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## Appeal Decision

Site visit made on 29 January 2019

**by G Jenkinson BSc (Hons) MSc MRTPI**

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

**Decision date: 08 August 2019**

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**Appeal Ref: APP/W1850/W/18/3213035**

**Rhyse Farm, Lyonshall, Kington HR5 3LX**

- 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 James Davies against the decision of Herefordshire Council.
  - The application Ref 182245, dated 4 June 2018, was refused by notice dated 1 October 2018.
  - The development proposed is the erection of an extension to an existing poultry shed.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. The main issues are:
  - the effect of the proposed development upon protected species, with particular regard to Great Crested Newts and;
  - the likely cumulative effects of the proposal, together with other nearby poultry developments, on the living conditions of the occupiers of nearby residential properties, with specific regard to odour and noise.

### Reasons

*The effect of the proposal upon protected species*

3. Great Crested Newts (GCN) are protected by law and their presence is a material consideration in a proposal where there is a reasonable likelihood of a protected species being present and affected.
4. The Preliminary Ecological Appraisal<sup>1</sup> sets out that no great crested newts were observed on the site. However, there are 6 ponds located within 500m of the site. One of these ponds is located around 16m south of the site and has been assessed to have 'good' habitat suitability for great crested newts. It is generally accepted that where suitable habitat is present the majority of a great crested newt population will use terrestrial habitats within 50m of the breeding pond.
5. Therefore, despite the fact that the habitats covering the development site are considered to be poor habitats for great crested newts during their terrestrial phase, as a precautionary measure, because the surveyed pond is so close to

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<sup>1</sup> Prepared by Craig Emms MSc MCIEEM and Dr Linda Barnett BSc (Hons), PhD, MCIEEM, dated May 2018, contract No 180

the development, and also because it has been assessed to have 'good' habitat suitability for great crested newts, the report recommends an eDNA survey for great crested newts is required to establish whether the species is present in the pond adjacent to the site.

6. I do not have such a survey before me and Circular 06/2005 advises that surveys should only be required by condition in exceptional circumstances. I do not consider this would be an exceptional circumstance and in this regard, I must apply the precautionary principle and find there would be harm to great crested newts. This would be contrary to the National Planning Policy Framework (The Framework), which seeks to protect and enhance sites of biodiversity value, minimising impacts on and providing net gains for biodiversity.

*Cumulative Effects of the proposal upon the Living conditions of nearby residents*

7. The proposal is to extend one of 5 large poultry sheds on an established farm in the open countryside. The unit currently produces 157,500 birds a year and the proposed extension would enable an increase to 12,000 birds per crop cycle, of which there are 7 to 8 per annum. The proposed extension would be identical in size, design and materials to poultry shed number 3.
8. In addition to the farmhouse, there are a small number of residential properties within 400m of the site, the closest being located approximately 120 metres from the site.
9. The Environment Agency (EA) under the Environmental Permitting (England and Wales) Regulations 2010 has issued an Environmental Permit (EPR/TP3636ME) for the proposed activity. The Permit is dated 8 August 2017 and allows for the extension of poultry houses 4 and 5 and an increase in broiler numbers from 157,500 to 191,365 places. The appellant submitted Odour and Noise Management Plans as part of the Environmental Permitting application. These outline actions and measures that will prevent or minimise odour and noise emissions. The reports were sufficient to warrant the Permit being issued, subject to conditions.
10. The siting of intensive livestock housing in the vicinity of dwellings requires careful consideration, and concerns from the Council were raised regarding the living conditions of the occupants of the nearby properties, particularly from noise and odour experienced in the summer months from their gardens. Given the number of other poultry units in the area, the Council's concerns relate also to the cumulative impacts the proposal could have in this regard.
11. The proposal would equate to around a 7.6% increase in the capacity of the site, which is a modest increase. Whilst I accept that during my visit in January, I witnessed minimal odour or noise, with the only real noise coming from the chicken feeders which was intermittent and inobtrusive, this was only a snap shot in time. However, I note that the appellant states that there have been no complaints against the farm in 35 years of operation. This is undisputed by the Council. I also note there were no objections from residents to the proposal.
12. Nevertheless, the noise and odour reports submitted to the EA are only management plans and there is no evidence that in granting the Environmental Permit the EA made any assessment of the cumulative impacts of the proposal

would have with other poultry farms in the area. I accept that the Framework (paragraph 183) indicates that planning should not seek to control or manage processes or emission, which are subject to separate pollution control regimes. However, without an odour and noise assessment I am unable to be adequately assess the cumulative impact of the development and therefore I must apply the precautionary principle and have regard for Paragraphs 180 and 181 of the Framework which seek to minimise the impact of pollution upon health and living conditions.

13. Therefore, in the absence of this information, I consider that proposal, together with other nearby poultry developments, could have an unacceptable impact on the living conditions of the occupiers of nearby residential properties, with specific regard to odour and noise. Accordingly, the proposal would be contrary to Policies SS1, RA6 and SD1 of Herefordshire Local Plan Core Strategy 2011-2031 (October 2015) (CS). Together, these policies seek to encourage sustainable development support the rural economy and safeguard residential amenity for existing residents; ensuring new development does not contribute to adverse impacts arising from noise or air contamination. It would also conflict with the Framework, which seeks to create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users.

### **Other Matters**

14. The proposals would generate an increase of 5 vehicles per flock, 4 of which will be articulated lorries, and the other a tractor and trailer in association with the manure removal. The increase in traffic movements associated with the development would therefore be limited.
15. The proposal would result in the removal of approximately 5 rows of cider apple trees. However, these would be replanted on adjoining land and I am satisfied that this would adequately mitigate the loss.

### **Conclusion**

16. For the above reasons, I conclude that the appeal should be dismissed.

*Gemma Jenkinson*

INSPECTOR