The Planning Inspectorate

Appeal Decisions

Site visit made on 29 October 2019

by S D Castle BSc(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 May 2020

Appeal A Ref: APP/X1118/W/19/3227309
PT Hillands, West Anstey, South Molton, Devon

- 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 Len Chappell against the decision of North Devon District Council.
- The application Ref 64059, dated 02 November 2017, was refused by notice dated 20 March 2019.
- The development proposed is retrospective application for free-range organic poultry enterprise. Application for 2 mobiles/4 pads. This application is one of 5 applications as advised by NDC Planning Officer. Mobile units moved on concrete pads for each batch.

Appeal B Ref: APP/X1118/W/19/3230844
PT Hillands, West Anstey, South Molton, Devon

- 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 Len Chappell against the decision of North Devon District Council.
- The application Ref 64060, dated 02 November 2017, was refused by notice dated 20 March 2019.
- The development proposed is retrospective application for free-range organic poultry enterprise. Application for 2 mobiles/4 pads. This application is one of 5 applications as advised by NDC Planning Officer. Mobile units moved on concrete pads for each batch.

Appeal C Ref: APP/X1118/W/19/3230845
PT Hillands, West Anstey, South Molton, Devon

- 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 Len Chappell against the decision of North Devon District Council.
- The application Ref 64061, dated 02 November 2017, was refused by notice dated 20 March 2019.
- The development proposed is retrospective application for free-range organic poultry enterprise. Application for 2 mobiles/4 pads. This application is one of 5 applications as advised by NDC Planning Officer. Mobile units moved on concrete pads for each batch.

Appeal D Ref: APP/X1118/W/19/3230846
PT Hillands, West Anstey, South Molton, Devon

- 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 Len Chappell against the decision of North Devon District Council.
- The application Ref 64062, dated 02 November 2017, was refused by notice dated 20 March 2019.
- The development proposed is retrospective application for free-range organic poultry enterprise. Application for 2 mobiles/4 pads. This application is one of 5 applications as advised by NDC Planning Officer. Mobile units moved on concrete pads for each batch.

Appeal E Ref: APP/X1118/W/19/3230930
PT Hillands, West Anstey, South Molton, Devon

- 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 Len Chappell against the decision of North Devon District Council.
- The application Ref 64063, dated 02 November 2017, was refused by notice dated 20 March 2019.
- The development proposed is retrospective application for free-range organic poultry enterprise. Application for 2 mobiles/4 pads. This application is one of 5 applications as advised by NDC Planning Officer. Mobile units moved on concrete pads for each batch.

Decisions

1. Appeals A, B, C, D and E are dismissed.

Application for costs

2. Applications for costs have been made by Mr Len Chappell against North Devon District Council. Those applications are the subject of separate decisions.

Procedural Matters

3. All five appeals relate to the same appeal site and form part of an overall site plan for a free-range poultry farm. Whilst each appeal proposes concrete pads on different parts of the overall site, the concrete pads, mobile units and feed silos are all of the same scale and design. I have considered each proposal on its own merits. However, to avoid duplication, I have largely dealt with them together in my reasoning, except where otherwise indicated.

4. The description of development on the appeal form refers to the siting of a mobile home to support the poultry enterprise. That mobile home was proposed as a separate planning application[1] to the above 5 referenced applications and does not form part of the above appeals.

5. At the time of my site visit, significant development had already taken place, including construction of the concrete pads. The 10 mobile broiler units and their associated feed silos were already on the site and appeared to be fully operational. Works in relation to the proposed new access onto the highway had not commenced.

[1] Planning ref: 63426

Main Issues

6. The main issues in this case are the effect of the development on:

- the character and appearance of the area, including the setting of Exmoor National Park;
- highways safety;
- the living conditions of nearby residents, with particular regard to noise, odour and vermin;
- the delivery of affordable housing as part of the Blackerton development[2]; and
- ecology, habitats and protected species;

Reasons

Character & Appearance

7. The appeal relates to an existing agricultural site with access from the northern side of the B3227. The broiler units are sited within an irregular shaped field located approximately 350 m north of the existing highway access. The field slopes downwards from south to north and includes mature hedge banks along much of its boundaries. The Council advises that the site is within the Farmed Lowland Moorland and Culm Grassland Landscape Character Area[3] which is characterised by a gently undulating landform with some places of a plateau like character. The Council goes on to advise that the special qualities of this area are small field patterns enclosed by Devon banks and open grazing land with isolated farmsteads and high levels of tranquillity and remoteness. The appeal site's irregular field pattern, boundary hedges, sloping topography and remaining areas of open grazing clearly contribute positively to the identified landscape character of the wider area.

8. An existing agricultural building at the south-eastern corner of the site was granted planning permission[4] in May 2017. That building is currently used to rear young poultry that are then transferred to the mobile broiler units. The appeal developments represent an extension of this existing agricultural enterprise and there is a strong functional link between the developments.

9. Whilst farms and agricultural buildings are common within the wider landscape, the extensive spread and generally linear arrangement of the concrete pads, and the subsequent uniform positioning of the broiler units, do not integrate well with the intimate and irregular small field pattern of the site and surrounding area. The broiler units are relatively low profile, but the linear and uniform arrangement of the pads, particularly when taken cumulatively, results in a significant and harmful intrusion of built form on previously open grazing land. The landscape harm is exacerbated by the light colour of the concrete pads and the grey colour of the broiler units. These finishes do not blend into

[2] Planning Ref: 55662
[3] As defined in the Joint Landscape Character Assessment for North Devon & Torridge 2010.
[4] Planning Ref: 62753

the landscape backdrop, relating poorly to the surrounding green slopes and background trees.

10. The Design and Access Statement advises that the broiler units were to be largely clad in green finishing materials to ensure that they blend into the surrounding fields and hedgerows. It goes on to state that all concrete pads will be sprayed prior to use with a dark green coloured paint to reduce the visibility and possible glare. It is not clear why the current developments have not followed through on these design principles. I note, however, that the appellant's Additional Planning Statement advises that it would be uneconomic to re-clad or re-colour the existing buildings. The Additional Planning Statement also advises that the Exmoor National Park Authority (the Authority) insist on buildings being roofed in slate grey as it is less intrusive. This is not, however, supported by the consultation response of the Authority which raises concerns with regards to the harmful visual and landscape impact of the current proposals surface finishes.

11. Colour and material choices need to be informed by the background texture of the landscape setting which, in this case, given the isolated nature of the broiler units, is the surrounding green sloping field and adjacent boundary landscape planting. Whilst I acknowledge that significant landscape planting is proposed, this would take a significant period of time to establish and, even if more appropriate surface finishes were to be conditioned, would only partially reduce the harm to the landscape character of the area. Residual harm due to the loss of open grazing and the intensification of built form that relates poorly to the landscape character would remain.

12. As part of my site visit, I travelled extensively in the surrounding area to assess the visual impact of the development at various viewpoints, including those highlighted by the Council, the Authority and interested parties. Due to the limited height of the broiler units, the intervening vegetation, and the sloping topography of the site away from the B3227, there are very limited views of the broiler units from the south when travelling along the B3277. The main visual impacts are to the north of the site where the broiler units and concrete pads can be clearly perceived within the wider sloping green field and against the surrounding landscaping. The visual impact is greatest at those viewpoints that are closest, including along the bridleway between Yahney Hill and Blackerton House, and along the local country roads including at East Anstey and Dunsley. From these viewpoints, the broilers appear harmfully conspicuous in the surrounding landscape by virtue of their extent, uniformity, surface finishes and position on an open green slope.

13. Other public views of the site from the north include at the southern fringes of Exmoor National Park (the National Park) which is located approximately 3.5km to the north of the site. Views from the southern boundary of the National Park are at Rhyll Gate Cross leading towards West Anstey. There are also views of the site from within the National Park, including from Ridge Road across East and West Anstey Commons; and from the Two Moors Way. These views are generally more restricted, distant, often short lived and include visual detractors such as pylons. Nevertheless, the developments in their current forms, whilst a small element in the wider landscape, do catch the eye from these viewpoints due to their incongruous uniform layout and surface finishes.

14. National Parks are landscape designations of national importance and paragraph 172 of the National Planning Policy Framework (the Framework) requires that great weight should be given to conserving landscape and scenic beauty in such areas. The Planning Practice Guidance (the Guidance) advises that land within the setting of National Parks often makes an important contribution to maintaining their natural beauty. I note that the Authority's Senior Landscape Officer advises that the development is harmful to the setting of the National Park but that mitigation measures, including landscaping and the use of appropriate surface finishes could assist in lessening the impact. Whilst the landscape and visual harm identified above are detrimental to the setting of the National Park, the current harm is limited by the separation distance, and the residual harm could be further lessened following landscaping and the use of appropriate surface finishes secured by condition.

15. The landscaping proposals appear to have gone through a number of iterations and I note the willingness of the appellant to accept a landscaping condition and to work with the Council on this matter. I also note that the Council's Landscape and Countryside Officer considers that the adverse impacts of the developments can be made acceptable through the implementation of the proposed soft landscaping scheme. I acknowledge that, with the proposed landscape planting completed, the developments would be less prominent in the wider landscape. I am not persuaded, however, that landscaping would acceptably mitigate the identified harms. Space will be required around the broiler units to allow them to be moved between pads and for vehicular access. There would still be significant residual landscape character and visual harm due to the loss of open pasture and the intensification of noticeable built form in an incongruous arrangement on a prominent sloping site. The creation of a wide highways access, the replacement of the original roadside hedgerow with one set back from the highway, and the laying of further hardcore to create the new access, would also result in further landscape and visual harm.

16. Drawing these points together, taken individually and cumulatively, the appeal proposals represent both landscape character and visual harm. The harm is greatest for the more elevated, linear and visible concrete pads and broiler units. Whilst landscaping and the use of more appropriate surface finishes, secured by conditions, would visually soften the developments, the developments would remain as incongruous arrangements of buildings rather than as a typical isolated agricultural facility characteristic of, and visually complementary to, the landscape character of the area. Residual visual and landscape harm, due to the loss of open grazing and the intensification of visible built form that relates poorly to the landscape character, would remain.

17. As such, I find that the proposals, both individually and cumulatively, are harmful to the character and appearance of the area and to the setting of the National Park contrary to Policies DM14 and ST14 of the North Devon and Torridge Local Plan (2018) (LP) which, when taken together, require, amongst other things, proposals respect the character and qualities of the landscape and the setting of any protected landscape and to include effective mitigation measures to avoid adverse effects or minimise them to acceptable levels. The proposals are also contrary to the provisions of the Framework, including paragraphs 127, 170 and 172, which taken together, require development to be sympathetic to local character, recognise the intrinsic character and beauty

of the countryside and to conserve and enhance the landscape and scenic beauty in National Parks.

Highway Safety

18. The existing authorised poultry brooder building on the site is served by an existing access onto the B3227. The appellant's submissions include a speed survey and a table showing the developments generate an additional 1-2 trips (2-4 movements) to the site per week. The speed survey recorded 85th percentile speeds of 56 mph in each direction. The existing access has visibility splays measuring 2.4 m x 36 m in both directions. The proposed location for the new access would provide 2.4 m x 112 m in the westerly direction and 2.4 m x 81 m in the easterly direction.

19. Whilst these new visibility splays would be below the standards required by the County Highway Authority, they represent a significant improvement on the existing visibility. There would, therefore, be a significant improvement in highways safety in relation to the existing vehicular movements relating to the existing authorised poultry brooder building. Those existing movements represent the majority of projected vehicular movements from the site. As such, overall, the proposed access would represent an improvement in highways safety in accordance with Policy DM05 of the LP which requires all development must ensure safe and well-designed vehicular access and egress. The limited number of additional vehicular movements resulting from the development would not result in an unacceptable impact on highway safety or a residual cumulative impact that would be severe. The development would also, therefore, accord with paragraph 109 of the Framework.

Living Conditions

20. The Council's statement advises that the closest dwellings to the site are currently located within the 'Blackerton' development approximately 160 m to the south of the nearest broiler unit. The separation distance to the boundary of existing rear gardens is less. The Blackerton development has not been completed in its entirety and includes 4 open market dwellings that, if built out, would be located at the northernmost extent of the Blackerton site, the boundary of which is approximately 90m from the nearest broiler unit.

21. The concerns of interested parties and the Council over the risk odours, noise and vermin can represent to adjacent occupiers living conditions are entirely understandable. Poultry operations are a known potential source of odour and vermin issues, particularly if not correctly managed. The appellant's submissions, however, include a Manure and Fly Management Plan that sets out that: there will be no storage of manure on site other than that contained within the broilers whilst occupied; the manure is to be removed at the end of each 7-week cycle; the manure will be transported immediately away from the site; and that the removal of manure reduces the opportunity for flies to carry over on the manure between batches. The Council's Environmental Health Officer considers it unlikely the development results in significant amenity impacts given the separation distance, lack of mechanical ventilation and prevailing south westerly winds.

22. Whilst it is likely odour and noise from the poultry operation is noticeable for nearby residents on occasion, there is no substantive evidence before me to

indicate that the developments, if properly managed in accordance with the Manure and Fly Management Plan, have, or would, result in significant adverse impacts on the living conditions of nearby residential occupants in terms of noise, odours or vermin. The site has an established agricultural use within a countryside context and a degree of agricultural noise and odour is to be expected in such areas. As such, the developments would not result in unacceptable harm to the living conditions of nearby occupiers in accordance with LP Policy DM01 which states development will be supported where it would not significantly harm the amenities of any neighbouring occupiers. Furthermore, in these regards, the proposal accords with the Framework, including paragraph 180 which requires decisions to ensure that new development is appropriate for its location, taking into account the likely effects (including cumulative effects) of pollution on living conditions.

Delivery of Affordable Housing

23. Whilst I appreciate the concerns of the Council and other interested parties regarding the impact of the broiler units on the delivery of affordable housing granted permission as part of the Blackerton development, there is no substantive evidence before me to indicate the broiler units would have a detrimental effect in this regard.

24. I have had regard to the report of the appellant's appointed expert, Mr Alex Rew FRICS FAAV, and also to the response of the Development Lead Officer of Plymouth City Council. Mr Rew, a qualified Chartered Surveyor and RICS Valuer, advises the negative impact of the broiler units on the market value of the 4 open-market dwellings on the Blackerton site would be limited to between 0%-5%. The Development Viability Lead Officer from Plymouth City Council advises that there is little evidence to suggest that the siting of the poultry units has caused the development of the adjoining four plots on the Blackerton site to be unviable or non-deliverable.

25. I also note the submission of East Anstey Parish Council includes evidence from a property expert, Mr Napoleon Wilcox, that suggests the broiler units may have a significant detrimental impact on the sale prices of future dwellings on the 4 open-market plots. However, even if I accept the views of Mr Wilcox regarding the impact on sale prices, I have no way of reasonably assessing whether this would make delivery of the affordable units unviable without a detailed viability assessment before me. Furthermore, no substantive evidence has been provided with regards to local affordable housing need and supply, or as to whether, or to what extent, a shortfall in supply exists.

26. In the absence of any such evidence, I am mindful that it is a well-founded principle that the planning system does not exist to protect private interests such as value of land or property. The commercial realities of the sale prices of any open-market dwellings on the Blackerton site are a matter for the developer and should not weigh against the development of surrounding land.

27. Notwithstanding the above, LP Policy ST19 relates to affordable housing on exception sites and states that proposals to deliver permanent affordable housing at Local Centres, Villages and Rural Settlements will be supported subject to a range of criteria. As the appeals relate to agricultural developments, Policy ST19 is not relevant to the proposals and there is no conflict with this policy.

Ecology, Habitats & Protected Species

28. Section 40 of the Natural Environment and Rural Communities Act (2006) places a duty on all public bodies in England and Wales to have regard, in the exercise of their functions, to the purpose of conserving biodiversity. Further, the Conservation of Habitats and Species Regulations 2010, Regulation 9(5) requires that 'a competent authority, in exercising any of their functions, must have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions'.

29. The proposals are not supported by either an ecological or habitats assessment. Whilst it may be possible to secure net biodiversity gains through a landscape plan secured by condition, insufficient information has been provided to adequately assess the potential ecological, habitats, and protected species impacts of the proposals. Of particular concern, there is no substantive evidence before me relating to the ecological implications of the construction of the new roadside access. That access requires the removal and cutting back of the roadside hedge, and the removal of a large tree. Such features, particularly given the presence of nearby wooded areas, can provide valuable habitat for protected species.

30. The Council's suggested conditions include a requirement for works to the roadside hedge to be informed by an ecological report. The Guidance advises, however, that an ecological survey will be necessary in advance of a planning application if the type and location of development are such that the impact on biodiversity may be significant and existing information is lacking or inadequate, and if there is a reasonable likelihood of a protected species being present and affected by development[5].

31. In the absence of any substantive ecological or habitats evidence, I cannot be certain that the proposals would not have an unacceptably harmful effect on ecology, habitats and biodiversity, or that any impacts on protected species could be adequately avoided or mitigated. Given this degree of uncertainty, the use of a condition would not be reasonable in this case.

32. For the above reasons, in the absence of sufficient evidence to the contrary, the proposed developments would potentially cause unacceptable harm to ecology, habitats and biodiversity interests, including protected species. This would be contrary to LP Policy DM08 which requires, amongst other things, development should conserve, protect and, where possible, enhance biodiversity and geodiversity interests and soils commensurate with their status and giving appropriate weight to their importance. For similar reasons, the proposal would not accord with the Framework, including paragraphs 170 and 174.

Other Matters

33. Concerns regarding biosecurity and the potential for an increase in avian flu are not for me to address and are more properly dealt with under other legislation. The appellant has demonstrated to the satisfaction of the relevant specialist consultees that the proposals would not have an unacceptable effect in terms

[5] Paragraph: 018 Reference ID: 8-018-20190721 Revision date: 21 07 2019

of drainage or phosphate impacts from manure run-off. I find no reason to disagree and am satisfied that the proposals comply with the development plan and national policy insofar as they apply to these matters.

Planning Balance and Conclusion

34. There is significant support within both local and national policy for agricultural developments. Paragraph 83 of the Framework advises that planning decisions should enable the development and diversification of agricultural and other land-based rural businesses. I give significant weight to the developments' contribution to the rural economy, in terms of both food production and employment (direct and indirect).

35. Whilst the Framework promotes economic development, it sets this within the overarching objective of achieving sustainable development. The developments, individually and cumulatively, result in landscape character and visual harm contrary to Framework paragraphs 127 and 170, and also harm to the setting of the National Park contrary to Framework paragraph 172.

36. Furthermore, whilst there is potential for biodiversity gains through additional landscaping, given the lack of information, I cannot be certain that the proposals, both individually and cumulatively, would not have an unacceptably harmful effect on ecology, habitats, biodiversity and protected species contrary to Framework paragraphs 170 and 174.

37. I give significant weight to the identified harms and find, overall, the developments, both individually and cumulatively, would not comply with the overarching aims of the Framework and would not constitute sustainable development.

38. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that appeals be determined in accordance with the provisions of the development plan unless material considerations indicate otherwise.

39. It is not unusual for some tension to be found between different policies in a development plan when applied to a specific proposal. Although there would be compliance with limited aspects of the LP, such as through the encouragement of economic development in the countryside linked to agriculture, this is outweighed by the earlier identified conflicts with LP Policies DM08, DM14, and ST14 to which I attach significant weight. Consequently, I have found that the proposal would conflict with the development plan when read as a whole. There are no material considerations of sufficient weight to indicate that the decision should be made other than in accordance with the development plan.

40. For the above reasons, appeals A, B, C, D and E are dismissed.

S D Castle

INSPECTOR