



Appeal Decision

Site visit made on 11 February 2019

by Rory Cridland LLb (Hons), Solicitor

an Inspector appointed by the Secretary of State

Decision date: 5 August 2019

Appeal Ref: APP/G1630/W/18/3206201

Leigh Court, Church Lane, The Leigh, Gloucester, GL19 4AF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Benjamin Troughton against the decision of Tewkesbury Borough Council.
 - The application Ref 15/00752/FUL, dated 7 July 2015, was refused by notice dated 3 January 2018.
 - The development proposed is described as “the construction of three new poultry units in order for the Troughton family to diversify their current farming activities of dairy herding and arable farming, into the production of poultry to assist an expanding food market in an effort to meet consumer demands for poultry. It is planned that this diversification will provide the sustainability for the current farm with a view to secure the long term future of the farm”.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. An application for an intensive rearing unit of this scale is a Schedule 1 development for which an Environmental Impact Assessment (EIA) is required. An Environmental Statement (ES) was submitted with the application.
3. On 18 February 2019, the Planning Inspectorate gave notice to the appellant under Regulation 22 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (as amended) that certain further information was required to support the ES. The notice explained that the Inspectorate was unable to proceed with the appeal until the required information had been received, publicised and made available to those bodies to whom the original ES had been sent. The additional information was submitted to the Planning Inspectorate on 25 June 2016 and the required advertising was carried out. I have had regard to this revised information in my decision.

Main Issues

4. The main issues are the effect of the proposed development on:
 - (i) the character and appearance of the surrounding area;
 - (ii) the setting of the nearby Grade I listed Church of St Catherine (“the Church”);
 - (iii) protected trees;

- (iv) the living conditions of occupiers of neighbouring properties with particular regard to noise, odour and other disturbance; and
- (v) the local transport network.

Reasons

Character and appearance

5. The appeal site is located south of The Leigh, a small village north of Gloucester and southwest of Tewkesbury and in an area designated as a Landscape Protection Zone (LPZ). The site itself currently comprises an agricultural field which forms part of Leigh Court, a mainly dairy enterprise producing 2 million litres of milk annually, with around 110 hectares of arable farmland and pasture.
6. Policy LND3 of the Tewkesbury Borough Local Plan to 2011¹ (LP) states that within the LPZ special protection is given to the ecology and visual amenity of the river environment. It restricts development which, amongst other things, has a visual effect on the character of the river banks or associated landscape setting of the Severn Vale. Furthermore, it makes clear that some of the Council's key aims are to protect the appearance of the landscape. Similarly, Policy SD6 of the Joint Core Strategy 2011-2031² (JCS) also seeks to protect landscape character for its own intrinsic beauty and for its benefit to economic, environmental and social well-being. It requires proposals to have and to demonstrate how the development will protect landscape character.
7. These policies accord generally with the guidance set out in the National Planning Policy Framework ("the Framework") which indicates that planning decisions should protect and enhance valued landscapes, recognise the intrinsic character and beauty of the countryside and conserve and enhance the historic environment.
8. The Council has raised a number of concerns around the impact of the proposal on the character and appearance of the surrounding area. These concerns are well founded. The proposal would involve the erection of 3 large poultry sheds measuring around 117m by 20m with a ridge height of around 5.2m. They would be located away from the existing farm buildings in an area of open countryside. There would be 4 feed bins located between the units, each around 8m in height, a new vehicular access track, resurfacing of the existing access, ground reprofiling including planted earth mounds and 3 new vehicle passing bays on Church Lane.
9. This would introduce a considerable amount of built form into an open, undeveloped area of land located within a sensitive landscape. While I note the conclusions of the appellant's Landscape and Visual Impact Assessment and the suggestion that the site is well contained and the landscape capable of absorbing the development, I do not agree. The sheds and feed bins would be visible from a number of vantage points both in the immediate vicinity along Church Lane as well as from further afield, including nearby public rights of way (PRoWs). Here, the sheds would appear more industrial in nature, out of keeping with the agricultural landscape and at odds with the sensitive rural character of the surroundings.

¹ Adopted March 2006.

² Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011-2031 (adopted December 2017).

10. I acknowledge that there will be more and less sensitive areas within the LPZ and recognise that the existing buildings at Leigh Court already impact on the landscape (as does the historical role that farming has played in its development). However, there is a distinct separation between the farm buildings of Leigh Court and the countryside to the south and east. The extension of development eastward into this sensitive countryside would jar with the rural, agricultural appearance of the surrounding landscape as well as with the historic character of the Church (a matter to which I return below). This would be exacerbated by the introduction of mounds within this landscape which would appear at odds with the generally flat topography which is characteristic of the surrounding area.
11. Likewise, the introduction of the proposed passing bays along Church Lane, each measuring around 25 metres in length and surfaced in tarmac, would materially erode the pleasant and attractive appearance of this picturesque rural lane. This relatively straight road is dominated by the Church and its rural character contributes to the setting of that important heritage asset. While I acknowledge that, in view of its localised impact, the resultant harm to the wider landscape would be minimal, the introduction of these large passing bays would negatively impact on the character and appearance of this rural route and would erode local distinctiveness.
12. Consequently, I find that the proposal would be harmful to the character and appearance of the surrounding landscape and would negatively impact on local distinctiveness. This would be detrimental to the LPZ. As such, I find the proposal is in conflict with LP Policy LND3 as well as JCS Policy SD6, both of which seek to guard against such harm

Heritage Assets

13. The appeal site is situated directly south of the Church, a Grade I listed heritage asset the significance of which derives in part from its relatively isolated, rural location within a generally, flat agricultural landscape. The tower of the Church is a prominent feature in the landscape and can be observed from a number of public view points, including from the Church of St Mary's at nearby Priors Norton.
14. JCS Policy SD8 requires development to make a positive contribution to local character and distinctiveness, having regard to valued and distinctive elements of the historic environment. It aims to conserve and enhance designated heritage assets and their settings in accordance with their significance.
15. There would be limited intervisibility between the Church and the proposed structures. However, as I have made clear above, they would be visible from a number of vantage points within the wider surroundings. This would include views from nearby PRow's which enable an appreciation of the relative isolation of the Church within the wider landscape.
16. The introduction of the proposed industrial looking sheds, isolated from the main farm buildings, would negatively impact on views towards the Church from within the surrounding landscape. Likewise, the creation of large passing bays along Church Lane would materially alter the rural, agricultural setting of rural lane eroding the setting of the Church and unacceptably impacting on its significance. This would be contrary to JCS Policy SD8.

17. However, while I note the Council's assertion that the harm would be substantial, I do not agree. The buildings would be situated sufficiently distant from the Church to limit any direct harm to the building itself and I note that the Church is already affected by the existing operation at Leigh Court. As such, I consider the harm would be less than substantial. Nevertheless, Paragraph 196 of the Framework advises that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits.
18. The appellant has identified a number of such benefits including the economic benefits to both the local and national economy resulting from the operation of the site. In addition, there would be some modest benefit to the local economy during construction which would help support local businesses and services. However, while these provide some additional public benefits, they are limited, and I afford them only a moderate amount of weight. Likewise, while I note the other benefits identified by the appellant, including the offsetting of carbon emissions through UK grown produce and the potential for renewable energy production, in the absence of more detailed information on these benefits, I afford them limited weight.
19. However, Section 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990 requires me to have special regard to the desirability of preserving the setting of heritage assets. Furthermore, the Framework makes clear that heritage assets are an irreplaceable resource and that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. In addition, Paragraph 194 indicates that any harm to the significance of a designated heritage asset should require clear and convincing justification.
20. In the present case, I do not consider the public benefits identified would outweigh the harm to the Church that I have identified above. As such, the proposal is also in conflict with the guidance set out in the Framework.

Living Conditions

21. In order to operate, the proposed sheds require an Environmental Permit (EP). This has been issued by the EA and covers key environmental issues such as odour, noise, bio-aerosols and dust. However, this permit is concerned with the operation of the facilities and not with wider land use considerations or impacts on living conditions of neighbouring occupiers of land. I go on to consider these matters further below.
22. Each of the poultry sheds would operate on a 35 day flock cycle with a ten day period between flocks for cleaning and disinfecting, equating to around 8 flock cycles a year. They would have a combined floor area of 7086m² with each unit measuring around 2362m².
23. Detailed evidence on the odour impacts have been submitted as part of the appeal which acknowledge that odours would be stronger as birds grow, peaking during the periods when litter is removed. However, the results of the modelling indicate that odour exposure levels would exceed the benchmarks set out by the Environment Agency for moderately offensive odours at six of the receptors identified. While I note that the impact on the Church, as a non-

- residential receptor is unlikely to be as significant as would be the case on a residential receptor at the same location, as a community facility of heritage value, as well as a place of worship, users would reasonably expect to enjoy a high level of amenity. As a result, it should, in my view, be considered as a high sensitivity receptor.
24. While I note that three of the identified residential receptors are associated with Leigh Court, that is not in itself sufficient to overcome the identified harm. Similarly, the fact that a further two of the receptors are linked with other farming operations does not justify exposure levels above the identified benchmarks.
25. Turning then to noise, the appellant has submitted a Noise Impact Assessment which concludes that the proposal would have no significant impact in terms of noise. The Council has raised a number of concerns with this assessment including that it fails to consider all potential sources of noise. I agree with those concerns. The updated noise assessment fails to consider the likely significant effects of construction or the likely significant cumulative effects of the proposal with other plans or projects on the nearest residential receptors. In the absence of this information, I cannot be certain that the proposal would not have an unacceptable impact in terms of noise.
26. The Council has also raised concerns regarding the associated levels of dust and bioaerosols. However, there is no robust evidence which would indicate that they would exceed acceptable levels. Furthermore, I note that Public Health England have advised that provided the installation is well managed, the activity proposed is likely to have a low impact on human health and that particulate matter would not exceed air quality standards at the nearby residential receptors.
27. Nevertheless, even though I do not consider dust and bioaerosol emissions from the site would be significant, I am not satisfied that the appellant has demonstrated that there would not be significant impacts on nearby receptors in respect of noise and odour.
28. Accordingly, I find the proposal is in conflict with Policy SD14 of the JCS which seeks to ensure that new development does not result in unacceptable harm to the living conditions of neighbouring residents or unacceptable levels of pollution or odour. It would also be in conflict with Paragraph 170 of the Framework which advises that planning policies and decisions should contribute to and enhance the natural and local environment by, amongst other things, preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of pollution.

Trees

29. Two mature Horse Chestnut trees are located at the entrance to the site, both of which are protected by a Tree Preservation Order³. They are located at the entrance to Leigh Court and make a positive contribution to the character and attractiveness of the surrounding area. Similarly, they are intervisible with the Church and positively contribute to its setting. They are mainly affected by the

³ Tewkesbury Borough Council (No. 385) (Leigh Court, Church lane, The Leigh) Tree Preservation Order 2017.

proposal as a result of the resurfacing works proposed to the access and the additional vehicular movements associated with the proposed development.

30. The appellant has submitted an arboricultural report⁴ which considers the effect that the construction of the proposed development would have on these trees. It concludes that, with the adoption of techniques that minimise root disturbance, including root protection fencing, it will be possible to achieve the successful construction of the proposed development without resulting in lasting damage to retained trees.
31. While I note that there are a number of flaws in this document, the area in question is already covered by a hard surface which has clearly been in place for some time. There is nothing to indicate that this has had any lasting detrimental impact on the health of these trees or that the resurfacing works proposed would have any greater impact.
32. Likewise, while I note that the proposal would result in an increased number of Heavy Goods Vehicles accessing the site, there is nothing to indicate that these would be any larger or more frequent than those already accessing Leigh Court via this access. Furthermore, there is little robust evidence which would indicate that the increased use of the track would result in harm to these protected trees.
33. Accordingly, I do not consider the proposal would negatively impact on protected trees. As such I find no conflict with LP Policy LND3 or JCS Policies SD6 or INF3 which, taken together, seek to retain important landscape features within the LPZ including protected trees.

Local Transport Network

34. The Council has also raised a number of concerns regarding the increase in the volume and frequency of HGV traffic associated with the proposed sheds. However, the Council accepts that there would be no severe impact on the safety or satisfactory operation of the local transport network and that, subject to conditions, it would accord with both local and national policy. There is nothing to indicate that the associated increase in HGV movements would have a materially greater impact on the wider highway network than is the case at present. In the absence of any robust evidence which would indicate otherwise, I find no harm in this respect.
35. As such, I find no conflict with JCS Policy INF1 which, amongst other things, seeks to ensure that new development provides safe and convenient connections to, and does not have an unacceptable impact on, the local transport network.

Other Matters

36. I note the suggestion that the proposal would help secure the ongoing viability of Leigh Court as a farming enterprise, and that there is a need for new sites to meet market demand. However, while this weighs in favour of the proposal, it does not overcome the harm I have identified above.

⁴ Arboricultural Implications Assessment and Arboricultural Method Statement (April 2018).

Conclusion

37. Although I have found that the proposal would not be harmful to protected trees or have an unacceptable impact on the local transport network, I have nevertheless found that it would have a negative impact on the surrounding landscape and local distinctiveness. Furthermore, I have found the harm to designated heritage assets would not be outweighed by the public benefits. In addition, I have found that insufficient information has been provided in respect of odour and noise to rule out significant effects on nearby sensitive receptors. Accordingly, I consider the proposal is in conflict with a number of development plan policies which are fundamental to the effective operation of the development plan as a whole as well as the guidance set out in the Framework.
38. Consequently, for the reasons set out above, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

Rory Cridland

INSPECTOR