



Appeal Decision

Site visit made on 18 June 2025

by H Jones BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 July 2025

Appeal Ref: APP/F4410/W/25/3361989

Hillcrest, Doncaster Road, Branton, Doncaster DN3 3LT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Mr Richard Bedford against the decision of City of Doncaster Council.
 - The application Ref is 22/01854/OUT.
 - The development proposed is outline application for the erection of 4 No. 2 storey dwellings, 1 No. detached double garage & the formation of a new private drive.
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Decision

1. The appeal is dismissed.

Main Issue

2. Whether the proposed development is required to deliver a minimum 10% biodiversity net gain and, if so, whether this would be secured.

Reasons

3. The statutory framework for biodiversity net gain (the statutory BNG) was introduced by Schedule 7A of the Town and Country Planning Act 1990 (inserted by the Environment Act 2021). The proposal the subject of the appeal is a minor development and, since the application was submitted to the Council before 2 April 2024, it benefits from a temporary waiver from the statutory BNG. The Planning Practice Guidance (the PPG) contains a section dedicated to biodiversity net gain and provides detailed advice on the implementation of the statutory BNG.
4. The concept of biodiversity net gain and its relevance to development proposals is not limited to the statutory BNG, however. It is quite typical for biodiversity net gain, in more general terms, to feature within development plan policies, and the concept has also been well-established within the National Planning Policy Framework.
5. Policy 30 of the Doncaster Local Plan 2015-2035 (the LP) concerns biodiversity and geodiversity. Amongst other matters, it sets out that development proposals shall be considered in the light of the mitigation hierarchy in accordance with national policy. LP Policy 30 further sets out that proposals which may result in harm to features of biodiversity interest shall only be supported where a minimum 10% biodiversity net gain would be achieved.
6. If the proposal were a development type which, irrespective of the transitional arrangements, would be exempt from the statutory BNG, it would likely be, having regard to guidance within the PPG, inappropriate to apply a meaningful amount of weight to any conflict identified with LP Policy 30. Similarly, if the requirements of

Policy 30 in respect of biodiversity net gain were inconsistent with the statutory BNG then this too may be a reason to attribute any conflict with it limited or no weight.

7. However, in this case, the proposed development is subject to the statutory BNG transitional arrangements. It is not a development type per se where the statutory BNG would never take effect. Where the transitional arrangements apply, the PPG guides that the application of development plan policy requirements concerning biodiversity net gain can still be appropriate. Furthermore, since Policy 30 requires development proposals to achieve a minimum 10% net gain for biodiversity, it is consistent with the statutory BNG. For these reasons, despite it benefiting from a temporary waiver from the statutory BNG, the proposal requires assessment against Policy 30, and it would be appropriate to attribute a significant amount of weight to conflict with it should that be identified.
8. A biodiversity net gain report¹ is before me (the BNG report). The BNG report compares the site's baseline biodiversity value with, at this outline stage, its value upon completion of the proposed development. The BNG report determines that the proposed development would result in a biodiversity net loss the equivalent of 58.48%. Therefore, rather than achieving Policy 30's 10% biodiversity net gain, the evidence before me shows that the proposal would result in the site's biodiversity value clearly deteriorating.
9. Doncaster's Biodiversity Net Gain Supplementary Planning Document (the SPD) was prepared in support of Policy 30 of the LP. The SPD does not form part of the development plan, nevertheless, it provides further useful guidance on how LP Policy 30's net gain requirements can be satisfied by development proposals.
10. The SPD sets out that, aside from permitted developments and householder developments, all development proposals are required to demonstrate a minimum 10% biodiversity net gain. In summary, the SPD advocates a hierarchical approach to biodiversity whereby, as a first step, any harmful implications of development upon biodiversity be minimised. Thereafter, mitigation proposals should be maximised within the site. Failing this, should off-site biodiversity net gain be proposed, the SPD's hierarchy advocates that delivery as close to the development as possible is preferred.
11. The submission of the BNG report before me fulfils the SPD's requirement for an initial biodiversity submission to be made at the outline stage. However, it does not demonstrate to me that the proposal's design would minimise its harmful effects nor maximise on-site habitat provision. Therefore, the BNG report, and the scheme as a whole, is not following the SPD's hierarchy or providing any assurance that a biodiversity net gain would be achieved.
12. The SPD advocates that a Section 106 agreement is the most suitable route to secure a final biodiversity net gain plan. This could secure the preferred SPD approach of habitat provision on site or, alternatively, a financial contribution towards provision off-site. Although the SPD sets out that the final biodiversity net gain plan is not required until after the outline stage, it does not set out that it is appropriate for the Section 106 agreement securing mechanism to also be deferred. Rather, I find that it sets out that the Section 106 agreement needs to be completed at the outline planning permission stage, i.e. before the planning

¹ Biodiversity Net Gain Report Ref SQ-957

permission is granted. The final biodiversity net gain proposals that the Section 106 agreement would secure can, however, be provided later.

13. Furthermore, I am mindful of the advice within the PPG which sets out that ensuring that any planning obligation is entered into prior to granting planning permission is the best way to deliver sufficient certainty for all parties about what is being agreed. The PPG further sets out that a positively worded condition which requires a Section 106 agreement to be entered into would unlikely pass the tests for condition imposition and, whilst a negatively worded condition may be acceptable, this would only be in exceptional circumstances and the heads of terms or principal terms of the agreement should, first, have been agreed. No such exceptional circumstances are before me, nor are any heads of terms or principal terms. Therefore, the imposition of a condition permitting a Section 106 agreement to be entered into after the grant of planning permission would be inappropriate in this case.
14. I have also considered whether it would be appropriate for me to simply impose a condition requiring the submission of a biodiversity net gain plan to be submitted and agreed later. Perhaps requiring such a plan to accompany the reserved matters or for it to be submitted and agreed prior to the development commencing. However, given the evidence before me, and the cited biodiversity net losses of the BNG report, the scheme has not been designed to deliver an on-site minimum 10% biodiversity net gain. I have no basis on which to be confident that it would achieve such on-site gains nor does the evidence before me make it clear that there is an intention to achieve such on-site gains. In such circumstances, I am not satisfied that such a condition would be appropriate or that it would be likely to be discharged successfully.
15. Therefore, Policy 30 of the LP applies to the proposal, and it requires that it deliver a minimum 10% biodiversity net gain. The proposed development would not secure this biodiversity net gain delivery. Furthermore, I am not satisfied that Policy 30's biodiversity net gain requirements could be addressed via the imposition of conditions. Consequently, the proposal conflicts with Policy 30 of the LP.

Other Matters

16. The proposed development would make a contribution to housing supply, and it would increase the choice of housing in the area. As a small development, it has the potential to be delivered quickly too. However, in providing only 4 dwellings, the boost to housing supply would be quite modest. Furthermore, the Council submit that it can demonstrate in excess of 5 years' worth of housing land supply, and I have no reason to disagree. Whilst this supply position does not act as a ceiling to further housing development, the Council's relatively healthy supply position is an important factor in determining the weight to be attributed to the proposal's boost to housing supply. I therefore attribute a moderate amount of weight to the proposal's contribution to housing supply, but the benefit derived from this is insufficient to outweigh the harm brought about by the proposal's failure to deliver biodiversity net gain.
17. The appellant refers to a planning permission for housing which was previously granted on the appeal site but sets out that it has now elapsed. As a result, that earlier planning permission does not have a realistic prospect of being

implemented. In turn, it does not constitute a fallback position weighing in favour of the proposal.

18. The appellant submits that responses have been provided to address the consultation comments received from the Council's drainage and pollution control officers. This may be the case, and the proposed development may not cause, or be the subject of, unacceptable drainage or site contamination problems or risks. However, an absence of harm in respect of such matters is a neutral factor in my decision, and it does not weigh in the proposal's favour.

Conclusion

19. The proposal conflicts with the development plan as a whole, and the material considerations do not indicate that the appeal should be decided other than in accordance with it. I therefore conclude that the appeal should be dismissed.

H Jones

INSPECTOR