
Appeal Decision

Site Visit made on 6 September 2021

by Gareth W Thomas BSc (Hons) MSc (Dist) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 October 2021

Appeal Ref: APP/P1615/W/21/3274345

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 P1057/20/FUL, dated 14 July 2020, was refused by notice dated 9 April 2021.
 - The development proposed is Erection of a poultry building (retrospective).
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a poultry building Clearwell Farm, The Rocks, Clearwell GL16 8JR in accordance with the terms of the application, Ref P1057/20/FUL, dated 14 July 2020, subject to the conditions in the attached Schedule.

Preliminary Matters

2. The application is described as retrospective. This does not have meaning in terms of the definition of development. However, I note that the building is complete but presently not in use. I have considered the appeal on this basis.
3. An appeal¹ for exactly the same development was dismissed in 2019. The Council accepted the Inspector's findings that there are no further concerns relating to the effects of the development on the ancient woodland arising from ammonia emissions. As competent authority under the Conservation of Habitats and Species Regulations 2017 (as amended), the Inspector was unable to rule out beyond reasonable scientific doubt that the traffic movements associated with the proposal, however small, taken in combination with other development at this location and served by the same access, would not have an adverse effect on the Wye Valley and Forest of Dean Bat Sites Special Area of Conservation (SAC) and the Favourable Conservation Status of its qualifying features of interest. Neither was he presented with substantive evidence of any imperative reasons of overriding public interest that would be sufficient to override the harm to the SAC.

Main Issue

4. The main issue in this appeal is the effects of the development SAC.

¹ APP/P1615/W/19/3227375 dated 19 December 2019

Reasons

5. The SAC is comprised of a number of constituent Sites of Special Scientific Interest (SSSIs) in the locality. The application site has the potential to affect one of these constituent sites, namely the Old Bow and Old Ham Mines SSSI by virtue of the access running directly over the caves to the former disused mines. The qualifying features of the SAC are the greater horseshoe and lesser horseshoe bats.
6. The Citation² for the SAC reveals that this complex of sites contains the greatest concentration of lesser horseshoe bats in the UK and supports large numbers of greater horseshoe bats. The Citation indicates that the caves not only support exceptional numbers of these species but also provide maternity and hibernation roosts.
7. The conservation objectives³ 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.
8. Clearwell Farm itself lies in open countryside to the north of Clearwell and is accessed from the public highway by a private access road that serves the existing poultry farm together with a separate feed mill. There are a number of poultry units at the farm housing 16,162 turkeys at any one time. The appeal building lies immediately to the west of a near identical building but is currently not in use following agreement reached between the appellant and the Council's Enforcement Officer pending the outcome of this appeal. Immediately to the north lies another poultry building, which at the time of the application, was not in use. This is an older building, which has very recently been brought up to standards suitable for the housing of poultry and was verified as such by the Animal & Plant Health Agency of DEFRA on 29 June 2021. That building presently accommodates a flock of up to 2932 birds at any one time. This number is included in the total flock of 16,162.
9. The appellant acknowledges concerns expressed by the Council and Natural England (NE) that increased heavy traffic movements over the SAC's cave systems situated under the access road may undermine the structural integrity of the roof of the caves leading to potential collapse with catastrophic impact on the habitat of protected species. However, the appellant believes that the older building provides a genuine fall-back position. By way of a Unilateral Undertaking (UU), the use of the older building for poultry rearing would cease and its capacity transferred to the new building. In this way, there would be no increase in poultry numbers and therefore no material increase in traffic movements over the cave system.
10. It is the Council's contention that the works necessary to bring up the older building would fall outside the scope of permitted development. Indeed, it is a main plank of the Council's case that upgrading this building to standards necessary for the purposes of keeping poultry would require the submission of

² 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)

³ 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

either an application for prior approval or planning permission. Moreover, the Council believes that the matter of whether or not the works that would be necessary to bring the older building back into productive use would require prior approval/planning permission or not should be dealt with through the submission of an application for a certificate of lawfulness of use or development under sections 191/192 of the Town & Country Planning Act 1990. I consider this irrelevant given that the building is now in use and has been cleared for such use by DEFRA. It is a longstanding building that has been in agricultural use throughout albeit for storage purposes in more recent times. It is pertinent to say that the Council has not served an enforcement notice in respect of recent upgrading works or to the use of the building for housing of poultry.

11. From the evidence, I see no reason why there would be any impediment to the use of the older building for the housing of 2932 birds. The building exists and has been in use for the purposes of agriculture. This all leads me to the view that provided the use of the older building is controlled in the manner proposed by the appellant, a genuine fall-back position would exist in this instance and that given there would be no overall increase in the number of poultry production and therefore no increase in traffic movements, it would have a less harmful effect than what was originally intended.
12. Although the Council did not raise the matter of the effects on air quality arising from the development in its reason for refusal, I note the previous comments of NE and the Inspector in the previous appeal. However, as no increase in poultry numbers will arise given my acceptance that a genuine fall-back position exists, I consider that there will be no additional significant effects on the integrity of the SAC in respect of air quality.
13. I am satisfied that the obligation contained in the UU would be necessary to make the development acceptable in planning terms and is directly related to the development. It does not include any financial considerations or contributions but in all other respects, it meets the relevant tests in Regulation 122(2) of the Community Infrastructure Regulations 2010 (as amended).
14. Having regard to the above, provided the numbers of poultry accommodated at Clearwell Farm do not exceed 16,162 birds, there would be no additional significant adverse effects on the SAC and taken in combination with other development, would not have an adverse effect on the Favourable Conservation Status of its qualifying features of interest. There would be no requirement to carry out an Appropriate Assessment in this case given there would be no increase in bird numbers.
15. I conclude that the proposed development influenced by the associated Unilateral Undertaking would comply with Policies CSP.1 and CSP.2 of the Forest of Dean Core Strategy and Policies AP.1 and AP.7 of the Council's Allocations Plan. These policies seek to improve the environmental conditions of the area, prevent adverse effects on protected sites, and ensure that the integrity of any affected conservation sites is not compromised as a result of new development. In so concluding, I am also satisfied that the proposed development would have a neutral effect on the SAC and the Favourable Conservation Status of its qualifying features of interest and that the guidance contained in the National Planning Policy Framework (the Framework) and Planning Practice Guidance (PPG).

Conditions

16. I have considered the conditions suggested by the Council, which with a few revisions to the wording of some, I accept in their entirety having assessed these against the advice contained within the Framework and PPG.
17. In addition to the plans condition that is included to provide certainty, given the basis upon which permission is granted and to avoid biodiversity harm, a condition is attached that limits the number of poultry that can be housed within buildings on the site. Similarly, in order to not place undue loading over the caves to the SAC, a condition that restricts the size of HGVs is included. In the interests of highway safety and convenience, a condition is necessary to require the submission to and approval by the Council of details of HGV parking and turning movements. Conditions are necessary for the submission and approval by the Council of dirty/foul/surface water disposal together with facilities for the storage of oils, fuels or chemicals so that the quality of the environment can be maintained.
18. In addition, and to safeguard the character and appearance of the area, conditions are attached specifying external materials and submission and implementation of landscaping proposals and subsequent landscape management of all planting. Also, in order to protect character and appearance and safeguard wildlife habitats, a condition is included in relation to lighting proposals and approval of details by the Council. Further it is considered necessary to include conditions requiring biodiversity enhancement so that net gains in biodiversity can be achieved in accordance with the Council's policy in this regard as well as the ongoing monitoring of emissions to safeguard the nearby ancient woodlands.
19. In order to secure an acceptable standard of development so that the living conditions of neighbours are protected, a condition is necessary requiring the submission to and approval by the Council of odour management details together with its subsequent ongoing management. Similarly, a condition is included requiring the implementation of the approved ventilation scheme.
20. I have also included a condition requiring the provision of electric charging points for customers and employees using the site in line with the Council's policy and its commitment to addressing the Climate Emergency.

Conclusion

21. For the above reasons and, having regard to all other issues raised, the appeal is allowed.

Gareth W Thomas

INSPECTOR

SCHEDULE – List of Conditions attached to this decision:

1. The development hereby permitted shall be carried out in accordance with the following approved plans: IP/HF/01; IP/HF/02; IP/HF/03.
2. The site as outline in blue through approved site plan drawing IP/HF/01 dated July 2020 and the three poultry sheds used for turkey rearing as depicted on approved location plan drawing IP/HF/02 dated July 2020 shall be used solely for the rearing of Turkeys and shall not exceed the following levels of poultry accommodation at the site:
 - No more than 16,162 Turkeys at any time.
 - No more than 3 flocks of Turkeys per annum to be accommodated at the site in any 12 month period.
 - Full records of number of Turkeys and flocks per 12 month period shall be retained for the development and be made available for inspection upon 7 days of a written request by the local planning authority.
3. No vehicles associated with the development hereby permitted shall exceed 36 Tonnes.
4. Prior to the first flock entering the poultry building hereby permitted full details of the proposed vehicle parking and turning area for 36 tonne HGV vehicles shall be submitted to and approved in writing by the local planning authority. Thereafter the approved details shall be fully implemented at the site within 1 month of written approval and be maintained as available for those purposes thereafter in perpetuity.
5. Prior to the first flock entering the poultry building hereby permitted full details of the dirty/foul water scheme shall be submitted to the local planning authority for written approval. Thereafter the approved dirty/foul water scheme shall be fully implemented within one month of the date of the approval and be maintained thereafter in perpetuity.
6. Prior to the first flock entering the poultry building hereby permitted a full surface water drainage scheme shall be submitted to the local planning authority for written approval. The scheme shall include details of the size, position and construction of the drainage scheme, and results of soakage tests carried out at the site to demonstrate the infiltration rate. Three tests should be carried out for each soakage pit as per BRE 365, with the lowest infiltration rate (expressed in m/s) used for design. Thereafter the approved surface water drainage shall be fully implemented within one month of the date of the approval and be maintained thereafter in perpetuity.
7. The external finish of the building hereby approved shall be maintained in Juniper Green BS12B29 in perpetuity.
8. Prior to the first flock entering the poultry building hereby permitted a scheme for hard and soft landscaping of the site (incorporating existing flora) and including the means of enclosure and the materials to be used for

hard surfacing, within the area outlined in blue on approved Location Plan drawing no IP/HF/01 July 20, shall be submitted to the local Planning authority. The scheme shall include, but not be limited to:

- (i) A landscaping implementation phasing plan, where appropriate.
- (ii) Detailed planting/sowing specifications including species, size, density spacing, cultivation protection (fencing, staking, guards) and methods of weed control.
- (iii) Details of surfacing, boundary treatments and landscaping structures including design, location, size, colour, materials and openings.
- (iv) Replacement tree planting to mitigate the trees lost during the development at the site.

Thereafter the hard and soft landscaping scheme shall be carried out in accordance with the approved details and in accordance with the landscape implementation phasing plan fully. If at any time in the five years following planting any tree, shrub or hedge shall for any reason die, be removed or felled it shall be replaced with another tree, shrub or hedge of the same species during the next planting season to the satisfaction of the local planning authority.

9. Prior to the first flock entering the poultry building hereby permitted a landscape management plan including long term design objectives, management responsibilities and maintenance schedules for all landscaped areas within the area outlined in blue on approved Location Plan drawing no IP/HF/01 July 20 shall be submitted to the local planning authority. The landscape management plan shall be carried out in accordance with the approved details.
10. Prior to the installation of any external lighting (including flood lighting - none has been indicated on the approved drawings) full external lighting details including measures to demonstrate that lighting will not cause excessive light pollution or disturb or prevent bat species using key corridors, forage habitat 6 features or accessing roost sites. The details shall include, but not limited to, the following details:
 - (i) A drawing showing sensitive areas and/or dark corridor safeguarding areas
 - (ii) Description, design or specification of external lighting to be installed including shields, cowls or blinds where appropriate.
 - (iii) A description of the luminosity of lights and their light colour
 - (iv) A drawing(s) showing the location and where appropriate the elevation of the light fixings.
 - (v) Methods to control lighting control (e.g. timer operation, passive infrared sensor (PIR)).

All external lighting shall thereafter only be installed in accordance with the specifications and locations set out in the approved details, and these shall be maintained thereafter in accordance with these details for perpetuity. Under no circumstances should any other external lighting be installed at the site.

11. Prior to the first flock entering the poultry building hereby permitted a scheme for biodiversity enhancement, such as incorporation of permanent bat roosting feature(s) and or nesting opportunities for birds, shall be submitted to the local planning authority for written agreement. Thereafter the approved scheme shall be fully implemented, retained and maintained for their purpose in accordance with the approved scheme for perpetuity. The scheme shall include the following details:
- (i) Description, design or specification of the type of feature(s) or measure(s) to be undertaken.
 - (ii) Materials and construction to ensure long lifespan of the feature/measure
 - (iii) A drawing(s) showing the location and where appropriate the elevation of the features or measures to be installed or undertaken.
 - (iv) When the features or measures will be installed within the construction, occupation, or use phased of the development permitted.
12. Prior to the first flock entering the poultry building hereby permitted an emissions monitoring scheme shall be submitted to the Local Planning Authority for written approval. The monitoring scheme shall incorporate the following:
- (i) Provide a 15-year phased monitoring programme based on risk and previous years assessments.
 - (ii) Detailed locations and methodologies for emissions monitoring affecting the natural environment to include timeframes
 - (iii) Set appropriate emissions warning and exceedance action trigger levels
 - (iv) Identify mitigation measures appropriate to potential trigger levels
 - (v) Details of recording and monitoring
- Thereafter the approved monitoring scheme shall be fully implemented and maintained in accordance with the approved details and made available for inspection upon 7 days of a written request by the Local Planning Authority.
13. Prior to the first flock entering the poultry building hereby permitted an odour management plan (including measures to be used and timeframe for implementation) for the site outlined in blue on approved Location Plan drawing no IP/HF/01 July 20 shall be submitted to the local planning authority for written approval. Thereafter the approved odour management plan shall be fully implemented and the site shall be maintained in accordance with the approved details in perpetuity and a record of any updates shall be made available for inspection by the local planning authority within 7 days of a written request.
14. Any facilities for the storage of oils, fuels or chemicals shall be sited on impervious bases and surrounded by impervious bund walls or be contained in a self-contained double skinned tank. The volume of the bunded compound should be at least equivalent to the capacity of the tank plus 10%. If there is multiple tankage, the compound should be at least equivalent to the capacity of the largest tank, or the combined capacity of interconnected tanks, plus 10%. All filling points, vents, gauges and sight glasses must be located within the bund. The drainage system of the bund

shall be sealed with no discharge to any watercourse, land or underground strata. Associated pipe work should be located above ground and protected from accidental damage. All filling points and tank overflow pipe outlets should be detailed to discharge downwards into the bund.

15. Prior to the first flock entering the poultry building hereby permitted 2 electric vehicle charging points shall be installed at the site. Charging points shall comply with BS EN 62196 Mode 3 or 4 charging and BS EN 61851 (as amended); have a charge point power of not less than 22kw.
16. Prior to the first flock entering the poultry building hereby permitted the improved means of ventilation (as approved through drawing IP/HF/03 dated July 2020) shall be fully installed and have been commissioned and operating normally in accordance with the manufacture's specification and guidelines. Thereafter the approved ventilation shall be maintained in accordance with the manufacturer's specifications and guidelines unless it needs to be replaced in which case the replacement ventilation shall be of the same specification or a higher specification in terms reducing emissions from the buildings.

