



Appeal Decisions

Site visit made on 20 March 2018

by JP Tudor BA (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 29th May 2018

Appeal A Ref: APP/W1850/W/17/3181217

**Former poultry unit on land at Upper Buskwood Farm,
Hope-under-Dinmore, Herefordshire HR6 0PX**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class R, Paragraph R.3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr and Mrs B Wynne (B & A Wynne) against the decision of Herefordshire Council.
 - The application Ref 163900, dated 2 December 2016, was refused by notice dated 3 February 2017.
 - The development is prior notification for a proposed change of use of part of an agricultural building to flexible uses (use classes A1, A2 and B1) (Class R).
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Appeal B Ref: APP/W1850/W/17/3181231

**Former poultry unit on land at Upper Buskwood Farm,
Hope-under-Dinmore, Herefordshire HR6 0PX**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class S, Paragraph S.2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr and Mrs B Wynne (B & A Wynne) against the decision of Herefordshire Council.
 - The application Ref 163901, dated 2 December 2016, was refused by notice dated 3 February 2017.
 - The development is prior notification for a proposed change of use of part of an agricultural building to a registered children's day nursery. (Class S).
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Decision

1. Appeal A is dismissed and Appeal B is dismissed.

Preliminary Matters

2. The descriptions of development in the banner headings above are taken from the Council's decision notices, as they more accurately and fully describe the nature of the proposals than the descriptions contained in the planning application or appeal forms.
3. As set out above there are two appeals on this site involving the change of use of different parts of the same former poultry shed. I have considered each proposal on its individual merits. However, to avoid duplication, and given that the Council's reason for refusal, in relation to both, concerns the same issue of

highway safety, I have dealt with the two schemes together, except where otherwise indicated.

4. Following the Council's refusal of prior approval for both applications, the appellants commissioned a report from a highways and transportation consultant¹ which has been submitted with the appeal documentation (the Highway Report). The relevant parties have had the opportunity to comment on the report during the course of the appeal process. I have taken the Highway Report and any comments on it into account in reaching my decisions.

Main Issues

5. The main issue is whether or not the proposed developments would be permitted development as provided for by Classes R and S, respectively, of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) (GPDO), with regard to the transport and highways impacts of the developments. In particular, in relation to their effect on highway safety on the local road network.

Reasons

6. The appeal site comprises a sizeable steel-framed building, last used as a commercial poultry shed. It forms part of a 130 acre agricultural holding at Upper Buskwood Farm. The related proposals are for the change of use of one part of the building for flexible commercial uses (A1, A2 and B1), with the remaining part to be used as a registered children's day nursery.
7. Upper Buskwood Farm lies to the west of the A49 trunk road. The roads leading towards the appeal site are unclassified. The principal route passes from the junction with the A49, some distance to the north of the appeal site, and proceeds in a south-westerly direction, passing through the main part of the small rural village of Hope-under-Dinmore. The appellants' Highway Report indicates that widths along this section of the route vary from about 6.3 metres, nearer the A49, to about 4 metres of so by the Village Hall, with a speed limit of 30mph. The Highway Report acknowledges that the effective width is reduced at some points by parked vehicles, which is in accord with what I saw on my site visit and the Council's assessment. Therefore, the route is relatively narrow and parts of it are effectively single track.
8. The road continues under a railway bridge before a left turn up Old Dinmore Hill leads towards the farm. Although there are some limited passing spaces, the road ascending the hill is narrow and single track with a 60mph speed limit. At the top the hill a right turn westwards, along a private access road, leads towards the appeal site, before a final right turn north heads into the farmyard, with the long rectangular former poultry shed to the left. A farm shop is further along on the left with a farm animal attraction in the fields to the east. A public footpath is also signed as running north through the farmyard area.
9. Given the semi-remote location and the topography, it is accepted that the majority of trips to the site would be likely to be by private motor car. The appellants' Highway Report estimates that the proposals would potentially generate a combined total of 152 additional daily traffic movements, with 62 extra peak hour movements. Traffic surveys, using Automated Traffic Counters

¹ The Hurlstone Partnership – 'Hearing Statement of Jeremy P. Hurlstone BSc (Hons) CMILT, MCIHT on Highway Issues' July 2017 and Appendices

(ATCs) at 6 sites along the main route to the appeal building, were conducted between 22 May and 4 June 2017.²

10. Based on that data, relating to existing traffic flows, the appellants' Highway Report advises that at Site 6 (south of Cherrybrook Close), where the highest daily and hourly traffic flows were recorded³, adding 152 daily traffic movements to the peak figure of 618 would give a total of 770 movements. Similarly, at the highest hourly recorded flow, between 1400 and 1500, adding 62 traffic movements to the peak figure of 66, would give a total of 128 movements. Albeit that these are presented as worst-case scenarios, they would represent significant increases, with the peak hourly flow almost doubling.
11. At Site 5 (south of the T junction to the west of the railway bridge), specifically selected as it is on the lane leading up towards Upper Buskwood Farm, the peak daily flow was 267 movements, with a peak hourly flow, between 1200 and 1300, of 38 movements.⁴ Therefore, the Highway Report calculates that adding the estimated increases would result in a peak daily flow of 419 vehicles and bring the peak hourly flow to 100 traffic movements. Again these would be significant increases, with the peak hourly flow more than doubling, even allowing for some variation at other times.
12. On the basis of the information provided in the traffic surveys and the appellants' Highway Report, I consider that the estimated increases in traffic generated by the proposals, both individually and cumulatively, would be significant and be likely to have an adverse effect on highway safety, given the nature of the surrounding rural road network.
13. The Highway Report attempts to reign back from the figures it has chosen to present by suggesting that they are artificially heightened because, amongst other things, the peak figures were recorded during a school holiday week, a time when the proposed nursery would be likely to have reduced attendance or be closed. However, at Site 6 the total daily traffic movements and hourly movements on the relevant days and times of the previous week, during term-time, still amounted to 571 and 44, respectively, compared with 618 and 66. Moreover, the 7 day average for the term-time week and holiday week were 513 and 531, respectively. Therefore, the difference in those base-line figures between term-time and school holidays is not that dramatic.
14. It is also suggested in the Highway Report that the estimated peak hour flows, referred to above, associated with the respective proposals would not be coincident. Whilst I note variations in existing traffic flows at different times, given that it is suggested that the peak drop-off and pick-up times for the nursery would be 0730-0930 and 1500-1800, it seems to me that it would be likely that car journeys associated with the nursery use and flexible use as shops/offices, would be likely to coincide during some period, adding to existing traffic.
15. Moreover, the appellant suggests that it is envisaged that the flexible use element would comprise 2-5 units for start-up businesses. Depending on the actual use and combination of businesses, whilst I appreciate the basis of the

² Traffic Survey Results Summaries – July 2017

³ Thursday 1 June 2017 & Tuesday 30th May 2017

⁴ Both recorded on 1 June 2017

- appellants' estimates, the levels of overall journeys associated with them could be greater. For example, a number of shops units may be likely to generate more customer or client journeys than some office or professional uses.
16. Whilst presenting worst-case scenarios can be of value, despite the provisos and qualifications subsequently suggested in the Highway Report, it appears that the number of additional journeys generated by the proposals, both individually and cumulatively, would remain significant in the context of the local rural road network.
 17. The Highway Report further submits that the cumulative traffic volumes would remain low. That appears to be on the basis of guidance contained in a Department for Transport Circular⁵ (the guidance) which relates to the 'The Quiet Lanes and Homes (England) Regulations 2006'. However, that guidance is provided in a quite different context and for a separate purpose. It is intended to assist local traffic authorities in deciding whether or not to designate a road as a 'Quiet Lane' or 'Home Zone'. The guidance states that: *'Quiet Lanes are minor rural roads or networks of minor rural roads appropriate for shared use by walkers, cyclists, horse riders and other vehicles. The aim of Quiet Lanes is to maintain the character of minor rural roads by seeking to contain rising traffic growth that is widespread in rural areas.'*
 18. It is appreciated that it is not submitted that the relevant roads are designated 'Quiet Lanes'. Nevertheless, the appellants refer to paragraph 7 of the guidance, which advises that it is recommended that 'Quiet Lanes' should have no more than about 1000 motor vehicles per day. Furthermore, that vehicle speeds should be kept to levels appropriate to the mix of uses and activities expected to take place, usually with the 85th percentile speed below 35mph. However, those figures are suggested maximums and are not intended as criteria for judging whether the level of increase in traffic associated with change of use proposals is acceptable. Indeed, the guidance specifically refers to the need to contain rising traffic growth that is widespread in rural areas rather than to facilitate it.
 19. Furthermore, whilst the submitted traffic surveys suggest current speeds are below 35 mph, a significant part of the route is subject to a 60mph speed limit. Moreover, it is not clear if recorded speeds would remain the same with additional nursery and flexible use traffic. Indeed, the existing recorded speeds could be interpreted as indicative of the limitations of the road network. Therefore, I give the 'Quiet Lanes' comparison limited weight.
 20. The Highway Report also refers to guidance in the Manual for Streets (MfS1) in support of the appellants' case. Paragraph 7.2.14 of MfS1 (along with research cited on page 83) refers to shared surface streets being likely to work well in short lengths or where they form cul-de-sacs and where the volume of traffic is below 100 vehicles per hour (vph) at peak times. However, those sections of MfS1 are primarily directed at residential street design and the research was conducted in London Borough Pedestrian Priority Areas (PPAs). Even if it has, as suggested, a wider application, the appellants' estimated use of 128 vph, accepting the various worst-case scenario qualifications, is above the 100 vph level identified. Therefore, the relevance of those parts of MfS1 to an existing rural road network and these proposals is tenuous.

⁵ DFT Circular 02/2006: The Quiet Lanes and Home Zones (England) Regulations 2006 – 9 August 2006

21. Another study, conducted by the Transport and Roads Research Laboratory (TRRL now TRL) is cited in the Highway Report. However, the submissions based on that study relate primarily to the capacity of single lane carriageways in relation to congestion and delays, whereas the main issue in these appeals is whether the additional traffic generated by the proposals would affect highway safety.
22. The appellants' Highway Report advises that there was only one accident recorded injury on the relevant route between Upper Buskwood Farm and the A49 between 2012 and 2016 inclusive, the most recent 5-year period for which information was available. The absence of previous accidents, arising from existing uses in the area, is not a justification for changes of use which would significantly increase levels of traffic along narrow country roads with parked vehicles, along some parts, and limited passing opportunities.
23. It is also submitted by the appellants that HGV and van movements associated with the former poultry shed use should be taken into account. However, I understand that the building ceased to be used as a commercial poultry unit in 2014. Therefore, whilst that use could resume, it is not current and, in any case, the proposed uses would be likely to generate a greater number of vehicle movements over more concentrated time periods, in the mornings and late afternoons. Therefore, I give that aspect limited weight.
24. The Council's highways officer has expressed concern about the effect of the additional traffic and the intensification of use of narrow roads, in relation to both proposals, based on his own experience of the area. It is reasonable to place significant weight on the professional advice of the Council's specialist highways section in relation to highway safety issues on the local road network. Similar views regarding the suitability of the roads and the intermittent nature of the pavements are expressed by a local councillor, the parish council and a number of local residents.
25. Whilst the appellants' submissions concentrate on a desired route from the A49, which is signed at some points, there are also other possible routes in the area leading towards the appeal site, such as the loop to the north of the farm and a road from the Country Park to the east, which also has sign to the appeal site. Those routes are often single track, with pot-holed and uneven surface sections and are unsuitable for increased domestic vehicular use. Although some have signage indicating restricted use or their status is unclear, the proposals could lead people from further afield, unfamiliar with the immediate road network, to use those unsuitable routes.
26. A pick-up point for children to be taken to the nursery in a mini-bus is suggested by the appellants, in an effort to reduce vehicle movements. However, it is not clear if that would be either practicable or if a conditions securing it would be enforceable. Moreover, the appellants' highways consultant considers that, due to the likely variation in arrival and departure times, there would be little benefit in terms of reduced traffic moments. Therefore, that option would not sufficiently mitigate the adverse effects. However, it does indicate recognition of the increase in vehicle movements that would be generated and the need to reduce them.

27. Whilst the appellants accept that total vehicle movements would increase, they cite paragraph 32 of the National Planning Policy Framework (the Framework)⁶ in support of the proposals. It says that decisions should take account of *'whether safe and suitable access to the site can be achieved for all people'*. It also states, within its third bullet point: *'Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.'* The appellants say that a severe impact is a high threshold to breach and that it cannot be concluded that the proposals would have a severe impact.
28. However, paragraph 32 of the Framework is addressing matters of highway capacity and congestion (in the context of the severe residual cumulative impact of the development envisaged in its third bullet point), rather than highway safety considerations in themselves. It cannot be the case that the Government considers anything other than severe impact on highway safety would be acceptable.
29. The above factors lead me to conclude that the appeal proposals, both individually and cumulatively, would have an adverse effect on highway safety on the local road network, which falls within transport and highways impacts, as set out in the GPDO.

Other Matters

30. Support for the proposals from some third parties is acknowledged. They and the appellants refer to benefits such as the provision of nursery school places, in an area where there is said to be a shortage. Other suggested benefits relate to education, farm diversification, employment and contributions to the local rural economy. However, the conditions of the relevant permitted development rights, conferred by the GPDO, require determination of such changes of use to be based on a specified set of impacts and risks, as detailed within Class R and Class S of the GPDO. Consequently, the various benefits and considerations referred to are not influential factors in the determination of appeals against the refusal of prior approval.
31. The appellants have referred to various other issues, including the date of an email containing the Council's highways officer's consultation response, which appears to be after the date on the decision notices. However, the Council have stated that the planning department were well aware of the views of the highways section. Reference is also made to apparent confusion relating to a previous prior approval at the appeal location. Whilst I am cognisant of those matters and have fully considered the appellants' submissions, they do not lead me to alter my decisions.

Conclusion

32. I have considered both appeals on their own individual merits on the basis of the evidence before me. For the reasons given above, I conclude that both appeal A and appeal B should be dismissed.

JP Tudor

INSPECTOR

⁶ Published March 2012