliminate discrimination, harassment, victimisation; advance equality of opportunity between persons with protected characteristics; and to foster good relations between persons who do/don't share protected characteristics.
30. The Appellant's SoC does not provide evidence that they have a protected characteristic and that this has been targeted as a result of the application process. However, the allegations appear to be related to unfair treatment when considering other similar schemes. As mentioned previously, one could also view this situation as the LPA not having undertaken their duty correctly, and that the imposition of Condition No.4 was the LPA fulfilling their duty to pay due regard to the adopted

policies of the Development Plan. To me, the act of placing Condition No.4 on the Decision notice was not a deliberate act that was directed towards the Appellant personally and would apply to any application where this policy is deemed relevant. As such, I have had due regard to the Public Sector Equality Duty set out under the Equality Act 2010 and have found that the placement of the condition was proportionate and no contravention of the PSED or EA10 has been demonstrated.

31. In the Appellant's SoC, there are four planning appeals⁵ that are referred to where the Appellant gives a summary of each one having been approved and their relationship to this current application under consideration. Whilst the appeals have not been appended to the appeal documents, the considerations are not identical, and illustrates that each application requires to be considered on their own merits. As such I afford limited weight to these appeals in demonstrating the appropriateness of removing the pre-commencement condition.

Conclusion

32. For the reasons given above, and considering all evidence before me together with the Development Plan and relevant material considerations, the correct procedure was followed in the imposition of Condition No.4 as a pre-commencement condition, and that this condition also meets the tests of Conditions. Taking this into account, the appeal is dismissed.

J Somers

INSPECTOR

⁵ Appeal Refs: APP/Q4625/W/19/3229173, APP/X1355/W/20/3263962, APP/B9506/W/19/3241641, APP/Z5060/W/20/3256359

