



Appeal Decision

Site visit made on 20 May 2025

by John Felgate BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 May 2025

Appeal Ref: APP/M2840/W/25/3359932

8 Hayway, Irthlingborough, Northamptonshire NN9 5QP

- 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 Natalie Whiting against the decision of North Northamptonshire Council.
 - The application reference is No. NE/24/00564/FUL.
 - The development proposed is a two storey, two bedroom dwelling, including access, parking and amenity space.
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Decision

1. The appeal is allowed and planning permission is granted, for a two storey, two bedroom dwelling including access, parking and amenity space, at 8 Hayway, Irthlingborough NN9 5QP, in accordance with the terms of the application, Ref. NE/24/00564/FUL, subject to the conditions in the attached schedule.

Background and procedural matters

2. The application was originally submitted on 24 March 2024, but was not validated until 14 June 2024, because of a delay in paying the necessary application fee. In the meantime, on 2 April 2024, the provisions of the Environment Act 2021 relating to biodiversity net gain (BNG) on small sites came into force, together with consequential amendments to the Town and Country Planning Act 1990 and the Town and Country Planning (Development Management Procedure) Order 2015 ('the DMPO'). The latter included the introduction of DMPO Article 7(1A), which requires applications for planning permission to be accompanied by certain additional information relating to biodiversity; and also the introduction of new Schedule 7A to the 1990 Act, in which paragraph 13 makes all new planning permissions, except where subject to one of the defined exemptions, subject to a 'BNG deemed condition', requiring the submission and approval of a biodiversity gain plan.
3. The requirements of Article 7(1A) were apparently not communicated to the applicant Ms Whiting (now the appellant), and no biodiversity information was submitted at any time during the application process. In the Council's decision, on 14 August 2024, planning permission was refused for a single reason, relating to the lack of such information relating to biodiversity, and a consequent lack of certainty that BNG would be achieved.
4. At the appeal stage, in January 2025, the appellant has acknowledged that the relevant requirements relating to BNG are now applicable, and has submitted a BNG assessment report, accompanied by a completed DEFRA 'biodiversity metric'. On 11 April 2025, the Planning Inspectorate wrote to the Council and the

appellant, seeking views on various matters relating to the late submission of this information. The replies received have been taken into account.

5. In my view there is no doubt that, had the application been submitted after the introduction of DMPO Article 7 (1A), without the biodiversity information now required, it would have been clearly invalid, and the Council would have been entitled not to deal with it. In this case however, the application was substantially complete before that date. The appellant was at fault in failing to pay the fee in a timely manner, and the Council was therefore justified in delaying its validation. But once the key date of 2 April 2024 had passed, the Council should have informed her of the new requirements, or invalidated the application at that stage. Instead, they did neither, thus giving Ms Whiting no opportunity to submit the necessary information prior to determination. She has now sought to do so retrospectively at the appeal stage. There is no dispute that the submitted information meets the requirements of Article 7(1A). Whilst normally the submission of new information at this stage would be discouraged, in this particular case it seems to me that refusing to accept the appellant's biodiversity material would compound the unfairness that has already occurred. In the circumstances, I am satisfied that this will not prejudice the position of the Council or any other parties.
6. I have therefore proceeded on this basis that the appeal before me is valid and that the biodiversity information submitted by the appellant is to be considered.

Main issue

7. Planning permission for an identical scheme was granted by the Council in February 2021, but has now lapsed. That permission followed from an appeal decision in 2020, in which the Inspector found the scheme acceptable in all respects except for the lack of a financial contribution to mitigate any potential recreational impacts on the Upper Nene Valley Gravel Pits Special Protection Area (SPA). In the present appeal, an undertaking has been entered into, and the impact on the SPA is no longer a matter of dispute.
8. In the light of all the above matters, the single main issue in the present appeal relates to the effect of the proposed development on the Environment Act's aim of achieving a 10% net gain in biodiversity.

Reasons for decision

9. The proposed development would involve the construction of a new detached dwelling within the garden of the existing property. This part of the garden is currently grassed, and therefore counts towards the site's baseline habitat, albeit of a low value. The development would result in a small net loss of this on-site habitat. It is not disputed that the appeal site would be unable to provide any compensatory new or improved habitat on site. The appellant's biodiversity matrix and report calculates the resulting net loss of biodiversity to equate to 0.0191 habitat units.
10. Under paragraph 15 of the new Schedule 7A to the 1990 Act, all developments are now required to achieve a 10% net gain (the 'biodiversity objective'), unless one of the various exemptions applies¹. In the present case no such exemption has been claimed. However, in such circumstances, paragraph 14(2) of Schedule 7A

¹ In the Biodiversity Gain Requirements (Exemptions) Regulations 2024; and Planning Policy Guidance para 74-003-20240214

provides for net gains to be provided not only on site, but alternatively through off-site provision or by purchasing credits through a registered third-party scheme. In the present case, the appellant's BNG report confirms that the latter route is envisaged. Given the evident inability of the site to provide on-site gains, and the lack of any other obvious off-site alternatives, I see no reason why the purchase of credits should not be an acceptable means of achieving the required BNG.

11. The purchase of credits, or an agreement with a relevant off-site provider, would need to be secured through a planning obligation. The relevant section of the Planning Policy Guidance (PPG) makes clear that it would be good practice to submit draft heads of terms for any such obligation at the application stage². But there is no absolute requirement to do so, and in any event an obligation would be expected to form part of the biodiversity gain plan that would need to be submitted prior to implementation, pursuant to the BNG deemed condition under paragraph 13 of Schedule 7A. Therefore, granting planning permission without a formal mechanism in place, to secure off-site gains or credits, would not affect the Council's ability to ensure that the BNG objective is achieved at a later stage. Nor would it involve any conflict with Policy 4 of the North Northamptonshire Joint Core Strategy, adopted in July 2016 (the JCS), which seeks to achieve biodiversity gains in more general terms.
12. In this context, I note that the PPG advises that, in the determination of a planning application, it will generally be inappropriate for permission to be refused on the grounds that the biodiversity gain objective will not be met³. This reinforces my view as set out above.
13. I fully accept that the purchase of off-site credits involves a substantial cost, and that in the present case this could significantly undermine the development's financial viability. However, there is no provision in the relevant legislation for the BNG requirement to be set aside or varied on these grounds. Nor would any consequent doubts about viability be a sufficient reason to refuse permission.
14. For these reasons, I conclude that planning permission for the proposed development could be granted, subject to the deemed BNG condition, without any conflict with the aim of ensuring that, where development takes place, it achieves a 10% net gain in biodiversity.

Other matters

15. The development would involve the loss of a small length of kerbside parking, equivalent to about one car space. But the scheme would provide two on-site spaces for the new dwelling. On my visit I saw that parking lay-bys have already been provided in Hayway for existing residents. On balance, it seems unlikely that the small loss of on-street parking would have such a severe effect as to outweigh the benefits of increasing the housing supply by one dwelling.
16. For the reasons already stated, I am satisfied on the evidence before me that any potential indirect effects on the Upper Nene Gravel Valley Pits SPA would be fully mitigated by the contribution provided for in the appellant's undertaking, towards the Council's strategic access, management and monitoring scheme. Consequently, the development would have no likely significant effect on the SPA.

² PPG para 74-015-20240214

³ PPG para 74-019-20240214

Conditions

17. Any conditions should meet the tests in paragraph 57 of the National Planning Policy Framework (the NPPF). Amongst other things, they must be necessary, and must be relevant to planning. In the present case, those that I intend to impose, in addition to the standard time limit for commencement, are set out in the attached schedule.
18. A condition specifying the approved plans is necessary to give certainty as to the nature of the development. Control over the external materials is needed to ensure a satisfactory appearance. A condition to secure the provision of the access and parking area is needed in the interests of highway safety. Requirements relating to obscure glazing and hours of work are necessary to protect the amenities of neighbouring occupiers.
19. However, conditions to prevent the on-site burning of materials, or to control dust emissions or the transmission of mud, are unnecessary because these would duplicate other controls available under public health and highways legislation; as such they fail the test of relevance to planning.
20. The PPG makes it clear that the requirement for BNG should not be imposed as a planning condition⁴, as any permission will automatically be subject to the BNG deemed condition, by virtue of paragraph 13 of Schedule 7A to the 1990 Act.

Conclusion

21. For the above reasons, I have found no justification to withhold planning permission on grounds relating to biodiversity, because the development cannot be implemented without complying with the BNG deemed condition, as prescribed by the relevant legislation.
22. The proposed development would therefore not conflict with JCS Policy 4. No conflict with any other development plan policy has been identified by any party.
23. It follows that the appeal is allowed and permission granted, subject to the attached conditions, and subject to the BNG condition set out in paragraph 13 of Schedule 7A to the Town and Country Planning Act 1990.

J Felgate

INSPECTOR

⁴ PPG para 74-024-20240214

SCHEDULE OF CONDITIONS

The planning permission to which this decision relates is granted subject to the following conditions:

- 1) The development hereby permitted shall be commenced not later than three years from the date of this decision.
- 2) The development shall be carried out in accordance with the approved plans, Drawings Nos 19-111-01-Rev A and 19-111-02-Rev B.
- 3) No development above ground floor slab level shall take place until details of the materials to be used on the external surfaces of the walls and roof of the proposed building have been submitted to the local planning authority and approved in writing. Thereafter, the development shall be carried out in accordance with these approved details.
- 4) The proposed new dwelling shall not be occupied until the proposed new dropped kerb, vehicular access and parking spaces shown on Drawing No 19-111-01-Rev A have been provided in accordance with the approved details, and have been surfaced in a bound material, and drainage has been installed to ensure that surface water is directed away from the highway. Thereafter, these facilities shall be retained as approved and installed.
- 5) The proposed new dwelling shall not be occupied until the windows marked 'frosted' on Drawing No 19-111-02-Rev B have been fitted with obscure glazing, to a minimum level of Pilkington Glass level 3 or equivalent. In addition, all parts of these windows that are below 1.7m above the finished floor levels shall be designed and fitted so as to be non-opening. Thereafter, the said windows shall be permanently retained in this form.
- 6) No construction work or deliveries of construction materials shall take place outside the hours of 08.00 – 18.00 on Mondays to Fridays, or 08.00 – 13.00 on Saturdays. No construction or deliveries shall take place on Sundays or public holidays.