
Appeal Decision

Hearing held on 30 September 2014

Site visit made on 1 October 2014

by I Jenkins BSc CEng MICE MCIWEM

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 16 February 2015

Appeal Ref: APP/C5690/A/13/2205776

Land at St Mildred's Road, Hither Green, Lewisham

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Ocean Wave Estates Ltd against the Council of the London Borough of Lewisham.
 - The application Ref DC/13/83518, is dated 10 May 2013.
 - The development proposed is the erection of private stables, removal of trees and laying out of 3 no. paddocks.
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Decision

1. The appeal is dismissed and planning permission for the erection of private stables, removal of trees and laying out of 3 no. paddocks is refused.

Application for costs

2. Prior to the Hearing, an application for costs was made by the appellant against the Council of the London Borough of Lewisham. That application is the subject of a separate Decision.

Procedural matters

3. In March 2014 the Council formally declined an application for inclusion of the site in the Council's list of *Assets of Community Value*.
4. A number of interested parties suggested in pre-hearing correspondence that the scheme is EIA development under the terms of the *Town and Country Planning (Environmental Impact Assessment) Regulations 2011* (2011 Regulations). Further comments made in relation to this matter at the Hearing included that the proposal may be regarded as having an urbanising effect on an undeveloped area of land and thereby fall within the scope of section 10b of column 1 of Schedule 2 of the 2011 Regulations. Having dealt with all other matters, I adjourned the Hearing on 30 September 2014 to consider whether it was necessary to request a Screening Direction from the Secretary of State. I indicated that if I decided it was not or that it was and the subsequent Direction was negative, I would close the Hearing in writing. No objections were raised to that approach.
5. Having considered the representations made, I decided to refer the matter to the Secretary of State. On the 23 October 2014 the Secretary of State issued, pursuant to the *Town and Country Planning (Environmental Impact*

Assessment) Regulations 2011, a Screening Direction to the effect that the proposed development is not EIA development. On the 24 October 2014 the Planning Inspectorate notified the parties, on my behalf, that the Hearing was closed.

6. Shortly after the appeal was lodged, the Council confirmed that, were it still in a position to do so, it would have refused to grant planning permission. It has indicated that the proposal is contrary to CS¹ Policy 12 and DMe² Policy 25, as the proposal would result in the loss of 2.3 hectares of natural habitat, including protected trees. Furthermore, it would cause an unacceptable loss of amenity to surrounding residential properties, with regard to light, atmospheric and noise pollution, resulting from the loss of protection currently afforded by shrubs and trees within the site. In this respect it would conflict with UDP³ Policy HSG 4 and DMe Policy 23. In addition, the proximity of the proposed stables to residential properties would result in an unacceptable intensity of odour and pollution by wind-blown straw to the detriment of the amenity of the occupiers of those neighbouring properties, contrary to the aims of UDP Policy HSG 4 and DMe Policy 23. Since the Hearing closed, the UDP has been overtaken by the adoption of the *Lewisham Development Management Local Plan, November 2014* (DM). Insofar as relevant to this appeal, the provisions of the DMe policies referred to above have been carried forward in the DM.

Main Issues

7. I consider that the main issues in this case are the effect of the proposal on: biodiversity in the local area; and, the living conditions of neighbouring residents, with particular reference to disturbance associated with noise and light pollution as well as air quality, odours and wind blown straw.

Reasons

8. The appeal site is a roughly rectangular strip of land situated along the northeastern side of the Hither Green railway sidings. Along the northeastern side of the site there is residential development to the north, which fronts onto Ronver Road and Rayford Avenue, and Northbrook Park to the south. The northwestern end of the site adjoins an area of allotments, beyond which are residential properties and the southeastern end of the site is separated from a car park by an area of overgrown land.
9. The appellant has indicated that the area of the site is around 5.3 hectares, which is not significantly different to the Council's estimate of 5.6 hectares. The central section of the site, an area of approximately 2 hectares according to the appellant, is occupied by the Willowtree Riding Establishment (WRE). The access gate to the WRE, off Ronver Road, leads to an area of hardstanding to the north of which are 3 paddocks and a small stable block. To the south of the area of hardstanding is the main cluster of single-storey buildings, comprising stables for the most part, beyond which are 2 more paddock areas and a roofed horse riding enclosure. To the north, south and west of the WRE the land within the site is characterised by dense scrub, tall herbaceous and ruderal vegetation, scattered trees and woodlands, with occasional standing water and seasonally wet areas.

¹ Lewisham local development framework Core Strategy, June 2011.

² Development Management Local Plan-Proposed Submission Version.

³ The Lewisham Unitary Development Plan, 2004.

10. The proposal would include: the erection of a small stable block, the creation of new paddocks and some improvements to the existing paddocks. The proposed new paddocks would take up, according to the appellant's estimates, approximately two-thirds of the area of the site outside the WRE. These works would include the removal of vegetation and some trees within that area and the new paddocks would be grassed, with some hedgerow/tree planting.
11. The *Ruskins Tree Report* (RTR), submitted in support of the planning application, made reference to the *Arbtech Tree Survey to BS5837*, which identified a total of 58 individual trees and 31 groups of trees within the site. The RTR indicated that most of the trees across the site would be removed. The application *Design and Access Statement* indicates that the intention is to increase the area of paddock available within the site for riding and exercising horses. The trees would be removed in order to maximise the size of the proposed paddocks, provide clear lines of sight and remove hazards for the horses and riders. The application plans reflect this approach. I saw that the areas of existing paddock are also largely devoid of trees.
12. Drawing no. LS02 rev B-Proposed Landscape Plan, which was submitted in support of the appeal, suggests that in comparison with the original proposal the number of trees to be retained would be increased and the boundaries of the proposed paddocks would be lined by hedgerows and some new standard trees. However, Forbes-Laird Arboricultural Consultancy (FLAC) who appeared at the Hearing on behalf of the appellant, suggested a change of approach, away from the relatively open paddock concept for which planning permission was originally sought to one of wooded pasture. It indicated that this would comprise '*open-grown trees within grassland used for grazing*'. It provided drawing no. 34-1024.01-Arboricultural Overview Plan, which suggests that 44 individual trees and 2 groups of trees could be retained. However, FLAC explained that the appeal drawings are for illustrative purposes only and further survey work would be necessary to determine which trees would be retained.
13. I consider therefore, that there is a significant degree of uncertainty as to which trees would be retained, if the wooded pasture concept were to be pursued. Furthermore, there is no evidence to show that wooded pasture would be suitable for the purposes for which planning permission was sought; that is, riding and exercising horses. Given the need identified in the DAS to clear sight lines and remove hazards, it appears unlikely that it would. This may result in pressure, following a grant of planning permission, for far fewer trees than suggested by FLAC to be retained in the interests of the functionality of the proposed paddocks, which would be difficult to resist once permission had been granted for the paddock use. Under these circumstances, the level of tree retention suggested by FLAC is not a matter that could be reliably secured by condition. I give little weight to the illustrative alternative concepts. I have considered the scheme on the basis of the details set out in the original application, and in particular drawing nos. B02 rev A-Proposed Site Plan and LA01-Landscaping plan which give a clear indication of the trees to be removed and retained.

Biodiversity

14. The *National Planning Policy Framework* (the Framework) indicates that the protection of wildlife and landscape areas should be commensurate with their

- status, giving appropriate weight to their importance and the contribution that they make to wider ecological networks. The appeal site comprises a Borough Grade II Site of Importance for Nature Conservation (SINC) and is also the subject of a site wide Tree Preservation Order No. 2012/04/1 (TPO).
15. The Greenspace Information for Greater London citation for the SINC, last updated in May 2006, indicates that *'Lewisham's rail-sides comprise an extensive series of low disturbance wildlife habitats and a vital network of green corridors. Extending through the Borough, the rail network provides feeding and breeding sites, shelter and means of dispersal for very many species of plants, birds, mammals and insects'*. On site *'a good range of trees and shrubs are present. There is a small pond from which common newt, frog and toad have all been recorded.....The sidings are a good area for migrant birds...'*.
 16. The *Site Allocations Local Plan Inspector's Report 2013* found that *'the site forms part of a chain of rail-side SINC's extending more or less continuously (although at various depths) through much of the Borough'*. Furthermore, *'the submitted survey evidence does not indicate that the site is of major importance for notably rare habitats and/or species. Nonetheless, the existing range of habitats, much relatively undisturbed, provides an extensive shelter for wildlife in an urban setting and the continued classification of the site as a SINC.... is appropriate.'* The adopted *Site Allocations Local Plan, June 2013* confirms the designation of the site as a SINC (SINC 12: Hither Green Sidings).
 17. I do not have the survey evidence that was before the *Site Allocations Local Plan Inspector*. Instead the application the subject of this appeal was supported by JCA's 2012 *Extended Phase 1 Habitat & Nesting Bird Survey Report*. It indicated that the scrub and trees have the potential to support nesting birds and the woodland would support insects and consequently attract foraging birds and bats. In addition, it identified that trees covered in dense ivy may be used by bats as transitory or night roosts and the ditches have the potential to support breeding amphibians. I give little weight to its suggestion that no further survey work is necessary, not least as the report was based on the assumption that the only habitat which would be impacted would be the scrub and that the trees would be protected, which does not accurately reflect what is proposed.
 18. The Ecology Consultancy (EC) *Preliminary Ecological Appraisal, September 2013* was commissioned by the Council in order to inform its consideration of the appeal planning application. This report confirms that the site has the potential to support a range of protected and notable species, such as bats, reptiles, amphibians and breeding birds. It indicates that the proposal would be likely to have a moderate adverse impact on breeding birds, as a result of habitat loss, and at the Hearing, the appellant acknowledged that the proposal would be likely to have a negative impact on the bird population of the site. The *Preliminary Ecological Appraisal, September 2013* states that the likely impact on other species cannot be confirmed until the presence/likely absence of species has been determined through further survey work. The review of the JCA and EC reports undertaken for the appellant by Ribble Ecology in November 2013 (RER), agreed that the presence of bats, reptiles and amphibians could not be discounted.

19. The overall finding of Bioscan's *Ecology report July 2014* together with its *Supplementary Ecological Information September 2014* (BSEI), submitted in support of the appeal, is that, based on further site investigation, the possibility of Great Crested Newts being present on site is negligible. At the Hearing, the EC confirmed that it accepts this finding and I have no reason to dispute it. However, the EC also indicated that as well as providing potential roosting opportunities, the site may function as a foraging area and commuting route for bats. Bioscan acknowledged that bats are likely to make some use of the site; a view supported by the experience of a number of local residents.
20. The BSEI indicates that several of the larger trees have the potential to offer summer roosting opportunities for bats and it suggests that the majority, if not all, of those trees could be retained. However, in the absence of bat survey work to identify all those trees likely to be used for roosting, I cannot be sure that some of those of value in this regard would not be removed if the scheme as shown on the application plans were to proceed. Notwithstanding that some boundary hedgerow/tree planting could be secured by condition, the EC also indicated that the overall reduction in the density of trees/shrubs within the site likely to result from the scheme may in turn deter bats from using the site as a commuting route. Due to the lack of any bat survey work to determine the extent to which bats use the site, I consider that there is a significant degree of uncertainty as to the likely impact on that species.
21. Circular 06/2005 indicates it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before planning permission is granted. In my judgement, this has not been done. Under the circumstances, I cannot be confident that the appeal scheme would not cause significant harm to bats, which could not be adequately mitigated or compensated for. In this respect, it would conflict with the aims of the Framework as regards conserving biodiversity.
22. Turning to the interests of reptiles, the BSEI indicates that a standard presence/absence reptile survey was carried out on the site during late July and August 2014. It confirmed the presence of common lizards on the site. At the Hearing, the EC indicated that it would be necessary to undertake a follow up survey to establish likely population levels, in order to assess whether the area of suitable habitat that would remain following implementation of the scheme would be sufficient to sustain the population and the likely impact if it would not. This survey work has not been done.
23. Whilst the numbers found in the presence/absence survey were low, this is of little assistance, not least as the survey was undertaken at a sub-optimal time of year. Natural England's *Standing Advice Species Sheet: Reptiles* indicates that reptiles are most effectively surveyed in April, May and September, and that surveys should not be undertaken during times of inactivity, which may include July and August. Furthermore, I share the concern expressed by the EC at the Hearing that the presence/absence survey was not comprehensive in terms of site coverage. Based on what I saw, the characteristics of the survey points were also to be found elsewhere around the site in locations that had not been surveyed.
24. It would be possible to ensure, through the imposition of a condition, that any site clearance works are undertaken in a manner that reduces the likelihood of

reptiles being killed, thereby avoiding offences under the *Wildlife and Countryside Act 1998*. However, I give little weight to the appellant's suggestion that a condition could be imposed to ensure that sufficient habitat would be retained to meet the needs of reptiles. As the EC indicated at the Hearing, this may necessitate a significant change to the scheme for which planning permission is sought through reductions in the paddock areas, which to my mind could not reasonably be secured by condition. Based on the evidence presented, whilst reptiles would be likely to be affected by the scheme, I cannot be sure that it would not cause unacceptable harm.

25. The appellant has indicated that at present the landscape within the site is unmanaged, other than minimal levels of maintenance around the stables. I understand that in the absence of management, the site is likely to become increasingly wooded over time and species associated with the more open mixed scrub, ruderal and grassland habitat would decrease. However, in my view, the proposed creation of paddocks, which would be likely to result in a significant and immediate reduction in the more open mixed habitats as well as the loss of most of the site's trees, replacing them with pasture, would cause greater and more certain harm. In this context the provision of a management plan for the landscape resulting from the proposal, which could be secured by condition, would be of limited benefit.
26. I acknowledge that many of the protected trees within the site are individually classed as being of low quality. Nonetheless, the likely significant loss of tree cover from the site would diminish its value as a green corridor between other SINC's. The proposal would also be likely to result in the loss of habitat for a range of species. There is no dispute that it would have an adverse impact on the site's capacity to accommodate breeding birds. In addition, the extent to which the scheme would harm bats and reptiles is uncertain. Based on the evidence presented, I consider it likely that overall the scheme would harm biodiversity in the local area, contrary to the aims of CS Policy 12 and Spatial Policy 1, LP⁴ Policies 7.19 and 7.21 as well as DM Policies 24 and 25 insofar as they seek to conserve and enhance biodiversity in keeping with the aims of the *National Planning Policy Framework* (the Framework). Furthermore, the adverse impact may be significant and it would not be possible to secure adequate safeguards through the imposition of reasonable conditions. Under these circumstances, a precautionary approach is justified and the uncertainty with respect to the overall detrimental impact of the proposal on biodiversity weighs heavily against approval of the scheme.

Living conditions

27. No expert evidence has been submitted in support of the concerns raised by the Council and others that, as a result of the proposed removal of trees and shrubs from the site, noise and air pollution arising from railway sidings to the west and highway traffic to the north of the site would have a greater impact on the living conditions of residents of properties situated to the east. I give greater weight to the evidence given by the appellant's arboriculturalist, with reference to Forestry Commission guidance, that the existing arrangement of trees within the site is not sufficiently dense and wide to materially attenuate noise arising from those sources. Furthermore, there is no evidence to show that retained trees together with the proposed planting, which would include

⁴ The London Plan, 2011.

some trees, hedges and grass planting, would not satisfactorily safeguard air quality and limit the possibility of straw being blown off site.

28. The proposal would only increase the stabling capacity of the appeal site from 40 to 44 horses. I consider that, notwithstanding that the proposed stables would be closer to some neighbouring properties than the existing stable block, given the small number of animals likely to be associated with the proposed building, its use would be unlikely to materially increase the noise levels experienced by residents of those neighbouring properties. The same conclusion can be drawn in relation to the use of the proposed paddocks, as horse riding is a relatively quiet pastime. It is unlikely that either the proposed stable block, which is likely to be cleaned out regularly in the interests of the animals, or the small potential increase in horses would cause any significant odour problems. No compelling evidence to the contrary has been provided by objectors to the scheme.
29. The Council and others have suggested that the removal of trees from within the site has the potential to increase the levels of light pollution experienced by residents of properties to the east, arising from lighting within the railway sidings to the west. However, any benefit of existing trees in terms of reducing light pollution is likely to be limited to the period of the year when they are in leaf and I consider that adequate mitigation could be provided through replacement boundary planting in the vicinity of the railway lights. This could be ensured through the imposition of a condition.
30. I conclude that the proposal would be unlikely to have a material detrimental effect on the living conditions of neighbouring residents, with particular reference to disturbance associated with noise and light pollution as well as air quality, odours and wind blown straw. In this respect it would not conflict with CS Policy 23 or the Framework insofar as they seek to secure a good standard of amenity for all existing and future occupants of land and buildings.

Other matters

31. The scheme would include works to improve the drainage of the existing paddocks, which tend to become unusable during the winter, due to water logging, when the horses are turned out in the undercover horse enclosure instead. Furthermore, it would significantly increase the area available for grazing, exercising and riding horses. Nonetheless, whilst the existing situation may not be ideal, WRE has been in operation for a significant number of years and I have no reason to believe that, without the proposed improvements to drainage and/or the facilities, either the viability of the existing enterprise or the social benefits the facility provides would be under threat. Nor is there any evidence to show that either these or any other aspects of the scheme represent a significant economic benefit.
32. The appellant has suggested that the alternative to the proposal, if WRE were to close in the future, would be that the site would have no security and incidents of fly tipping as well as antisocial behaviour would increase to the detriment of all. Furthermore, in the absence of a landscape management plan, secured through the grant of planning permission, Japanese Knotweed within the site may spread. However, I give these arguments little weight and consider that to do otherwise could give encouragement to landowners seeking a beneficial permission not to manage their land in a diligent manner. The potential for fly tipping and trespass could be greatly reduced if the

- existing boundary fence were to be repaired and maintained in reasonable condition, matters already within the control of the appellant.
33. The appellant has indicated that the majority of trees within the site make little contribution to amenity and so are not worthy of the protection afforded by the TPO. However, as I have indicated, this wooded area is of value from a nature conservation standpoint, a factor which the *Planning Practice Guidance* indicates may be taken into account when assessing the amenity value of trees and consequently, whether they should be protected by an Order. Furthermore, I saw that, as well as being visible from neighbouring properties, trees within the site can be seen from the accessways to the rear of properties that front onto Rayford Avenue and St Mildred's Road. In my view, the wooded nature of the site contributes positively to the character of the locality.
34. The site is also designated as Metropolitan Open Land. I consider that the proposed stable would amount to a small scale structure to support the outdoor open space use of keeping horses. Furthermore, due to its limited scale, the proposed stable block would not have a material detrimental impact on the openness of the site. Therefore, in my judgement, the scheme would not conflict with LP Policy 7.17, which seeks to safeguard Metropolitan Open Land.
35. I have had regard to the significant number of consultation responses to the planning application and appeal from interested parties. Whilst a small number support the scheme, the majority oppose it for reasons which are generally consistent with those cited by the Council.
36. The proposed provision of stables and paddocks would accord with the aims of CS Policy 12 and LP Policies 3.19 and 4.6, insofar as they give encouragement to the provision of sport, recreation and leisure facilities in accordance with the aims of the Framework. Nevertheless, in my judgement, neither these, nor any other matters raised are sufficient to outweigh the considerations which have led to my conclusions on the main issues.
37. I give little weight to the concerns raised that, if the appeal were to be allowed, it may make it more difficult for the Council to resist proposals from those with an interest in the land to re-develop it for other purposes, such as housing. No such scheme is before me and each proposal must be considered on its own merits. Furthermore, in any future case it would remain open to the Council to show in the particular circumstances that harm would be caused.

Conclusion

38. Notwithstanding my findings concerning the other matters raised, including that the effect of the proposal on the living conditions of neighbouring residents would be acceptable, in my judgement, they would not outweigh the harm that the appeal scheme would potentially cause to biodiversity in the local area. Furthermore, having considered the environmental, social and economic aspects of the scheme, I consider overall that it would not amount to sustainable development under the terms of the Framework. I conclude on balance, for the reasons given above, that the appeal should be dismissed.

I Jenkins

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr A Cassidy BA(Hons) Cert Ecol MSc MRTPI MSc MIEMA CEnv	Cassidy & Ashton Group Limited.
Mr P Stileman BSc(Hons) MICFor Dip Arb(RFS) MArborA	Forbes-Laird Arboricultural Consultancy.
Mr S Watson BSc(Hons) MCIEEM	Bioscan.

FOR THE LOCAL PLANNING AUTHORITY:

Mr G Cooper Dr S Yarwood-Lovett BSc(Hons) CEnv MCIEEM	The London Borough of Lewisham Council. The Ecology Consultancy.
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INTERESTED PERSONS:

Dr P Stookes LLB(Hons) MSc PhD MIEMA CEnv	The Baring Trust.
Councillor S Clarke Mr B O'Donovan Mr S Kenny	Grove Park Ward. Local Resident. Grove Park Community Group/Grove Park Neighbourhood Forum.
Councillor M Ingleby	Whitefoot Ward/Friends of Grove Park Nature Reserve.
Councillor L Curran Mr A Brooks-Johnson	Sidnam Ward. Wide Horizons.

DOCUMENTS

- 1 Letters notifying interested parties of the appeal and the Hearing arrangements.
- 2 Appeal consultation responses.
- 3 Drawing no. 34-1024.01-Arboricultural Overview Plan.
- 4 Drawing no. B02 rev A – Proposed site plan.
- 5 Letter from Willowtree Riding Establishment to the Planning Inspectorate, dated 29 September 2014.
- 6 Letter from Northbrook Park Community Group to the Inspector, dated 29 September 2014.
- 7 Extract from the *Planning Practice Guidance*-Tree Preservation Orders and trees in Conservation Areas.
- 8 Case law submitted by the Baring Trust.

- 9 Extract from the *Development Management Local Plan-Proposed Submission Version*, Policies 23, 24 and 25.
- 10 Extract from *The London Plan 2011*, Policy 7.17.
- 11 GIGL plan showing Sites of Importance for Nature Conservation.
- 12 Natural England's Standing Advice Species Sheet: Reptiles.