



## Appeal Decision

Inquiry held on 26-29 April 2022

Site visit made on 29 April 2022

**by Ms S M Watson BA (Hons) MCD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 14 June 2022**

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**Appeal Ref: APP/X3025/W/21/3289431**

**Gregory Quarry, Nottingham Road, Mansfield.**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Mr Lee O'Connor against the decision of Mansfield District Council.
  - The application Ref 2017/0575/OUT, dated 6 September 2017, was refused by notice dated 6 July 2021.
  - The development proposed is residential development of up to 204 dwellings; access off Quarry Lane; associated open space; landscaping; and infrastructure works (outline with all matters reserved except for access)
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### Decision

1. The appeal is dismissed.

### Applications for costs

2. An application for costs has been made by Mansfield District Council against the Appellant. This will be the subject of a separate decision.

### Preliminary Matters

3. Following co-operation between the two main parties, the first reason for refusal in respect of the deliverability of the proposed development is not defended by the Council. The Council's position on this was confirmed before the Inquiry opened.
4. The proposal was made in outline with all matters reserved except for access.

### Main Issues

5. The effect of the proposals on (i) biodiversity including the effect upon the Quarry Lane Local Nature Reserve (LNR), the River Maun Local Wildlife Site (LWS) and the Maun Woodland and Scrub (LWS) and (ii) the provision of Local Green Space.

### Reasons

*Biodiversity*

Background

6. The northern part of the site includes the Quarry Lane Local Nature Reserve (LNR); the River Maun Local Wildlife Site (LWS); the Maun Woodland and Scrub

LWS; and Open Space. In addition, all of the site is Strategic Green Infrastructure (GI). The road would cross the northern part of the site and the housing would be in the quarry area.

### Botanical Surveys

7. The site has been subject to numerous botanical surveys. The Council says that more detailed surveys should have been undertaken but I have no formal guidance before me that would suggest this to be the case. There is evidence that Goldenrod was present on the site in the past but it was not found in the latest survey. Goldenrod could be incorporated into a planting scheme. I do not consider that the botanical surveys were inadequate.

### Invertebrates

8. A Dingy Skipper butterfly was recorded on the site about 6 years ago but this is an old record and none have been recorded since. Nevertheless, there is dispute between the two main parties as to whether the quarry floor contained Open Mosaic Habitat on Previously Developed Land (OMHPDL) which has Priority status. A substantial amount of evidence was put to the Inquiry from both parties as to whether or not the quarry supported OMHPDL. I accept that the Appellant's ecologists had visited the site and the Council's ecologist only saw it after the quarry was almost entirely cleared of vegetation. Nevertheless, there is some information in the Appellant's own ecology reports that would point to OMHPDL being contained within the quarry, such as in Fig 3.2 of the Appellant's Ecological Impact Assessment 2020. In addition, Natural England's draft map identifies the area as such. Whilst I appreciate that the map relies on satellite imagery and the reliability of this map is classed as low, it does add some weight to the Council's case. The quarry had been substantially cleared of vegetation some time before the Inquiry so it is impossible for me to be assured with certainty about the OMHPDL status as I was unable to see its previous condition at my visit. Nevertheless, had it been OMHPDL then an invertebrate survey should have been carried out and this was not done.
9. If it was OMHPDL site clearance would be beneficial because clearance resets the ecological clock and the classic management of OMHPDL is to periodically scarify the ground. It could grow back in the quarry as the soil and therefore, seed banks remain. It can be seen on site that the vegetation is starting to re-grow. This type of habitat is important for invertebrates.
10. The Appellant has stated that the quarry will remain cleared of vegetation if planning permission is not granted due to issues in relation to anti-social behaviour and illegal encampments. The Council does not dispute that the quarry is subject to such problems. However, the statement by the appellant that he will keep it cleared to prevent anti-social behaviour is not binding upon him. He might change his mind or his circumstances might change. I therefore give his stated intention limited weight. Housing would permanently prevent its regrowth.
11. A precautionary approach indicates the need for an invertebrate survey so it could be assessed how the proposed housing would affect invertebrates.

### Bats

12. I have concerns about the survey methodology used in the 2017 report. The Bat Conservation Trust (BCT) recommends that more activity surveys should

be carried out than the appellant undertook in 2017. If the advice had been followed, there would have been 14 surveys carried out instead of three. I appreciate that the guidance was updated after the surveys were carried out but the report could have been accordingly updated. Furthermore, the transects were not compliant with the guidance as they missed out the majority of the site, especially the woodland. In addition, the guidance also recommends that automated bat detectors be used at three locations per transect but only one detector was used. Furthermore, old technology was used which can only record one bat at a time which means that not all data could be collected.

13. In spite of this, the 2017 Report indicated that the habitat present in the quarry is of high quality for foraging bats. This is unsurprising given the habitats present, including woodland, scrub, grasslands and open water situated on a major river corridor within green infrastructure and locally designated sites. It also identified several trees that may provide moderate bat roosting habitat.
14. The 2017 Addendum Ecology Report re-evaluated the trees as being of negligible to low potential for bats. It also identified the northern wall in the south-east of the site as having high potential for bat roosts yet no further bat surveys have been carried out to establish whether bats are using it for hibernation.
15. The 2020 Ecological Bat Survey did not update the surveys within the quarry but concentrated it in the Maun Valley and the bridge. The transect surveys were not in accordance with the BCT guidelines. It ignored the quarry or the features in the southeast of the site. No surveys were done to establish if hibernating bats were present in the structures identified earlier as having high potential to support bats.
16. The 2021 bat surveys identified 7 species foraging within the quarry or along the Maun River corridor. This is over 50% of the Nottinghamshire bat fauna species. The 2021 survey identified 7 species foraging within the quarry or along the Maun River corridor: common pipistrelle, soprano pipistrelle, *Myotis* sp, brown long-eared bat, noctule, Leisler's and serotine. This assemblage of species represents over 50% of the Nottinghamshire bat fauna. Secondly, Leisler's bats are a rare species in the UK so this record of them is significant. More important is the record of a serotine bat. This bat is extremely rare in Nottinghamshire and has only been recorded five times in 15 years.
17. Again the 2021 surveys did not follow the BCT survey guidelines which state that on high value sites, two surveys a month should be done between the months of April and October but only a total of four surveys were undertaken over the months of August, September and October. Furthermore, the automated bat detector surveys should have been deployed at three locations across the site, rather than just two over the same period (April to October). The cliff face had still not been surveyed for either summer or hibernation roosts. The evidence suggests that there is significant bat activity around this area. Furthermore, the east of the site (the narrow corridor between Nottingham Road and the main part of the quarry) appears to be a significant corridor for commuting and foraging bats. The detector at location D4 (Plan Eco 3 of the Appellant's ecology proof of evidence) detected 6 species and over 4000 registrations in the seven nights it was deployed. Although I understand

that the bats are likely to have been flying backwards and forwards as they stop at Nottingham Road, this is indicative of it being a commuting/foraging route for bats.

18. I accept the BCT recommendations are guidelines; that professional judgement is required; and that the surveys have been undertaken by qualified ecologists. However, as bat activity was originally expected to be higher than subsequently recorded this suggests to me that it would have been prudent to be more thorough with subsequent surveys. I appreciate that the site's location within an urban area might dissuade bats from using the site but without the more thorough surveys, this has not been properly established.
19. Overall, I consider that the surveys for bats have been inadequate. Even if the Leisler and serotine do not roost on the site or if the recordings were not accurate, it is clear that a good number of species of bats use the site at least for foraging. I accept that no trees within the site have been identified by the Appellant as having potential to support roosting bats. Nevertheless, even if there are no hibernation or summer roosts within the site, the site is clearly an important habitat for a significant species assemblage of bats, particularly for foraging.
20. There is dispute between the parties in respect of the width of the roadway cutting across the northern part of the site but even if I accept the appellant's figures, the road itself will intrude upon some of the foraging habitat. Furthermore, although there is already street lighting on the north and south sides of the river, there would be more streetlighting for the access road and there would also be lights from the cars using it. In addition, there would be light and activity associated with the new houses and the internal road layout. Lighting and urban activity is a deterrent to foraging bats. Whilst the proposal would not completely prevent foraging, there would be some detriment to the habitat and it would become less attractive for the species. I appreciate that a Landscape and Ecology Management Plan could include bat boxes and managed planting but this would not adequately mitigate for a loss and deterioration of natural habitat and the introduction of urban features. I conclude that there would be significant harm to an important habitat for bats.

#### The Maun Woodland and Scrub LWS

21. The Maun Woodland and Scrub LWS supports calcareous grassland, neutral grassland and also broad-leaved woodland which is a Priority Habitat. It is known to support 17 LWS indicator species when only 7 are required for designation.
22. I heard from the Appellant at the inquiry that the clearance work would result in a loss of around 8% of the Maun Woodland and Scrub LWS. This relates to the loss associated with the removal of the tunnel. The Council estimates that there would be a total loss of around 11.5% of the Maun Woodland and Scrub LWS due to the clearance because, in its opinion, more would be lost in association with the construction of the road which also runs through this designation. The two sets of ramps proposed in the Maun Woodland and Scrub LWS are also likely to result in clearance of vegetation as a result of the construction work. I consider that the Appellant has underestimated the loss.
23. I note the appellant's argument that there would be opportunity to introduce new planting to both sides of the proposed access and to ecologically manage

those areas. However, planting takes time to establish. Furthermore, no firm details are before me.

### Toads

24. There is evidence that one of the ponds on the quarry supported a population of common toads, a Priority species, at some time in the past. However, the two ponds in the quarry are low quality ephemeral ponds which I saw at my visit to be small, shallow and dry. The proposed scheme would include ponds which might give toads an opportunity to re-establish. I do not find harm in respect of toads or ponds.

### River Maun LWS - New Bridge

25. The River Maun LWS is designated for its populations of native White-Clawed Crayfish which are a Priority Species. Aside from White Clawed Crayfish, which have not been detected on the site, the River Maun supports a number of other species including water vole, bullhead and brook lamprey. A vegetation/riparian habitat could be incorporated within the bridge designs. However, the bridge is illustrated to be around three times the length of the existing bridge which would have an effect on the light available for the vegetation to grow. Nevertheless, I accept that the bridge could provide a concrete edge for mammals to cross underneath it. Also bat boxes could be incorporated under the bridge. The Environment Agency did not object to the scheme. Overall, I do not consider that the bridge would harm the biodiversity of the River Maun LWS.

### Quarry Lane Local Nature Reserve (LNR)

26. There would be a small loss of grassland and scrub as the road would be within this area. Furthermore, due to the foundations for the bridge, it is unclear whether all woodland would be retained and I was unable to get a definitive answer about this matter at the Inquiry. There could be an opportunity to introduce more ecologically valuable planting either side of the proposed access but this would not overcome the loss of the overall area of the LNR.

### Green Infrastructure

27. I have already given little weight to the Appellant's stated intention that the quarry will remain cleared of vegetation if planning permission is not granted. Whether or not the site is classed as OMHPDL, plants and woodland are important to biodiversity and a reduction of CO2 and therefore beneficial in reducing climate change.
28. The Council's Green Infrastructure Study 2018 explains that the quarry was designated due to its urban woodland. Whilst I appreciate that the quarry is in private ownership, the policy designation remains relevant and it provides a significant amount of green infrastructure within an otherwise urban area. The protection of GI is identified under LP Strategic Priority 12 and is included in the LP Objective 7 in relation to health and wellbeing; Objective 8 in relation to climate change; and Objective 12 which includes to protect, enhance, restore and maintain important natural resources, including wildlife, soil, air quality geological resources and the network of habitats and designated sites.
29. Even if there is no public access, green infrastructure is important to the local plan objectives referred to above. The development of the quarry itself would

involve a significant area of GI to be lost in central Mansfield, especially for the residents of nearby housing. If left undeveloped, I heard that the site could rapidly recolonise within a few years. Although the site has no future as a working quarry, granting planning permission would permanently remove this opportunity for woodland and other vegetation to grow back. The Council's LP is recently adopted and the IN2 designation protects the site from development. There is a very clear policy conflict in this respect.

### Biodiversity Net Gain

30. Net gain in planning describes an approach to development that leaves the natural environment in a measurably better state than it was beforehand.<sup>1</sup> Biodiversity net gain delivers measurable improvements for biodiversity by creating or enhancing habitats in association with development. Biodiversity net gain can be achieved on-site, off-site or through a combination of on-site and off-site measures. BNG does not override the protection afforded to sites which are of value for nature conservation or sites which support Priority Habitats and species.
31. National and local policy expect development to provide a net gain but do not specify a quantum. It is anticipated that the Environment Act 2021 will introduce a requirement for a 10% BNG on all developments but this level of requirement has not yet come into effect and therefore I would not expect this level of BNG at this point in time but some must be achieved in line with established planning policy.
32. The Appellant's Ecology proof indicates that calculations using the Defra Biodiversity Metric tool (v3.0) show there would be around an 11% net loss in biodiversity as a result of the development. The Council considers that there would be a far greater loss, not least because it considers the quarry to have been wrongly classified and the Appellant's baseline to be wrong. Even if I am to accept the Appellant's lower baseline figure, I must be satisfied that at least some BNG can be secured in accordance with LP Policy NE2.
33. The National Planning Policy Guidance (NPPG)<sup>2</sup> indicates that planning obligations can, in appropriate circumstances, be used to require that a planning permission provides for works that will measurably increase biodiversity. It says that benefits could be achieved entirely on-site or by using off-site gains where necessary and goes on to say that off-site measures can sometimes be secured from habitat banks which comprise areas of enhanced or created habitats which generate biodiversity unit credits. It says that care needs to be taken to ensure that any benefits promised will lead to genuine and demonstrable gains for biodiversity.
34. It also says<sup>3</sup> that biodiversity net gain complements and works with the biodiversity mitigation hierarchy set out in the Framework. It does not override the protection for designated sites or protected or priority species. It goes on to say that Local planning authorities need to ensure that habitat improvement will be a genuine additional benefit, and go further than measures already required to implement a compensation strategy.

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<sup>1</sup> National Planning Policy Guidance Paragraph: 020 Reference ID: 8-020-20190721

<sup>2</sup> Paragraph: 023 Reference ID: 8-023-20190721

<sup>3</sup> Paragraph: 024 Reference ID: 8-024-20190721

35. I appreciate that the development cannot commence until the Council has approved a BNG scheme under the terms of the S.106. However, the Appellant has not identified a habitat bank and Mansfield District Council does not have such a bank. Therefore, I cannot be satisfied that the off-site net gains would be appropriate or provided in a suitable location as there is no control over where the Council might allow it to be provided and there is no public scrutiny over details to be approved under a legal obligation. Therefore, the natural environment might not be left in a measurably better state than it was beforehand, especially as I have not found in favour of all of the ecology evidence submitted by the Appellant. Whilst the NPPG says that off-site measures can sometimes be secured from habitat banks it does not say that off-site measures are always appropriate. It says that that planning obligations can, in "appropriate" circumstances be used to achieve such objectives, but due to the lack of detail about how and where these net gains will be achieved, including the lack of any identified habitat bank, I consider that the S.106 agreement would be inappropriate to achieve the BNG.
36. The Appellant has drawn my attention to a previous appeal decision in Milton Keynes<sup>4</sup> in support of using the Environment Bank to provide the required level of biodiversity units on another site. However, in that case the Environment Bank had been directly approached by those appellants and had provided a quote. In this case, no such discussions have taken place. Therefore, that previous decision is not directly comparable to the appeal before me.

#### Conclusions on Biodiversity

37. I appreciate that the plans for the construction of the roadway and bridge are indicative and that firm details of them would be considered at reserved matters stage. Nevertheless, illustrative plans are submitted to show how a scheme would work and without alternative plans I cannot be assured that the impact upon biodiversity would be less.
38. I have found harm in respect of invertebrates, bats, the River Maun Woodland and Scrub, and GI. There is a lack of clarity on the baseline calculation for BNG due to the debate over whether the quarry was OMHPDL and I find that the reliance on the S.106 to rely on the provision of BNG would be inappropriate in this particular case. Whilst the Appellant has constructed their argument that the effect on each individual part of the site as not to amount to significant harm, taking all the harms together, I find significant harm to the biodiversity of the site as a whole. Furthermore, as the Council has a 7.75 year housing land supply, housing could be delivered elsewhere.
39. Natural England did not object to the planning application but its statement of "no objection" was under the heading "Statutory Nature Conservation Sites" which is not relevant to this proposal. The rest of the comments it provided were of a general nature and did not relate to the specific details of the proposal.
40. The proposal is therefore in conflict with Mansfield District Local Plan 2013-2033 (LP) Policy IN6; Policy NE2 which indicates support for development that protects ecology and delivers a net gain in biodiversity across local and landscape scales; and Policy IN2 which seeks to protect the functions and key

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<sup>4</sup> APP/Y0435/W/20/3251121

assets of the green infrastructure network and to avoid or minimise significant adverse impacts on ecological assets.

#### *Provision of Local Greenspace*

41. The Local Greenspace (LG) in this area is designated for its significant historic, recreation, beauty and wildlife value. The Appellant maintains that the access road would not cross the boundary of the LG protected under Policy IN6 of the Mansfield District Local Plan 2013-2033 (LP).
42. IN6(1) indicates that, other than in very special circumstances, it only supports development in LG where the development would clearly enhance or be ancillary to the reasons why it was designated.
43. IN6(2) indicates that development proposed within close proximity to LG will only be supported where it can be clearly and satisfactorily demonstrated that the development would not significantly harm the purpose(s) for which the local green space was designated.
44. In respect of Policy IN6(1), although the road itself would not be within the IN6 designation, the Appellant's letter from Pascoe indicates that 1-2m to the east of the road would be needed for construction works, including for the erection of scaffolding so the land within the IN6 area would be affected by construction. There are no plans to indicate how the scaffolding would impact existing trees and vegetation. The change in levels and the construction of a retaining wall also has potential to affect existing tree roots. The Council argued that this means that the development is within the LG however, I consider this matter is more to do with the second part of the policy, IN6(2).
45. I could see at my visit that the LG provides a green and pleasant environment away from Quarry Lane and the surrounding urban environment. It is described in the Designating Local Green Space Addendum 2018 as offering an opportunity for quiet contemplation and is unique as it also is wheelchair accessible. The picnic area and interpretation area, a little away from the appeal site, provide a unique place for school trips and family outings within a heavily built-up area. The proposal would not permanently remove the LG or prevent its continued use but it would detract from its qualities. The effect on the trees and vegetation from the scaffolding has not been made clear and this weighs against the proposal, but even if there were no harm to vegetation and wildlife, the introduction of an access road in this location would have an intrusive and urbanising effect upon the Local Greenspace which would cause significant harm to its function for recreation and beauty. Therefore, the proposal would conflict with the second part of LP Policy IN6.

#### **Other Matters**

##### Community Open Space (COS)

46. COS is protected by LP Policy IN3. The Council's Community Open Space Assessment 2018 recognises that parts of western, central and southern Mansfield urban are areas of the district where residents lack access to nearby green space. It also recognises central and western Mansfield as an area where there is a general gap in access to nature.
47. The permissive path that runs east to west north of the quarry over the tunnel is within the IN3 designation. This path is used by the public to walk through

the COS. The removal of the tunnel and construction of the re-graded road would not prevent access to this path but it would involve the construction of a large ramp system to get up and across the path. There is no dispute that the ramps would be accessible in terms of the Disability Discrimination Act. However, the proposed road across the site would form a barrier to mobility and make the space less attractive and useable.

48. Furthermore, the construction of the ramp and the road would take up land within the IN3 designation resulting in a loss of COS and a severance of it leading to its fragmentation. Policy IN3 seeks to avoid the fragmentation of open space into smaller parcels. In addition, the road and access ramp would introduce built urban form into the COS and would separate the Quarry Lane LNR from the Local Greenspace. The whole of the area is tranquil in comparison to the surrounding urban environment. The effect on the natural feel, quality and tranquillity of the open space and nature reserve, as a whole, would be radically changed by the fragmentation and introduction of these urban features with their associated hard surfacing, traffic movements and street lighting. Even though there would only be a small loss of publicly accessible COS, it would be a harmful change in the character of the area and would make the site less attractive as open space.
49. The development would therefore conflict with LP Policy IN3 which seeks to safeguard COS unless it is satisfactorily demonstrated that the proposed development is ancillary to the existing recreational use of the site, the open space is surplus to requirements, alternative provision is made in an accessible location nearby and any small loss would lead to an improvement to the remaining area whilst maintaining its overall function. The proposed development would not meet any of these exceptions.

### Planning Obligations

50. A S.106 agreement makes several provisions. Some are to make the development acceptable and others can be considered benefits of the scheme. I consider the benefits of the scheme would be the provision of 20% affordable housing. I give significant weight to the provision of affordable housing as its need is not disputed. The remainder of the provisions in the S.106 agreement pertain to make the development acceptable. However, it is not necessary for me to look at them in detail, given that I have found the proposal is unacceptable for other reasons.

### Other Benefits

51. There would also be other benefits to the scheme. There would be economic benefits arising from the construction of the development although I do not accept the appellant's argument that new residents would bring spending into the Mansfield area as this spending would be removed from somewhere else. I give the economic benefits from construction moderate weight.
52. Although Mansfield has a healthy housing land supply, I give the provision of a mix of housing in a sustainable location significant weight as it would boost the supply of housing.
53. I give moderate weight to the development discouraging anti-social behaviour on the site by the natural surveillance that would result from the occupiers of the proposed housing. I also give moderate weight to the improved access

through the site between Nottingham Road and Quarry Lane. There would be some improvements to Quarry Lane around the access to the site which are necessary to make the development acceptable. When taken together with the increased traffic at the access, I do not consider that the development would be an overall benefit to Quarry Lane. The proposed works around the access are therefore a neutral factor.

### **Planning Balance and Conclusion**

54. Whilst there are some benefits to the scheme, including the provision of market and affordable housing, these do not outweigh the cumulative harm I have found. The loss of the GI, whatever type of habitat existed, and the harm to LG and COS are sufficient to make the scheme unacceptable even without the additional biodiversity harm. The proposal therefore conflicts with the development plan as a whole and does not represent sustainable development. Therefore, I dismiss the appeal.

*Ms Siobhan Watson*

INSPECTOR

## LIST OF DOCUMENTS SUBMITTED AT THE INQUIRY

### **Appellant**

- A1 – Ashfield and Mansfield Trails (East) Multi-User Routes
- A2 – Emails relating to biological records
- A3 – Opening Submissions on Behalf of the Appellant
- A4 – Natural England date – Open Mosaic Habitat (Draft)
- A5 – bat survey data
- A6 – plan showing the extent of the access for approval.
- A7 – Letter from Pascoe in respect of the bridge and retaining wall construction

### **Council**

- C1 – Natural England – DEFRA open data Open Mosaic Habitat
- C2 – Opening Statement on Behalf of Mansfield District Council
- C3 – Living England: From Satellite Imagery to a National Scale Habitat Map

## APPEARANCES

### **Appellant**

Ian Ponter of Counsel called  
Timothy Goodwin BSc(Hons), MSc, MIEnvSc, MICEEM, MIALE  
Rob Crolla BA(Hons), DipTP, MTP, MRTPI

### **Council**

Merrow Golden of Counsel called  
Andrew Baker BSc(Hons) FCIEEM  
Bob Woollard, MA MRTPI

### **Interested Parties**

Tim Spurry, Maun Conservation Group  
Councillor Andre Camilleri, South Mansfield Division, Nottinghamshire County Council