



Appeal Decision

Site visit made on 23 September 2025

by **M. P. Howell BA (Hons) Dip TP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 2 FEBRUARY 2026

Appeal Ref: APP/X1118/C/24/3352855

Bulldog Fish Farm, Snapper, Barnstaple, Devon, EX32 7JX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr. Nigel Early against an enforcement notice issued by North Devon District Council.
- The enforcement notice was issued on 28 August 2024.
- The breach of planning control as alleged in the notice is the failure to comply with conditions imposed on a planning permission ref 70751 granted on 18 May 2020.
- The development to which the permission relates is: A Settlement Pond
- The conditions in question are conditions 2 and 3 which state that:
 - 2. The development hereby permitted shall be carried out in accordance with the following approved plans/details: 17 132 03b Site Plan/Volume of Flood Storage Proposed and received on the 03/04/20, 17 132 02C Location Plan and received on the 17/04/20, 1443w0001P3 Amended FRA and received on the 03/04/20, Email COR Agent Supporting Seeding Details and received on the 17/04/20 ('the approved plans').
 - 3. The pond hereby approved shall not be used by members of the public for fishing.
- The notice alleges that the conditions have not been complied with in that: Within the last 10 years, (i) works not in accordance with the approved plans in breach of planning Condition 2 attached to planning permission reference 70751 and (ii) use of the pond by members of the public for fishing in breach of Condition 3 attached to planning permission reference 70751.
- The requirements of the notice are to:
 - 1. Comply with drawing - Proposed Flood Compensation Plan 1443/SK01/PS dated July 2022 attached to this Notice;
 - 2. Comply with Drainage Technical Note Report Ref 1443w0002 (29th September 2022) attached to this Notice;
 - 3. Comply with drawing - Section through as built pond 1443/SK03/P1 dated July 2022 attached to this Notice;
 - 4. Comply with drawing - Cut and fill analysis of proposed flood compensation 1443/SK02/P2 dated July 2022 attached to this Notice;
 - 5. Remove all excess material resulting from Steps 1-4, ensuring compliance with Waste Exemption Licenses/Exemptions and using a Registered Carrier if appropriate;
 - 6. Following completion of Steps 1-5 regrade and cultivate the land leaving it in a condition suitable for agricultural use;
 - 7. Cease use of the pond, outlined in green on the attached plan, for fishing by members of the public.
- The period for compliance with the requirement is: 6 months from the date the Notice takes effect.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary Decision: The appeal is dismissed, and the enforcement notice is upheld with corrections.

Matters Concerning the Enforcement Notice

1. Under section 176(1)(a) of The Town and Country Planning Act 1990 (as amended) (1990 Act), I have the authority to correct any defects or errors in the Enforcement Notice (Notice), or, under section 176(1)(b), to vary its terms. The key consideration

in either case is whether the correction or variation would cause any injustice to the appellant or the local planning authority.

2. In cases involving a breach of condition enforcement notice, the allegation typically focuses on the development permitted, what has been carried out on site, the associated planning permission, and the conditions that are alleged to have been breached and why. A Notice should also identify with a sufficient degree of certainty the 'development' as defined in section 55 of the 1990 Act¹ that has been carried out in breach of the relevant condition or conditions.
3. In the allegation set out in the Notice, I find the term 'works' in the description of the matters particularly vague. The term 'works' could encompass building or engineering operations that fit within the section 55 definition, but it may also refer to 'works' and activities that do not. Furthermore, how the condition has been breached is critical to the allegation. However, the allegation also does not provide any clarity on how the 'works' have breached the approved plans referred to in condition 2 of the planning permission. This vagueness creates uncertainty regarding the alleged unauthorised development the Notice is targeting. For these reasons, I find that the allegation in the Notice is defective and needs correcting.
4. Based on the submitted documentation and the Drainage Technical note attached to the Notice, it appears that the term 'works' refers to the engineering and building works undertaken to form the 'Settlement Pond' approved as part of the planning permission, Council reference 70751. The reason why the building and engineering works have breached condition 2 is due to the Settlement Pond being built with different dimensions and levels from those approved. Therefore, if the Notice were corrected to replace the term 'works' with 'construction of a settlement pond' and referred to the different dimensions and levels when referring to the breach of condition 2, this would overcome the uncertainty identified.
5. The main parties were made aware of my concerns and were asked for their observations on a suggested correction to the allegation, and if any injustice would be caused if I were to correct the allegation in such a manner. Neither party objected to the suggested correction to the allegation, nor highlighted any concerns that injustice could be caused by me correcting the defects. Although I have indicated that the wording of the allegation creates uncertainty, I am satisfied that the appellant did understand what he had done wrong and what needed to be carried out to remedy it. The correction is, therefore, needed to provide more certainty on what is being targeted as part of the Notice, but this would not cause injustice to the appellant or the Council's cases.
6. As such, for clarity, I will delete the allegation and correct it to the following:

"The construction of a settlement pond in breach of conditions 2 and 3 of planning permission, Council reference 70751, granted on 18 May 2020.

Condition 2 is as follows:

2. The development hereby permitted shall be carried out in accordance with the following approved plans/details:
 - 32 03b Site Plan/Volume of Flood Storage Proposed and received on the 03/04/20

¹ "development," is defined as the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

- 32 02C Location Plan and received on the 17/04/20,
- 1443w0001P3 Amended FRA and received on the 03/04/20,
- Email COR Agent Supporting Seeding Details and received on 17/04/20 ('the approved plans').

Reason: To ensure the development is carried out in accordance with the approved plans in the interests of proper planning.

Condition 3 is as follows:

3. The pond hereby approved shall not be used by members of the public for fishing.

Reason: In the interests of amenity and having regard to highway safety, vehicle access and parking facilities and sustainability as considered in the adopted North Devon and Torridge Local Plan and the National Planning Policy Framework.

The settlement pond has been constructed with dimensions and levels that differ from, and are not in accordance with, the approved plans listed in condition 2. The settlement pond is also being used by members of the public for fishing, which is not permitted by condition 3.”.

Background and Preliminary Matters

7. During the course of the appeal, the government published a consultation regarding the National Planning Policy Framework 2024 (the Framework), outlining proposed changes to the existing Framework 2024, accompanied by a Written Ministerial Statement. However, since these proposed reforms are still in draft form and may be amended before the final document is released, I have assigned them only limited weight at this stage. In addressing the determining issues of this appeal, it was therefore unnecessary to consult the parties on these changes, and I have focused my decision on the existing Framework.
8. The submissions indicate that the fish farm has been operating since 1989; however, the evidence is limited regarding details of the historical permission granted at the site. I have no decision notice, accompanying plans, nor details that indicate the extent of the permission granted and any conditions. However, from the appellant's submissions, anecdotal evidence with the appeal suggests that the existing ponds at the fish farm have also been used for recreational fly fishing for an extended period of time without complaint.
9. The appellant applied for planning permission for a settlement pond as part of the existing fish farm operation at the site, Council reference 70751. I will hereafter refer to this as the 2020 permission. From the submissions received, both parties agree that the settlement pond constructed was not in accordance with the approved details. The settlement pond has been constructed with different dimensions and levels, and from my visit, it also includes dedicated locations where fishing can be undertaken around the settlement pond. The settlement pond is also being used by members of the public for fishing.
10. Therefore, the Council determined that the formation of the settlement pond was a material operation comprised in the 2020 permission, but it has deviated from the approved details, and it is being used for fishing by the public, which has resulted in a breach of conditions 2 and 3.

11. In his Statement of Case, and concerning condition 2, the appellant has expressed no objection to carrying out the flood compensation works set out in requirements 1 to 6 of the Notice, and detailed in the Drainage Technical Note, ref 1443w0002, and the associated plans attached to the Notice. It is indicated that the appellant has been working with the Council Officers, and they are content to undertake the flood mitigation works. Additionally, the Environment Agency expressed support for the flood compensation measures outlined in the requirements associated with the Notice in the appeal submissions.
12. The principal reason the appellant has made the ground (a) appeal is to seek permission for the settlement pond as built, but without a restriction on members of the public being able to fish at the settlement pond. Therefore, the appellant is seeking permission for part of the matters set out in the Notice, namely the pond as built but without compliance with condition 3 of the 2020 permission.
13. While I did inquire about whether the ground (a) appeal also sought to address the flood mitigation works, it was noted that the appellant has not submitted any plans or details pertinent to these works, relying solely on the Drainage Technical Note and associated plans attached to the Notice. In view of this, and to avoid any confusion, I have decided to focus solely on the matters in dispute in the appeal, which pertain to the use of the settlement pond for fishing by the public.

The Ground (a) and the Deemed Planning Application

14. In light of the above, the **main issue** in this appeal is the effect of the development without compliance with condition 3 of the 2020 permission on highway safety.

Reasons

15. The site is accessed via a long, private track off Goodleigh Road. The track and access are owned by the appellant; it is steep and winding with uneven sections and few passing places. It currently serves the fish farm, the residential property associated with it and from the evidence before me, holiday lets at Kingdon Gardens. The access point is directly off Goodleigh Road. Goodleigh Road is a single-carriageway road with a national speed limit² with limited street lighting. There is a grass verge but no pavement along the road. There are trees and hedgerows on each side of the access on adjacent land. At the time of my visit, the vegetation was low, and there was good visibility in both directions.
16. Policy DM05 of the North Devon and Torridge Local Plan 2018 (Local Plan), criterion (1) states that all development must ensure safe and well-designed vehicular access and egress, adequate parking and layouts which consider the needs and accessibility of all highway users, including cyclists and pedestrians.
17. Paragraph 115 of the Framework states, amongst other things, that when assessing applications for development, it should be ensured that: (b) safe and suitable access to the site can be achieved for all users. Paragraph 116 of the Framework states development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network, following mitigation, would be severe, taking into account all reasonable future scenarios.

² 60mph on a single-carriageway road.

18. The business initially operated an on-site farm shop that was open to the public. Additionally, the existing ponds have allowed public fly fishing since approximately 1990. However, there is no detailed traffic statement that quantifies the volume and type of vehicles accessing the site related to these activities.
19. The appellant has provided limited anecdotal evidence regarding the daily operations of the fish farm and other activities on the property using the current vehicle access. The appellant's submissions indicates that, before the construction of the settlement pond, the on-site shop received an average of 20 customers per week, and casual visits, which include anglers and their friends, averaged around 25 movements weekly. It is stated that only one or two anglers typically fish at the settlement pond at any given time, usually those who already fish in the adjoining ponds.
20. The Council's Highways Authority has expressed concerns about the anticipated increase in traffic associated with the development of the settlement pond and its impact on the current access. Estimates suggest the facility may accommodate up to eight anglers simultaneously for group or corporate events, potentially generating an additional 16 vehicle movements each day. This projection translates to roughly 112 vehicle movements weekly.
21. During my site inspection, I observed multiple angling jetty areas strategically positioned around the settlement pond, specifically designed to facilitate public fishing activities. While some anglers may currently use the existing pond, the operational development of the settlement pond evidently increases the site's capacity to host additional anglers concurrently. Consequently, it is reasonable for the Council and Highways Authority to have regard to the potential increase in traffic to and from the site, which is an important consideration in the determination of the appeal.
22. Although the Highways Authority has not raised concerns regarding the overall capacity of the existing highway network, it has significant reservations about maintaining the required visibility splays necessary for safe access to the site. Both parties agree that the appropriate visibility splays are 55 meters southbound and 58 meters northbound. Currently, the access point benefits from good visibility in both directions, due to the appellant's maintenance of the adjacent land and hedgerows. However, the appellant does not own the land bordering the existing access and therefore lacks the authority to ensure ongoing maintenance of adequate visibility.
23. The Highways Authority concluded that only 39 meters northbound and 27 meters southbound visibility splays can be achieved, which is insufficient for ensuring safe access and egress. Consequently, a condition mandating the maintenance of the visibility splays at the required distances cannot be enforced, leading to an unsafe access to the site. Thus, it is necessary to impose a condition restricting the use of the settlement pond for recreational fishing while still allowing its operational use as a settlement pond to mitigate adverse impacts on highway safety.
24. The appellant argues that the required visibility splays have been maintained for a considerable period through an informal agreement with neighbouring landowners, which seems to have facilitated safe access. Furthermore, a traffic statement related to an alternative development conducted in 2023 indicates there have been no recorded injury accidents at the access point over the past two decades. Therefore, the appellant maintains that safe access and egress can be preserved, even if movements associated with fishing activities are allowed at the existing ponds and the settlement pond.

25. Despite the appellant's assurances and the absence of recorded accidents, the appeal lacks sufficient evidence regarding ownership of the adjacent land and the agreement with the other land owners, which is crucial for sustaining visibility at the access point. Moreover, the informal nature of the agreement with neighbouring landowners does not guarantee that safe access can be maintained. Given that the required visibility splays extend beyond the red-lined area onto land not owned by the appellant, it is neither reasonable nor enforceable to impose a condition mandating their maintenance in either direction.
26. In my assessment, without the requisite visibility being secured through the trimming or lowering of hedgerows and vegetation on adjacent land, the access point—along with vehicles exiting the site—would become partially obscured from view by prevailing traffic on Goodleigh Road at the required distances. Additionally, vehicles leaving the site would lack an adequate line of sight to oncoming traffic in both directions, substantially increasing the risk of vehicle collisions and endangering highway safety.
27. Therefore, the use of the settlement pond without a condition to maintain the required visibility splays results in an unsafe access and egress for users and an increased risk to highway safety, contravening Policy DM05 of the Local Plan and paragraphs 115 and 116 of the Framework. Thus, the condition restricting public fishing at the settlement pond is necessary to enable the development to be retained in connection with the fish farm while preventing public fishing at the settlement pond to safeguard highway safety.
28. The appellant has contested whether condition 3 from the 2020 permission adheres to the tests required for conditions set out in paragraph 55 of the Framework³.
29. It has been shown that allowing fishing at the settlement pond will increase traffic to the site, which is served by an access which cannot be maintained to the appropriate standards. In this respect, the condition restricting public access for fishing at the settlement pond is necessary to make the development acceptable in planning terms. The condition is relevant to the development and precise as it directly concerns the approved settlement pond, and it does not control unrelated land or activities on the site. While enforcement may rely on observation and investigation to determine whether fishing is being undertaken at the existing ponds or the approved settlement pond, it is still enforceable. As such, I am satisfied that in these circumstances, the condition restricting public fishing at the settlement pond is compliant with the tests.
30. The appellant also proposes that the condition could be varied to allow use of the pond for recreational fishing purposes incidental to the approved commercial use of the fish farm. However, a condition such as this places no additional control on the site as any incidental use is already permitted, if appropriately connected to a primary use of the site. Consequently, varying the condition as suggested would neither provide further control nor offer any clarity, as its wording would complicate interpretation and enforcement for the appellant and Council.

Other Matters

31. Although there is reference to amenity and parking facilities in the reasons for the condition limiting the use, the Council has not disputed the appellant's case in this regard. I would agree that there was sufficient space for additional parking needs

³ necessary, relevant to planning, relevant to the development permitted, enforceable, precise, and reasonable in all other respects

around the ponds on hardstanding areas at the site. Furthermore, given the scale and nature of the use, it is unlikely that the activities would result in impacts on amenity.

32. The appellant has referenced a planning application approved by the Council in September 2015 for the material change of use of two former dwellings to holiday lets⁴. The properties are served by the same access as the appeal site, and the appellant sets out that the permission has been implemented. The appellant has provided an extract from the Officer Delegated Report recommending approval, along with an Access Drawing related to the application.
33. While I have considered this information, the appellant has not supplied the full details of the approved scheme. I do not have a copy of the Officer Delegated Report, the decision notice detailing the approval, or any conditions attached. Without the full details, it is not possible for me to adequately compare the highlighted case with the proposal at hand. Each case must be assessed on its own merits and the particular circumstances of the case. Therefore, I have given this limited weight in my determination and approached the current appeal based on the specific facts and context before me.

Conclusion

34. To allow the settlement pond without a condition restricting public access for fishing would run contrary to the policies of the development plan and Framework, which require development to ensure safe access and egress for all, and to refuse applications if there would be an unacceptable impact on highway safety. The development is, therefore, contrary to Policy DM05 of the North Devon and Torridge Local Plan and paragraphs 115 and 116 of the Framework. I attribute significant weight to its conflict with this policy and the Framework.
35. I have not been provided with any detailed information on the benefits, but there would be economic benefits arising from fishing-related services the business provides to the rural locality. Given the scale of the business, the benefits outlined would result in a limited uplift to the economy in a rural area, but these do not outweigh the significant harm I have identified.
36. For the reasons given above, I conclude that the appeal on ground (a) should not succeed. I shall uphold the Notice with a correction and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

Formal Decision

36. It is directed that the enforcement notice is corrected by:

In paragraph 3, delete the words of the allegation and substitute with the words 'The construction of a settlement pond in breach of conditions 2 and 3 of planning permission, Council reference 70751, granted on 18 May 2020.'

Condition 2 is as follows:

2. The development hereby permitted shall be carried out in accordance with the following approved plans/details:

⁴ Council reference 58858

- 32 03b Site Plan/Volume of Flood Storage Proposed and received on the 03/04/20
- 32 02C Location Plan and received on the 17/04/20,
- 1443w0001P3 Amended FRA and received on the 03/04/20,
- Email COR Agent Supporting Seeding Details and received on 17/04/20 ('the approved plans').

Reason: To ensure the development is carried out in accordance with the approved plans in the interests of proper planning.

Condition 3 is as follows:

3. The pond hereby approved shall not be used by members of the public for fishing.

Reason: In the interests of amenity and having regard to highway safety, vehicle access and parking facilities and sustainability as considered in the adopted North Devon and Torridge Local Plan and the National Planning Policy Framework.

The settlement pond has been constructed with dimensions and levels that differ from, and are not in accordance with, the approved plans listed in condition 2. The settlement pond is also being used by members of the public for fishing, which is not permitted by condition 3.'

37. Subject to the correction, the appeal is dismissed, and the Notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

M. P. Howell

INSPECTOR