

Redditch Borough Council
Planning Committee

Committee Updates
18th January 2023

21/00249/FUL Land North of Droitwich Road Feckenham

Amended Public Speaking Arrangements

As a consequence of an error in the notification letter relating to the committee venue and time, the Chairman has exercised his discretion to extend the time to register to speak until noon today. Interested parties were notified with the correct details shortly after the error came to light on Monday.

Further Representations Received

Following preparation of the Agenda Report the following representations have been received –

WCC Highway Authority

The following is a brief summary of the representation dated 12th January 2023

No objection subject to conditions

- Visibility splays
- Access gates position
- Surfacing of first 5 metres of access
- Provision of Electric Vehicle Charging point
- Cycle Parking
- Closure of southern access

WCC Archaeology Service

No objection subject to conditions

WCC Archeology have also confirmed they are content with the proposed conditions, subject to some minor amendments to condition 10 (which have been agreed with the applicant).

Feckenham Parish Council

The following is a summary of the representation dated 12th January 2023 received 16th January 2023, since which time it has been available in full on the Council's website

“1 The latest proposal seeks to INCREASE the area of gravelled hardstanding by 50%”

2 The Parish Council disputes the argument that damaging a small fraction of the ridge and furrow doesn't matter

“3 The latest proposal fails to address important water drainage issues”

Did the Applicant INTEND to carry out the Unauthorised Development?

This question matters because it determines how planning law, the NPPF, and the NPPG should be applied after that. The planning officer claims that there is no evidence to suggest that the applicant INTENDED to carry out any unauthorised development. He then bases several important arguments

on this very improbable assertion. We say there is good evidence that the applicant did intend to construct a car park on Green Belt land, knowing he should have obtained planning permission beforehand. This evidence includes

- 1 The advertisement by Vantage Land for the purchase of the land can be seen at <https://www.vantageland.co.uk/land-for-sale-feckenham-worcestershire.php> This advertisement says explicitly,
"The land is designated as Green Belt and a Special Wildlife Site. Any development would be subject to the appropriate planning permission".
On the balance of probabilities, we say the applicant would have been aware of this during the purchase.
- 2 Multiple witnesses and photographs attest that the applicant continued the development after the LPA and Enforcement Team advised that planning permission was required and that construction work should cease.
- 3 The LPA informed the Parish Council that the applicant had undertaken to cease work, but we observed that he failed to do so.
- 4 The applicant did apply for planning permission

This means that -

1. The 2015/7 Ministerial Statement about Intentional Unauthorised Green Belt Development in Green Belt becomes engaged, and the unlawful construction of the car park becomes a significant material consideration that applies with full weight in the planning balance, suggesting refusal of the application.
2. Paragraph 196 of the NPPF is also engaged, which says that any planning decision should regard the intentionally damaged heritage asset as if it were undamaged. i.e., the decision should be made "as though this was a virgin site with undamaged ridge and furrow". (We also believe that if the applicant had made a planning application BEFORE he built the car park, no planning committee member or planning officer would have granted consent, as happened in the Tennis Court precedent 21/01671/FUL where refusal was the outcome).
3. If Paragraph 196 of the NPPF is correctly applied, as above, the site should be assessed as if the car park and dangerous southerly entrance were not in existence and the Ridge and Furrow formations were completely unharmed and intact. Considering the application without the presence of the dangerous southern entrance, the planning officer CANNOT infer that there would be any public benefit to removing the dangerous access (because it does not exist for the purpose of the planning assessment under Para 196).
4. Similarly, had the Planning Department correctly enforced the initial planning breach and the applicant been forced to remove the unlawful southern entrance in 2020, it would, in reality, not exist now, and there could be no public benefit from removing it. Thus, it is perverse, in the extreme, to argue that correcting one unlawful development should permit another unlawful construction to be allowed.

The PC dispute the claimed public benefits of the proposal

1 Removal of the southerly entrance is a highway safety benefit

2 Granting planning permission with conditions gives an opportunity to protect the remainder of the undamaged ridge and furrow

Because-

- 1 The southerly entrance was unlawfully constructed. It is fundamentally against the principle of natural justice that the applicant should be entitled to claim any credit (or public benefit) from removing an unlawful gateway and thereby claim credit justifying keeping the already unlawfully constructed car park which has also damaged heritage assets. The truth is that neither structure should have been permitted or built.

2 During 3-4 years of ownership, the Parish Council is unaware of any evidence that the applicant has damaged heritage assets in the pastured fields (except for a small enclosure where pigs are housed). The Parish Council accepts that the council has speculated that such damage could occur, based on the Historic England and county archaeologist's reports. However, in the absence of substantial proof that significant damage has already happened to the main pasture area, we believe there may be no need or justification for some of the "usage" conditions. If any conditions are unjustifiable, it is hard to argue that they are of public benefit.

We believe this planning application should be refused. We are, nevertheless, happy for the applicant to develop the site for agricultural and equine use. We think the unlawful hardstanding should be removed entirely and the levels of the underlying soil restored to their previous state – thereby correcting the flooding issues. If the applicant then wishes to apply for appropriate and proportionate stabling provision for equine usage, we would support it.

Officer Comments

In response to Representation from Feckenham Parish Council

"What is wrong with the applicant's latest 15th December 2022 Proposal?"

"1 The latest proposal seeks to INCREASE the area of gravelled hardstanding by 50%"

The extent of the hard standing for which retrospective permission is sought is shown on the submitted plans. The area referred to is the track from the entrance to the parking area. Contrary to the assertion by the Parish Council, the report makes reference to this in the fourth paragraph on page 56 of the agenda report

"2 The Parish Council disputes the argument that damaging a small fraction of the ridge and furrow doesn't matter"

No such assertion has been made by officers. Granting planning permission subject to conditions is considered to offer a longer-term safeguard to the heritage asset than had enforcement action been taken, which could only attempt to secure the removal of the hard standing

"3 The latest proposal fails to address important water drainage issues"

The Parish Council have asserted that the presence of surface water flooding on the highway has only resulted as a consequence of unauthorized development, and that removing the unauthorized development would address the issue.

Officers consider that this matter can be addressed via a planning condition and that it is not necessary for drainage details to precede a grant of permission. If that had been the case then NWWM and the Highway Authority would have recommended accordingly. The applicant only needs to address disposal of surface water from their site. Any issues with pre-existing ditch / drainage (other than where these intersect with the proposed vehicular access) are a matter for NWWM and Highway Authority to investigate independently.

Weight to be afforded to any demonstrated intent to carry out Unauthorised Development

Following the Ministerial Statement in 2015, it appears that Government has issued no guidance on what weight Local Planning Authorities should be afforded to any demonstrated intent to carry out Unauthorised Development

Paragraph 196 of the NPPF states –

196. Where there is evidence of deliberate neglect of, or damage to, a heritage asset, the deteriorated state of the heritage asset should not be taken into account in any decision.

Your officers consider that paragraph 196 is more aptly applied to scenarios where, for example through deliberate neglect or damage to a building an applicant argues that the whole building should be demolished. In this case the fate of the whole field is not threatened by the development. Moreover, the action of removing it is likely to risk further damage to the underlying remnant ridge and furrow, which must also be a consideration.

Public benefits

In terms of public benefits – Firstly, the southern access was pre-existing, as it evident from google street view. Accordingly, it is a lawful means of access which could be employed for purposes of agriculture. The alterations to it comprising fencing and repositioning of the field gate were unauthorized. The benefit is permanent removal of that point of access. Secondly, the Parish Council incorrectly assume that there are any enforceable incentives to maintain the ridge and furrow or special wildlife site. It is necessary to look beyond the very limited measures which could be achieved through serving an enforcement notice, which would not facilitate long term management. Erosion cause by livestock and horses can be managed but can only be secured through a planning condition.

Recommendation

Having regard to the development plan and to all other material planning considerations, planning permission be GRANTED subject to the following conditions -
Conditions numbers 1,2,3, 5,6,7,8,9, 11,12,13,and 14 remain as recommended in the report.

Revised Conditions

- 4) Within 2 months from the date of this permission ~~a lighting strategy~~ **details of any external lighting** shall be submitted to the Local Planning Authority. The ~~scheme~~ **lighting** shall be implemented and carried out in accordance with the approved details within 2 months from the date of approval of those details and thereafter retained in that form for the lifetime of the development. **No other lighting shall be installed without the prior approval of the Local Planning Authority.**

Reason: To ensure that the development, both during construction and once operational, does not cause harm to nocturnal wildlife within, and commuting to and from, the adjacent LWS and other habitats.

10. Within 2 months of the date of this permission a management agreement which sets out the principles and actions needed to maintain, **and monitor the condition of** the ridge & furrow and conserve their historic importance shall be submitted to and approved in writing by the Local Planning Authority. This shall include –
- **a method statement for** maintaining a continuous grass sward,
 - measures for preventing bare patches or erosion,
 - measures for managing scrub vegetation,
 - measures for controlling stock numbers and supplementary feeding,
 - details of the alignment of fence lines and size of paddocks
 - **Annual monitoring and recording of condition and measures to identify and repair erosion**
- The development shall thereafter be carried out in accordance with the approved Management Agreement for the lifetime of the use.

Reason: To ensure the long-term protection and management of the heritage asset.