
Appeal Decision

Site visit made on 8 February 2017

by J C Clarke BSc(Hons) BTP MRTPI

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

Decision date: 29th March 2017

Appeal Ref: APP/W1850/W/16/3162464

Bage Court, Scotland Bank, Dorstone HR3 5SU

- 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 Mr MG and GJ Morgan against Herefordshire Council.
 - The application Ref 161909 is dated 8 June 2016.
 - The development proposed is Erection of an agricultural building for free range egg production with associated feed bins and hardstanding areas.
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Decision

1. The appeal is dismissed and planning permission for Erection of an agricultural building for free range egg production with associated feed bins and hardstanding areas at Bage Court, Scotland Bank, Dorstone HR3 5SU is refused.

Procedural Matters

2. Following the submission of the appeal the Council has confirmed that, if the appeal had not been submitted it would have refused permission. I have taken the Council's putative 'reasons for refusal', relating to landscape and highways matters into account in my decision.
3. As the proposed building would constitute an intensive livestock installation exceeding 500 square metres in floorspace, it would fall within Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011. Such proposals can in some circumstances constitute 'EIA development', requiring the submission of an environmental statement. The Secretary of State has, however, issued a screening direction confirming that the proposal subject to appeal does not comprise EIA development, and I have determined the appeal on this basis.
4. In the period before my site visit, the Golden Valley Action Group (GVAG) requested that the procedure for dealing with the appeal be changed to an informal hearing. However, in common with an earlier appeal concerning a larger scheme for the same site¹, the case falls within the criteria for being determined via the written representations procedure². I have therefore dealt with the appeal via this route. I have, however, carefully considered all the points raised by all parties in determining the appeal.

¹ Reference APP/W1850/W/15/3129896

² 'Procedural Guide: Planning Appeals – England' Planning Inspectorate, 2016 - Annex K

5. The Dorstone Neighbourhood Plan (DNP) was subject to a positive referendum result on 12 January 2017 and been 'made' by the Council. I have taken the DNP and all comments received relating to it into account in my decision. Before making my decision I also sought and received factual clarification from the Council and Appellant concerning the current status of a previous planning permission for development at the site. I have taken into account the comments made.

Main Issues

6. The main issues in this case are:
- (a) The effect of the proposed development on the character and appearance of the area;
 - (b) The effect of the proposed development on highway safety;
 - (c) The effect of the proposed development on biodiversity; and
 - (d) Whether any harm which may arise from the proposed development would be outweighed by any benefits which it may deliver.

Reasons

Policy Context and Background

7. The current development plan comprises the Herefordshire Local Plan Core Strategy (HLPCS) 2015 and the Dorstone Neighbourhood Plan (DNP). My decision must accord with these documents unless material considerations indicate otherwise. The National Planning Policy Framework (the 'Framework') is an important material consideration.
8. The proposed agricultural building would accommodate 16,000 laying hens, operating on a 60 week production cycle. It would be of a smaller scale than a previous proposal for the erection of 2 broiler rearing units and associated development, in relation to which an earlier appeal³ was dismissed. A key consideration in the current appeal is whether the concerns of the Inspector set out in that decision have been adequately addressed.

Character and appearance

9. Paragraph 109 of the Framework establishes, in summary, that the planning system should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes. Subsequent appeal decisions and case law indicate that to be regarded as 'valued', an area should have physical attributes which take it out of the ordinary. Although the current proposal was not accompanied by a Landscape and Visual Impact Assessment (LVIA), the parties have submitted a range of landscape related documents which have informed my findings.
10. The Natural England National Character Area (NCA) 99 – the Black Mountains and Golden Valley, in which the appeal site is located, is described as one of the most tranquil areas of England, with few settlements and relatively little new development or transport infrastructure. The NCA states: '*The Golden Valley has very fertile, high-grade agricultural soils, has been intensively cultivated for centuries and is still very important for commercial agricultural.*

³ reference APP/W1850/W/15/3129896

Here there are extensive areas of arable land, with many low hedgerows where the hedgerow tree cover is relatively poor.'

11. The Herefordshire Council Landscape Character Assessment (LCA) updated 2009 describes the area in the vicinity of the appeal site as 'Principal Settled Farmlands'. These cover a rolling, lowland area of central Herefordshire, and are described as '*settled agricultural landscapes of dispersed scattered farms, relic commons and small villages and hamlets*'.
12. The part of the Golden Valley containing the appeal site has a more settled character than the wild, rolling uplands of the Black Mountains, which are also in NCA 99, and contains some large agricultural buildings. It is not part of an Area of Outstanding Natural Beauty (AONB) or subject to any other formal landscape designation. Although some moves have been made locally to secure AONB status for the area in the future these may not be successful.
13. However, the area around the appeal site, by virtue of its mosaic of fields, hedgerows, woodland and villages combined with its steep sided valley slopes, appears to me to form a key part of the transitional zone between lowland Herefordshire and the Black Mountains. In this sense it is integral to the '*...strong sense of transition from the wild and remote beauty of the upland plateau to the cultivated intimacy of lowland England*' referred to in the summary profile of NCA99. Whilst it is a working landscape with capacity to accommodate new farm buildings, I also consider that it is part of a valued landscape.
14. The proposed building would be smaller than those which were subject to the previous appeal. Its design would be typical of poultry units of this type and it would be seen as part of the existing group of functional farm buildings in views from the surrounding area. Its roof line would sit slightly below the eaves of the adjacent buildings and it would be partially hidden by the existing buildings in some views.
15. However, the proposed building would also substantially expand the built coverage within the appeal site onto an adjacent field. It would be noticeably longer than any of the individual existing buildings at the site. Due to a combination of its length, enclosed and utilitarian design, and facing materials, it would have an austere industrial appearance. Its design would contrast markedly with those of the partly open sided existing buildings and its eastern gable would project obtrusively beyond the alignment of the eastern facet of the adjacent building. These negative effects would, in particular, be experienced within nearby publicly accessible areas including parts of: the B4348; the section of The Scar/Scar Lane which passes the site and runs up the valley side to the north east; and the public right of way along Spoon Lane.
16. I accept that conditions could be imposed for example to control the colour of the external cladding on the building, landscaping, and any security lighting. Some views towards the building from nearby highways and rights of way would be screened or filtered by existing hedging. The proposed landscaping would, in the long term, partially mitigate the effects of the proposal. However, these points would not either individually or collectively neutralise the landscape and visual effects of a building of this scale at this location.

17. Whilst I have noted the Appellant's reference to an earlier planning permission⁴, granted in 2006 for buildings to be erected in a similar location to that now proposed there is no firm evidence that this is capable of being lawfully implemented as an alternative to the appeal proposal.
18. I note that the Council has granted permission for 2 other free range egg laying units, of the same or larger capacity to that subject to the appeal, at Bolstone and Foy. Unlike the appeal site, those locations are within an AONB. However, the submitted details of these other cases do not demonstrate that their landscape impact or neighbourhood planning context equates to that of the appeal proposal. They also do not demonstrate that the appeal proposal, which I have considered on its own merits, would not be harmful.
19. Having regard to all these points I consider that the appeal proposal would lead to substantial harm to the character and appearance of a valued landscape, leading to conflict with relevant provisions of Policies SS6, LD1, RA6 and SD1 of the HLPCS and DNP ENV Policy 1 of the DNP and of the Framework.

Highway safety

20. Access to the site is obtained along the B4348 from the north-west or through the village of Dorstone. The latter approach has a series of significant 90 degree bends and sections with restricted width, few passing places and limited visibility. There is also little in the way of pedestrian footways or street lighting in the area. These constraints mean that large vehicles coming through Dorstone village are likely to cause conflict with other road users and damage to carriageway edges, hedges and verges.
21. The scheme subject to the previous appeal involved 22 HGV visits (44 two way movements) over a 45 day period. Whilst the Inspector found that proposal to be severely prejudicial to highway safety, her findings in this regard were on the basis that most HGV visits would be via Dorstone village and that large numbers of these visits would take place on particular days.
22. The Appellants have indicated that the current proposal would generate 2.5 visits (i.e. 5 two way movements) per week by OGV2⁵ vehicles, plus visits by 2 OGV2 vehicles on a single day at the beginning and end of each 60 week flock cycle. On most days there would either be no visits or only one visit by such vehicles. Compared to the previous proposal the numbers of OGV2 vehicle visits would therefore be lower and more evenly spread out over time. The volume of such traffic generated by the proposal would also be small compared to that which currently uses the B4348, identified as 11 movements per day⁶.
23. The Appellants' preferred route for egg collection vehicles, which would constitute the bulk of OGV2 traffic visiting the site, would approach and leave the site from the north-west and thereby avoid the need to travel through Dorstone village. Whilst any condition seeking to control the routing of such visits would not be enforceable, it cannot be assumed that most such visits would be through Dorstone village. The proposal would also not substantially increase, in proportionate terms, the overall numbers of large vehicles negotiating 'pinch points' on the wider network. The access into the site itself

⁴ reference DCSW2006/0086/F

⁵ 16.5 metre long articulated vehicles

⁶ See Council delegated report – page 23

off the B4348 would also be of a suitable standard subject to a condition being imposed requiring the provision of adequate visibility splays in either direction.

24. The Appellants have also indicated that the proposal would include 1 box van visit per week to collect dead birds and 2 tractor and trailer movements per week to distribute manure. With regard to the latter, I note the concerns which have been expressed regarding whether the Appellants' landholdings can satisfactorily accommodate all manure that would be generated in accordance with pollution control requirements. However, even if the calculations put forward on behalf of GVAG concerning this point are correct any increase in vehicular activity required to address this is unlikely to be of such frequency as to add substantially to the highways issues associated with the proposal.
25. I conclude that the proposed development would lead to a limited increase in the use of the surrounding highway network by large vehicles. As the Highway Authority has objected, it would conflict with Policy DND ENV 1 of the DNP. However, the increase involved would be insufficient to cause substantive loss of highway safety, conflict with relevant provisions in Policies SS4, MT1 and RA6 of the HLPCS or cause the severe residual impacts referred to in paragraph 32 of the Framework.

Biodiversity

26. The application was accompanied by an Ecological Survey, which was undertaken during May i.e. an optimal time for many species. Whilst this identified evidence of otters using the stream around the southern end of the site, this was as a transit route and the proposals would create a buffer zone to prevent disturbance to the stream habitats and to otters using it.
27. Whilst the Ecological Survey stated that bats probably forage along hedgerows within the site, it did not include any night time surveys or public records search to establish further details⁷. In the absence of further information it has to be assumed that the proposal could impact upon bat foraging. However, this impact can be reduced to an acceptable level by means of a condition controlling the extent and design of any security lighting.
28. I note the fears which have been expressed that the proposal could, by enhancing levels of nutrients and phosphates, adversely affect river systems including designated wildlife sites. However, the comments of Natural England indicate that the proposal would not damage or destroy the interest features for which the River Wye SSSI/Special Area of Conservation (SAC) has been notified. The evidence before me does not justify coming to a different view in relation to the SAC or the River Dore Local Wildlife Site. Given Natural England's status as a statutory consultee its views must carry substantial weight in my decision. It should also be noted that manure management is subject to separate legislative control. Whilst I note the concerns which have been expressed concerning the effect of ammonia emissions on the Moccas Park Site of Special Scientific Interest (SSSI) these are not substantiated within the comments of Natural England.
29. I conclude that, considered as a whole, the proposal would not lead to any material conflict with the development plan or the Framework in relation to biodiversity.

⁷ Ecological survey page 5

Other Considerations

30. The appeal proposal would offer the benefit of increasing agricultural capacity and food capacity, which is important to the local economy of Herefordshire and of the nation as a whole. It would enable the Appellants' farming business, which is currently based on cropping, beef and sheep production, to change and diversify, thereby supporting existing employment within the farm, and offer some benefit to the construction and supply chain industries. It would therefore contribute to a notable extent towards the economic and social objectives of the Framework. These benefits need to be viewed, however, in the context of the harm that I have identified earlier. I also note that no substantive job growth appears to be associated with the proposal. It is also not clear that less visually harmful forms of diversification have been fully explored, or that the strategic economic benefits of the proposal could not be reaped from a similar proposal erected elsewhere where it would not cause the substantial harm that I have identified.
31. Concerns relating to animal welfare and health, and stocking density, are more properly dealt with under other legislation and are therefore not matters for me to address.
32. The responses from relevant technical consultees also indicate that matters concerning flood risk, drainage, odour, air quality, and land contamination can be satisfactorily addressed where necessary through the imposition of conditions on a planning permission. There is also no firm evidence that the proposal would lead to a need for an agricultural dwelling at the site. These points, however, constitute a lack of harm in relation to these matters rather than positive benefits to weigh in the planning balance.

Planning balance and conclusion

33. I have found that the proposal would cause substantial harm to the character and appearance of the area. Due to the resultant breach of policies in the development plan and Framework, this harm carries substantial weight against allowing the appeal.
34. In support of the proposal I have found that it would make a notable contribution to economic and social objectives. It would also not lead to any substantive harm to highway safety, biodiversity or any other matter. However, whilst the benefits of the proposal are important, for reasons which I have set out earlier I do not consider that they would outweigh the harm that I have identified. As a result the proposal would not accord with the development plan as a whole or simultaneously promote the economic, social and environmental dimensions of sustainable development referred in the Framework.
41. For the reasons given above I conclude that the appeal should be dismissed and refuse to grant planning permission for the proposed development.

Jonathan Clarke

INSPECTOR