The Planning Inspectorate

# Appeal Decision

Site visit made on 22 September 2020

**by Darren Hendley BA(Hons) MA MRTPI**

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

**Decision date: 13th October 2020**

**Appeal Ref: APP/L3245/W/20/3253658**
**Cruckmeole Farm, B4386 Junction Cruckton to A488 Cruckmeole, Cruckton, Shrewsbury, Shropshire SY5 8JN**

- 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 Sandells, K J Sandells against the decision of Shropshire Council.
- The application Ref: 18/05388/FUL, dated 13 November 2018, was refused by notice dated 4 December 2019.
- The development proposed is the erection of a free range egg production unit including silos and all associated works.

## Decision

1. The appeal is dismissed.

## Applications for costs

2. Applications for costs were made by both main parties during the course of the appeal against one another. These applications are the subject of separate Decisions.

## Main Issues

3. The main issues are the effect of the proposal on (i) biodiversity interests, in particular The Stiperstones and The Hollies Special Area of Conservation (SAC); (ii) the living conditions of the occupiers of the nearby residential properties by way of noise and odour; and (iii) the character and appearance of the area.

## Reasons

*Special Area of Conservation*

4. The Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) transpose the Habitats Directive and the Birds Directive into law. The aim of the Directives is to conserve key habitats and species. Sites designated under the Habitats Regulations include Special Areas of Conservation.

5. The SAC lies within 10 kilometres of the site. The qualifying habitats for the SAC are European dry heaths and Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles. The site lies within the impact risk zone of the SAC and, therefore, has the potential to affect its interest features. In particular, this concerns airborne ammonia from the proposed poultry house

and the ranging area because ammonia would be emitted from the birds' droppings. Accordingly, there would be a pathway to affect the designated features of the SAC with the potential for increase of ammonia and nitrogen deposition.

6. I am, therefore, required under the Habitats Regulations to consider whether significant effects are likely as the competent authority. Part of this consideration is whether the appellant has provided such information that may be reasonably required for the purposes of assessment or to enable it to be determined whether an appropriate assessment is required.

7. The appellant submitted an ammonia report with the planning application submission. The report details the critical load and level which is used to assess the harmful effects from ammonia on sensitive habitats. The relevant threshold for the SAC is 1.0 μg/m$^3$. A 1% criterion is then used to determine whether or not an effect would be significant. Below this level the effect is not deemed significant and above it would be deemed potentially significant. Whilst it is not in dispute that the proposal as a stand-alone project would increase the level to the SAC, the criterion would not be exceeded according to the ammonia report.

8. The Council has, though, pointed out that the SAC is already exceeding its critical load. As a consequence, the proposal would add further to this harmful effect on the SAC. The Council has referred to the Dutch Nitrogen judgment[1], which considered that when a site is currently exceeding its environmental benchmarks, such as the SAC, that the extent to which new proposals might be authorised will necessarily be limited.

9. The appellant considers that existing guidance should be followed, with regard to that produced by the Environment Agency (EA), and that the Dutch Nitrogen judgment should be used to inform that guidance, rather than an individual planning application. However, as a ruling of the Court of Justice of the European Union, it carries significant weight in my decision. The relevant EA guidance has not been subsequently amended, based on the extracts that are before me. The same applies in relation to the Council Interim Guidance that I have been referred to.

10. There are also uncertainties over the information that has been provided and how this may impact on the findings of the ammonia report. In particular, the various appeal documents refer to differing sizes of ranging area and types of hardstanding material that would be utilised, and the land divided into paddocks for the birds to use. Whilst this may be seen as taking an overly cautious approach to matters that could usually be dealt with by way of planning conditions, a precautionary principle applies when assessing whether or not the effect would be likely significant because of the strong level of protection that is afforded to the SAC. Hence, this also applies when scrutinising the evidence that has been submitted. Nor is there a shadow appropriate assessment or similar before me.

11. In terms of the in-combination assessment, this would amount to 2.02%, based on the most up to date information that the appellant has provided, notwithstanding the concerns that the Council has raised over its accuracy. This would be well above the 1% criterion and limited information pertaining to

[1] C-293/17 and C-294/17.

the assessment of the in-combination effect is before me, including why a small increment would not have a significant impact in light of that the SAC is already exceeding its critical load.

12. I acknowledge that the Council's Ecologist stated in the consultation response to the planning application that the proposal would be unlikely to have a significant impact on the SAC's integrity alone or in-combination. This fails, though, to take account of the full implications of the Dutch Nitrogen judgment, which the Council has acknowledged in its appeal submissions.

13. The appellant's views on the absence of likely significant effects seem in part predicated on mitigation measures, and I am aware of the Ammonia Mitigation Scheme, as well as the Habitat Mitigation and Enhancement report and plan. The People Over Wind judgment[2] is clear, though, that mitigation measures cannot be taken into account when considering whether there would be likely significant effects. That position has also now been upheld by the High Court[3]. Hence, mitigation measures are also discounted from my consideration at the screening stage.

14. In taking these considerations together, there is not sufficient information that may be reasonably required to enable me to decide whether an appropriate assessment needs to be carried out. In such circumstances it must be assumed that such an effect on the SAC would be adverse and significant, in applying the Habitats Regulations. Simply put, significant effects cannot be ruled out. In relation to the role of Natural England, it would have been consulted as the statutory nature conservation body if I had carried out an appropriate assessment. However, as I have set out above, there is not sufficient information for this to be done.

15. The effect on a number of other designated sites has also been raised, including Ramsar sites which are afforded the same level of protection as European sites, Sites of Special Scientific Interest and areas of Ancient Woodland, as well as habitat related matters on and close to the site. As I have found against the proposal in relation to the SAC, I do not have cause to consider the effects on these other designations further.

16. I conclude that the proposal would have an unacceptable effect on biodiversity interests, in particular the SAC. As such, it would not comply in this regard with Policies CS5, CS6 and CS17 of the Council's Shropshire Local Development Framework: Adopted Core Strategy (2011) (Core Strategy) which, amongst other matters, seek to avoid unacceptable adverse environmental impacts, conserve and enhance the natural environment and ensure that development does not adversely affect ecological values and functions.

17. It would also not comply in this regard with Policies MD2 and MD12 of the Site Allocations and Management of Development Plan (2015) (SAMDev) which concern natural assets, and require a Habitats Regulations Assessment where the Local Planning Authority identifies a likely significant effect on an internationally designated site.

18. It would also not accord with the National Planning Policy Framework (Framework) where it seeks to protect and enhance biodiversity, and with the Habitats Regulations, for the reasons that I have set out.

[2] People Over Wind & Peter Sweetman v Coillte Teoranta C-323/17
[3] Gladman Developments Ltd v SSHCLG and Medway Council [2019] EWHC 2001 (Admin)

*Living Conditions*

19. The nearest residential properties lie to the north of the proposed ranging area at Terrace Farm and The Stables. The proposed building itself would be around 150 metres from these properties, which have their garden and paddock areas closest to the boundary with the site. There are further residential properties to the north-east and north-west, although these would be more distant from the proposed building. A new housing development on the edge of the nearby settlement of Hanwood is separated by further agricultural fields.

20. The appellant's odour assessment states that the levels would be well below the EA's benchmark for what could be considered moderately offensive as regards the closest property at Terrace Farm. As a result, with the distance from the proposed building, the odour would not be to the extent that it would be unacceptable in terms of the day to day activities, even with the prevailing wind direction. The proposed building would also require regular manure removal. Subject to this being carried out in a managed fashion, fugitive emissions would also be likely to be not unacceptable.

21. The proposed arrangements for manure spreading, however, cause more of a concern. Whilst this is by no means an unusual activity in rural areas, it falls to me to consider the effects from the proposal. Some of the spreading areas that are shown in the Manure Management Plan are located in close proximity to not insignificant areas of housing, in particular on the edge of Hanwood. Whilst I am aware that wind direction will be taken account of as regards the closest dwellings, I am not satisfied this is sufficient in terms of protecting the living conditions of the occupiers by way of odour. Mechanisms which display a requisite level of protection are not before me.

22. In relation to noise, the appellant has clarified the number of fans. Their operation would not cause undue disturbance. With regard to noise from heavy goods and delivery vehicles, the location of the proposed building and the access arrangements would be sufficiently distanced from the nearest residential properties. The predicted number of associated traffic movements would be moderate.

23. I conclude that whilst the proposal would not be unacceptable as regards noise, it would have an unacceptable effect on the occupiers of nearby residential properties by way of odour due to manure spreading. Therefore, it would not comply with Policy CS6 of the Core Strategy and with Policies MD2 and MD7b of the SAMDev where they are involved with residential and local amenity matters and no unacceptable adverse environmental impacts. It would also not comply with the Framework where it concerns a high standard of amenity for existing and future users, and the effect of pollution on living conditions.

*Character and Appearance*

24. The site comprises two fields that are currently separated by a hedgerow. It slopes from north to south towards a ditch which runs along its south boundary. It also contains a number of individual mature trees that give the site somewhat of a parkland character. Further vegetation and trees are found around the site boundaries, apart from with the paddock areas to the north of the site and at a gated access point on the site frontage. Whilst there is built development in its vicinity and the site lies fairly close to Hanwood, the area is

largely countryside in its character. Other settlements in its vicinity are on a more modest scale.

25. Where the proposed building would be sited lies within the Riverside Meadows Landscape Character Type (LCT), under the Shropshire Landscape Typology (2006). It ably demonstrates a number of the LCT's key characteristics, including a pastoral land use, linear belts of trees along watercourses, and hedge and ditch field boundaries. The Principal Settled Farmlands LCT also lies in close proximity.

26. As it is a largely rural landscape, it would not be untypical to see such a building that is related to an agricultural use. Whilst there would be some loss of the pastoral fields and hedgerows, this would not be to the extent that it would render the effect on landscape character unacceptable, especially as further hedgerow planting, re-location and tree planting is proposed.

27. In respect of visual impacts, the proposed building would be located at the lowest point of the site. It would be considerably lower than the residential properties to the north. In other directions, it would be well screened by the trees and hedgerows around the perimeter of the site and beyond. A viewpoint in the appellant's Landscape and Visual Impact Assessment at the site access point would have proven beneficial. However, even with the widened access, the visual impact would be unlikely to be unacceptable with the distance that the proposed building would be set back from the road.

28. The required access improvement would seem to impact on more of the hedgerow along the site frontage than is indicated, as well as a tree. However, with the further planting proposed, this would be adequately mitigated for in visual impact terms. In relation to residential properties at the edge of Hanwood, these are too distant for the scale of the proposed building to have a significant visual impact. Views from the minor road to the north would be largely over the site, and so the visual impact would also not be unacceptable in this direction. The landscaping measures that are proposed within the site would satisfactorily address the limited level of adverse effects.

29. I conclude that the proposal would not have an unacceptable effect on the character and appearance of the area. It would comply in this regard with Policies CS5 and CS17 of the Core Strategy and with Policy MD12 of the SAMDev where they concern matters related to local character, distinctiveness and the local environment. It would also accord with the Framework where it involves development that is sympathetic to local character.

**Other Matters**

30. The proposal would bring some economic benefits by way of farm diversification into egg production. This would not, though, outweigh the harm to biodiversity interests, in particular the SAC, and to the living conditions of the occupiers of nearby residential properties by way of odour.

31. Interested parties have raised a number of other concerns. As I am dismissing the appeal on other grounds, such matters do not alter my overall conclusion and have therefore not had a significant bearing on my decision

## Conclusion

32. For the reasons set out above and having regard to all matters that have been raised, the appeal should be dismissed.

*Darren Hendley*

INSPECTOR