
Appeal Decision

Hearing Held on 13 November 2019

Site visits made on 12 and 13 November 2019

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 December 2019

Appeal Ref: APP/P1615/W/19/3227375

Clearwell Farm, The Rocks, Clearwell GL16 8JR

- 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 Stephen Hay against the decision of Forest of Dean District Council.
 - The application Ref 1191/18/FUL, dated 23 July 2018, was refused by notice dated 15 April 2019.
 - The development proposed is the erection of a poultry building.
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Decision

1. The appeal is dismissed.

Application for costs

2. At the Hearing an application for costs was made by Newland Parish Council against Mr Stephen Hay and Forest of Dean District Council. This application is the subject of a separate Decision.

Procedural matters

3. The development subject to this appeal has been partially carried out insofar as the poultry shed has been constructed and is in use for the rearing of turkeys. However, the proposal also includes the installation of chimneys and associated extraction fans in place of the existing gable end fans on the new building and an existing adjacent building. I have, therefore, determined the appeal on the basis of the submitted drawings.
4. For clarity, where I refer to an 'existing situation', I refer to the situation prior to the erection of the poultry shed. That is, a situation where there were two poultry sheds at the farm. Where I refer to the 'proposal' this includes the new shed, which has already been erected, and the chimneys to that shed and the adjacent one.

Main Issues

5. The main issues are
 - (i) the effect of the development on the surrounding ancient woodland with particular regard to ammonia emissions; and
 - (ii) the effect on the Wye Valley and Forest of Dean Bat Sites Special Area of Conservation (SAC).

Reasons

Ancient woodland

6. Clearwell Farm is accessed from the public highway by a private access road that serves the appellant's poultry farm business and a separate feed mill. Close to the site are areas of ancient woodland. There is no dispute that ammonia levels within the woodland are in excess of those that the Environment Agency considers may cause harm to the ancient woodland habitat. Indeed, at the hearing, the appellant's ecologist identified that there are indications of damage, which may be a result of the high ammonia levels.
7. The proposal, through the introduction of the chimneys, seeks to improve the dispersal of ammonia from the poultry farm. There is no dispute over the conclusions of the appellant's air quality assessment¹ that the proposal would result in reduced ammonia levels across the modelled areas of ancient woodland, when compared to the existing situation. Whilst the chimneys are yet to be built, they are part of the proposal and so it is reasonable to assess the effect based upon their presence, as has been done in the assessment. The reduction in ammonia levels weighs heavily in favour of the proposal.
8. Despite improvements, critical levels of ammonia, above which adverse effects may occur, would still be exceeded within the ancient woodland. The proposal to improve dispersal does not tackle overall emissions and the appellant has not proposed any method of reducing them. Indeed, the proposal to add a further poultry shed would result in an increase in ammonia emissions from Clearwell Farm as a whole and it is inevitable, therefore, that increased total deposition would have to occur across the wider environment. However, my attention has not been drawn to any particular embargo on new poultry sheds generally.
9. Beyond the modelled area, the appellant's uncontested evidence indicates that the proposal's contribution to ammonia levels in the ancient woodland would be so low that they would result in negligible changes to the overall levels compared to the existing situation. This would be the case even if a more stringent threshold, for use where lichens and bryophytes are an integral part of the ecosystem, were applied.
10. In light of the above, the evidence indicates that the proposal would not have an adverse effect on the ancient woodland. This does not run counter to the evidence of those interested parties who have noticed a marked deterioration in the woodland in recent years because the mitigation measures that are integral to this proposal have not yet been installed. Nor, being based upon a comparison of ammonia levels, does it take the existing condition of the woodland into account, which is advised against in Planning Practice Guidance (PPG).
11. There is another poultry building at Clearwell Farm that would not be improved and there may be other available methods to further reduce emissions that have not been proposed. However, although they have not yet been constructed, those measures that are part of the proposal are sufficient to mitigate the effect of the additional poultry shed on the ancient woodland.

¹ Steve Smith, AS Modelling & Data Ltd. (16.07.2018) A Report on the Modelling of the Dispersion and Deposition of Ammonia from the Historical Free Range Laying Chicken Houses and the Existing and Proposed Turkey Rearing Houses at Clearwell Farm, Clearwell, near Coleford in Gloucestershire

Despite the sensitivity of the surrounding area, there is no clear reason that the appellant should be expected to go beyond those measures sufficient to mitigate the effect of the new development.

12. The National Planning Policy Framework (the Framework), at paragraph 175(c) sets out that development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists.
13. This development proposal, as clearly shown on the drawings, includes the erection of the poultry shed and the installation of the chimneys. Unlike compensation, which following PPG guidance² should only be considered once harm has been justified by wholly exceptional circumstances, paragraph 175(c) does not indicate that mitigation, such as installing chimneys on the existing shed, cannot be regarded as an integral part of the proposal. Indeed, the PPG³ encourages consideration of the scope for avoiding or mitigating adverse impacts when assessing development proposals, which I have done. Therefore, this mitigation does not fall to be considered as wholly exceptional reasons within the meaning of paragraph 175.
14. Moreover, I have found that the proposal taken as a whole would reduce ammonia levels over the modelled area and have a negligible effect on ammonia levels beyond that. There is no substantive evidence that, other than through ammonia emissions, the proposal could cause harm to the ancient woodland. Therefore, the proposal would not result in the loss or deterioration of the ancient woodland, there is no need to consider whether there are wholly exceptional reasons and no need for compensation under Framework paragraph 175(c).
15. The effect on ancient woodland was the Council's only reason for refusal. Consequently, and notwithstanding the numerous other concerns of local residents, my findings on this main issue indicate that the circumstances that could lead to a grant of planning permission may exist. Accordingly, I now turn my attention to the effect on the SAC.

The effect on the SAC and appropriate assessment

16. The SAC is comprised of numerous constituent Sites of Special Scientific Interest (SSSIs) in the locality. One such site, the Old Bow and Old Ham Mines SSSI is close to the site and, partially, directly under the access road to Clearwell Farm. The qualifying features of the SAC are the greater horseshoe bat and lesser horseshoe bat.
17. The Citation⁴ for the SAC indicates that this complex of sites contains by far the greatest concentration of lesser horseshoe bats in the UK and also supports large numbers of greater horseshoe bats. It goes on to say that it supports an exceptional breeding population of both species as the majority of sites within the complex are maternity roosts, and there are several disused mines which are used as hibernation roosts.

² Paragraph Reference ID 8-033-20190721

³ Ibid.

⁴ Document 7 submitted at the hearing

18. The conservation objectives⁵ of the SAC are to ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the Favourable Conservation Status of its qualifying features by various means including maintaining the structure and function of the habitats of the qualifying features and the supporting processes on which the habitats of qualifying species rely.
19. Although Council officers initially 'screened out' any significant harm to the SAC, an early consultation response from Natural England (NE)⁶ raised concerns that the Council's early assessment had considered mitigation at the screening stage and had not accounted for any effects on air quality. Subsequently, NE clarified that traffic to the site may be causing damage to the caves and further investigation was required.
20. At the hearing, there was no dispute that the surrounding woodland supports foraging activities of the bats. Notwithstanding my findings in respect of the ancient woodland, the additional chimneys proposed to the existing shed could be construed mitigation that should not be accounted for when considering whether there is a risk of significant adverse effect on the SAC. Furthermore, whilst the effect of traffic associated with the development on the SAC is disputed, I find that traffic to the site could affect the structural integrity of the caves and could cause noise and vibrations within the subterranean habitat. On this basis, I conclude that there is a risk that the development could lead to significant adverse effects on the integrity of the SAC and Appropriate Assessment under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) is required.
21. As competent authority in respect of this development proposal, I now detail my Appropriate Assessment, which I have undertaken on a proportionate basis with regard to the relevant documents submitted at the hearing⁷, the evidence provided in the main appeal submissions and those oral submissions that I heard.
22. In terms of the foraging activities of the bats, no lighting has been proposed at the appeal building and, therefore, the development would not result in further light spill that could adversely affect foraging behaviour. I have already found that there would be improvements to the air quality in the ancient woodland in respect of ammonia levels. Whilst this may well lead to an improvement in foraging conditions for the bats, I have no substantive ecological evidence to make such a connection and such would therefore be conjecture. Appropriate Assessment must be based upon scientific evidence. In the absence of such evidence, I cannot conclude beyond reasonable scientific doubt that adverse effects on the foraging activities of bats would not arise.
23. Turning to traffic related impacts, the public highway over much of the cave structure and access track to the site is already heavily used by large vehicles. The vast majority of these traffic movements are associated with the adjoining feed mill that shares the access to the site. The appellant contends that the additional loading on the cave roofs and vibrations associated with the small increase in traffic from the proposal would be insignificant in comparison to those created by the feed mill.

⁵ Document 6 submitted at the hearing

⁶ Documented in the Planning Officers committee report, page 27

⁷ Document Nos. 4-8 submitted at the hearing

24. The appellant has provided a report⁸ (the PBA report) that concludes that under current conditions the mine roof directly below the farm access road is potentially unstable and that an off-site mine pillar is marginally stable. It goes on to conclude that the stability analysis of the adjacent highway (Lambsquay Road) has identified that the pillar is unstable with the mine roof being marginally stable to unstable under current and loaded conditions. The Council commissioned an independent review of the report⁹ (the Hydrock report) that concludes that the information in the report is insufficient to accurately quantify the degree of stability.
25. Notwithstanding the above, the Hydrock report gives an opinion that if further investigation were undertaken it is likely to prove that a better level of stability exists than currently surmised and that it is probably not worthwhile undertaking further work for the purpose of assessing traffic influence.
26. I note that a contributing factor to the conclusions of the Hydrock report is that there are no current signs of deep collapse evident in the area, which suggests strong and intact rock above the cave. The report also notes that the cave system is of ancient origin and, being in a setting that has a significant industrial past, would have been trafficked over by many heavy vehicles over its existence.
27. However, comments over previous traffic movements are unsubstantiated by evidence. Furthermore, I note that there may have been recent increases in traffic to the feed mill which I understand are not restricted by planning condition or the like. Indeed, the appellant's design and access statement that accompanied the application indicated 16,790 x 44 tonne articulated lorries per annum were attracted to that site, whereas the more recent appeal statement indicates 22,630 HGV movements. I note that movements to the poultry sheds would also have been higher in the past when the farm was used for egg production, but I have no corresponding information about feed mill traffic at that time.
28. Against this background of increasing traffic levels, the PBA report is now some 5 years old. I have no clear evidence about traffic movements to the site at that time or in the years preceding it. Both reports indicate uncertainties and, therefore, as conditions may have changed over time, I cannot conclude that the caves remain stable. In addition, there is no rigorous analysis of the effect of noise and vibrations from traffic movements on the subterranean bat habitats.
29. I accept that the additional traffic would be small in proportion to that generated by the feed mill, especially in the context of rising feed mill traffic levels. It would also be concentrated to short periods at the end of each rearing cycle rather than a general day-to-day increase. Nevertheless, there would be some increase and I have no substantive evidence about the potential ecological effects of these concentrated periods of additional traffic.
30. Moreover, I am mindful that NE, having reviewed both the PBA and Hydrock reports have maintained their objection to the proposal. As the Statutory Nature Conservation Body, I attach very substantial weight to NE's consultation

⁸ Peter Brett Associates (2016) Clearwell Farm, Forest of Dean, Gloucestershire Access Road Stability Assessment
Project Ref: 36502/3501

⁹ Document 3 submitted at the hearing

response. With regard to the foregoing analysis and notwithstanding that the Council took a different view in determining the application, I have no robust scientific evidence to contradict NE's position.

31. I note that the affected site is only one component of the wider SAC, there is no firm evidence of the numbers of bats using this location and there may be shortcomings in the submitted data concerning bat numbers over recent years. Adopting a precautionary approach and following Appropriate Assessment, I cannot rule out beyond reasonable scientific doubt that the traffic movements associated with the proposal, however small, taken in combination with other development, would not have an adverse effect on the SAC and the Favourable Conservation Status of its qualifying features of interest.
32. Following on from the above, I have not been presented with any clear mechanism with which adverse effects could be mitigated or an alternative solution whereby they would be avoided. Nor is there any substantive evidence of any imperative reasons of overriding public interest that would be sufficient to override the harm to the SAC.

Planning balance and conclusion

33. I have found that there would not be any harm to the ancient woodland as a consequence of the proposal. However, in accordance with the Habitats Regulations, as clarified in the PPG¹⁰, my findings in respect of the SAC must be decisive in this case.
34. Furthermore, the Framework, at paragraph 175 indicates that if significant harm to biodiversity cannot be avoided, then planning permission should be refused. The proposal would also conflict with those aspects of Policies CSP.1 and CSP.2 of the Forest of Dean District Council Core Strategy 2012, and Policies AP1 and AP7 of the Forest of Dean District Council Allocations Plan 2018 (AP) that seek to improve the environmental conditions of the area, prevent adverse effects on protected sites, and ensure that the integrity of any affected nature conservation sites is not compromised by development.
35. At the hearing, the Council confirmed that, despite being cited on the reasons for refusal, there would be no conflict with AP Policies AP4 concerning design or AP8 concerning green infrastructure. That does not, however, alter my overall findings above. I note the numerous other concerns raised by local residents in connection with the proposal, but in light of my overall finding, such effects will not arise as a consequence of my decision. Whilst the development is already in place, it is not my role in the context of this appeal against a refusal of planning permission to advise the Council or appellant on their next course of action.
36. For the reasons given above I conclude that the appeal should be dismissed.

M Bale

INSPECTOR

¹⁰ Paragraph Reference ID: 65-001-20190722

APPEARANCES

FOR THE APPELLANT:

Craig Emms (Ecologist)
Sam Harrison
Ben Hay
Ian Pick (Agent)
Matthew Stoaling (Air Quality)

FOR THE LOCAL PLANNING AUTHORITY:

Alastair Chapman RTPI CIEEM (Sustainability Team Leader)
Robin Williams MRICS RTPI (Planning Consultant)

INTERESTED PERSONS:

Mary Conrad
Richard Crighton (Clerk to Newland Parish Council)
Andrew Darke
Rich Eaves
Colin Fell
Nicky Jones
Chris McFarling (St Briavels Parish Councillor)
Elaine Morman
Haydn Morris MRTPI (on behalf of Newland Parish Council)
Helen O'Kane
John Payne
David Priddis
Paola Reason (Biocensus, on behalf of Newland Parish Council)
David Wheeler (Newland Parish Councillor and Forest of Dean Councillor)
Walt Williams
Jonathan Wright

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Letter notifying the date of the hearing and list of people notified
- 2 AP Policy AP8
- 3 Hydrock (22.03.2019) Review of Previous Stability Assessment of Clearwell Farm Access. Ref: FDC Clearwell Cave – GEOL001(SC)
- 4 Magic Map showing Special Areas of Conservation
- 5 Wye Valley & Forest of Dean Bat SAC's map
- 6 Natural England (27.11.2018) European Site Conservation Objectives for Wye Valley and Forest of Dean Bat Sites/Safleoedd Ystlumod Dyffryn Gwy a Fforest y Ddena Special Area of Conservation Site Code: UK0014794
- 7 English Nature (May 2005) EC Directive 92/43 on the Conservation of Natural Habitats and of Wild Fauna and Flora Citation for Special Area of Conservation (SAC)
- 8 Natural England (11.02.2019) European Site Conservation Objectives: supplementary advice on conserving and restoring site features. Wye Valley and Forest of Dean Bat Sites/Safleoedd Ystlumod Dyffryn Gwy a Fforest y Ddena Special Area of Conservation (SAC) Site Code: UK0014794
- 9 HMPC Ltd (11.11.2019) further written submission on behalf of Newland Parish Council
- 10 Biocensus (13.11.2019) further written submission on behalf of Newland Parish Council
- 11 Revised list of conditions to be imposed in the event that the appeal were allowed
- 12 Application for costs by Newland Parish Council
- 13 Cost rebuttal statement from the Local Planning Authority