



Appeal Decision

Site visit made on 8 September 2025

by **Jonathan Price BA(Hons) DipTP DMS MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 18 September 2025

Appeal Ref: APP/D0515/W/25/3366436

35 Gosmoor Lane , Elm, Wisbech, Cambridgeshire PE14 0AH

- 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 Katherine White against the decision of Fenland District Council.
 - The application Ref F/YR24/0995/F was approved on 10 February 2025 and planning permission was granted subject to conditions.
 - The development permitted is change of use of land for use as a private hire dog park, involving the erection of a field shelter and a 1.8m high boundary fence.
 - The condition in dispute is No 2 which states that: The development shall not commence until a Biodiversity Gain plan is submitted to and approved in writing by the Local Planning Authority; The Biodiversity Gain plan shall deliver a minimum of 10% biodiversity net gain and will include as a minimum, where applicable: a) Details regarding how the biodiversity gain hierarchy has been applied; b) Details regarding proposed on-site biodiversity enhancements; and/or; c) Details regarding proposed off-site biodiversity gains; and d) A completed pre and post development biodiversity metric calculation; and e) A Habitat management and monitoring plan for both on and off site improvements. The approved plan will be implemented within 1 year of the approval and so maintained for at least 30 years after the development is completed.
 - The reason given for the condition is: To ensure compliance with Schedule 7A of the Town and Country Planning Act 1990 (inserted by the Environment Act 2021).
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Decision

1. The appeal is allowed and the planning permission Ref F/YR24/0995/F for change of use of land for use as a private hire dog park, involving the erection of a field shelter and a 1.8m high boundary fence at 35 Gosmoor Lane, Elm, Wisbech, Cambridgeshire PE14 0AH granted on 10 February 2025 by Fenland District Council, is varied by deleting condition 2.

Background Matters and Main Issue

2. As set out above, the condition in dispute is a pre-commencement one, requiring submission and approval of a Biodiversity Gain plan and setting out the minimum requirements to achieve at least 10% biodiversity net gain (BNG). The reason given is to ensure compliance with Schedule 7A of the Town and Country Planning Act 1990 (the Act), which provides the statutory framework for BNG.
3. This objective of BNG is for development to deliver at least a 10% increase in biodiversity value relative to the pre-development biodiversity value of the onsite habitat. This increase can be achieved through onsite biodiversity gains, registered offsite biodiversity gains or statutory biodiversity credits. As explained in the Planning Practice Guidance (PPG), the statutory framework for BNG deems every planning permission granted to be subject to the condition that the biodiversity gain objective is met, unless specific exemptions apply. The biodiversity gain condition

is also a pre-commencement condition: once planning permission has been granted, a Biodiversity Gain Plan must be submitted and approved by the planning authority before commencement of the development.

4. In relation to the specific exemptions from BNG, the appellant's case is that this proposal benefits from the de minimis provisions. This exemption relies on meeting two criteria. There is no dispute over the first of these, in that this proposal does not impact on any onsite priority habitat. The Council contests the second criterion whereby, if there is an impact on other onsite habitat, that impact must be on less than 25 square metres (e.g. less than a 5m by 5m square) of onsite habitat with a biodiversity value greater than zero and on less than 5 metres of onsite linear habitat (such as a hedgerow).
5. The PPG requires applicants provide sufficient evidence supporting the de minimis exemption. In cases where the development would be smaller than 25 square metres, the description of development, existing and proposed site plans, and the development's area size (in square metres) may be sufficient. The appellant had provided the de minimis reasons in the appropriate part of the application form. This confirmed that it was considered the general Biodiversity Gain condition did not apply. The reason given was that no building works were required, purely fencing to existing land.
6. The PPG advises that by stating the proposal is considered de minimis in the application form enables the Council to consider whether the proposal is genuinely exempt at the validation stage. Notwithstanding the information on the form, the application was validated and duly determined. The Council reported that on the basis that the proposed gravel car park and timber shelter would exceed an area of 25 square metres, the de minimis exemption did not apply and the proposal was required to provide BNG in accordance with the Act. The pre-commencement condition in dispute was imposed to secure this, by requiring the implementation of an approved Biodiversity Gain plan. Therefore, the main issue in the appeal is whether this condition was reasonable and necessary in the circumstances.

Reasons

7. Paragraph 57 of the National Planning Policy Framework (the Framework) requires that planning conditions 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. It advises that agreeing conditions early is beneficial to all parties involved in the process and can speed-up decision-making. It cautions that conditions that are required to be discharged before development commences should be avoided, unless there is a clear justification. Footnote 24 provides a reminder that the Act will require the applicant's written agreement to the terms of a pre-commencement condition, unless prescribed circumstances apply.
8. Such prescribed circumstances clearly apply to the deemed biodiversity gain condition, by virtue of Schedule 7A to the Act. However, there appears no provisions absolving the Council from first seeking written agreement to its further BNG condition. Had this been sought, it would be reasonable to consider this opening the door to some degree of negotiation over the extent of actual development, relative to the de minimis criteria. The PPG encourages pre-

application engagement between applicants and Councils over whether development proposals would be subject to BNG¹.

9. In contrast to those normally imposed, the biodiversity gain condition has its own separate statutory basis, deemed to apply to every planning permission granted for the development of land in England (unless exemptions or transitional provisions apply), and there are separate provisions governing the Biodiversity Gain Plan. To ensure applicants are clear about this distinction, the PPG strongly encourages Councils not to include the biodiversity gain condition, or the reasons for applying this, amongst the others imposed on the planning permission². Instead, there is a separate requirement to provide information about the biodiversity gain condition, to be kept separate from the conditions listed on the decision notice. The PPG provides a link to the suggested wording³.
10. The PPG does provide some endorsement for conditions, where appropriate, that relate to the delivery of BNG. A planning condition can be used to secure significant onsite habitat enhancements which are required to be secured and maintained for at least 30 years under paragraph 9 of Schedule 7A. Other potential conditions could include monitoring and reporting arrangements⁴. However, the disputed condition repeats much of that applied through the deemed biodiversity gain condition or covered in the text suggested as information. Only the parts relating to the implementation within one year of an approved habitat management and monitoring plan, and to 30 year maintenance, might have appropriately been covered.
11. The Council had evidently not engaged with the applicant over the claimed exemption that had quite properly been identified in the application form. Instead, approval was granted with a pre-commencement biodiversity gain plan condition, apparently without the required prior written agreement. On this basis, the condition in dispute fails the test of necessity and reasonableness, since were the development to proceed in a manner that clearly exceeded the de minimis provisions, the statutory condition would still apply and the Council might then pursue the required BNG.
12. In the appeal it is made clear that the area proposed for parking was erroneously shown in the plans. Only an area adequate to allow two cars to park and turn would be required and this need not be constructed as hardstanding but left as grass. Although this appeal is not over other conditions, numbers 5 and 6 suggest to me the Council is anticipating a greater amount of constructional work than intended for a proposal of this nature. On the information before me, the local highway authority (LHA) had not required an access constructed to its highways construction specification for a minimum width of five metres for a minimum distance of ten metres measured from the near edge of the carriageway. Even if it had, the Council will no doubt reflect on whether this is proportionate to the nature of the proposal and the appellant's intention to carry out the development within the ambit of the de minimis exemption. Similarly, without an engineered access or a hard surfaced parking area, the requirement of condition 6 over these being constructed to

¹ Paragraph: 002 Reference ID: 74-002-20240214

² Paragraph: 024 Reference ID: 74-024-20240214

³ Paragraph: 025 Reference ID: 74-025-20240214

⁴ Paragraph: 027 Reference ID: 74-027-20240214

prevent surface water run-off onto the highway might be more simply addressed. Again, this is not shown in the correspondence to be a condition sought by the LHA, which had been content with the proposal based on the management and pre-booking arrangements subsequently secured by condition 3.

Conclusion

13. Framework paragraph 57 makes it clear that planning conditions should be kept to a minimum and only used where they satisfy specified tests. For the reasons explained, the condition in dispute fails the tests of necessity and reasonableness. Other conditions are required to be satisfied. Although outside the scope of this appeal, I am satisfied these offer the opportunity to address the necessity of losing existing onsite grassland habitat to hard surfacing. In the event this could not be agreed in a manner that fell within the exempted 25 square metres, then the Council still has the deemed pre-commencement BNG condition to rely upon. There appears to be ample opportunity to deliver BNG on-site, should it transpire that this is required. Therefore, for the reasons explained, I conclude the appeal succeeds.

Jonathan Price

INSPECTOR