



Appeal Decision

Site Visit made on 31 August 2021

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th November 2021

Appeal Ref: APP/A2335/W/20/3265416

Lower Addington Farm, Birkland Barrow Road, Nether Kellet, Carnforth, Lancaster LA6 1FJ

- 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 W A Agriculture against the decision of Lancaster City Council.
 - The application Ref 20/00019/FUL, dated 8 December 2019, was refused by notice dated 22 June 2020.
 - The development proposed is the construction of agricultural shed for free-range hens.
-

Decision

1. The appeal is allowed and planning permission is granted for the construction of an agricultural shed for free-range hens with associated parking at Lower Addington Farm, Birkland Barrow Road, Nether Kellet, Carnforth, Lancaster LA6 1FJ in accordance with the terms of application Ref 20/00019/FUL, dated 8 December 2019, subject to the conditions set out in a schedule attached to this decision.

Procedural Matters

2. Since the time of the Council's determination of the application it has adopted a new development plan. This consists of the Local Plan for Lancaster District 2011-2031 Part One: Strategic Policies and Land Allocations DPD [2020] (SPLA) and Part Two: Review of the Development Management DPD [2020] (DMDPD). The policies referenced in the Council's Decision Notice have now been superseded. According to the Council, Policy E4 of the Lancaster District Local Plan [2008] is replaced by Policy EN3 of the SPLA. Policies DM28 and DM35 of the Development Management DPD [2014] are replaced by Policies DM29 and DM46 of the DMDPD.
3. The Government published a revised National Planning Policy Framework (the Framework) in July 2021. All references to the Framework in this decision relate to the updated document.
4. The description in the banner heading above is taken from the planning application form. The description appearing on the Council's Decision Notice also refers to the associated parking areas. As a more comprehensive description of the development that appeared on the plans on which the Council carried out its consultations, I do not consider that any party will be prejudiced by my use of it.
5. The site is located within a Natural England consultation zone of Natura 2000 sites including the Morecambe Bay & Duddon Estuary Special Protection Area (SPA), Morecambe Bay Special Area of Conservation (SAC) and the Morecambe Bay Ramsar. These overlap with the Morecambe Bay Site of Special Scientific

Interest (SSSI). The Conservation of Species and Habitats Regulations 2017 (the Habitats Regulations) require the Competent Authority to consider whether or not the proposal could adversely affect the integrity of the protected (habitat) sites, either alone or in combination with other plans and projects. This responsibility falls to me in the context of this appeal.

Main Issues

6. The main issues are therefore the effect of the proposed development on:

- the Morecambe Bay & Duddon Estuary habitats sites and the SSSI
- the character and appearance of the local landscape.

Reasons

Habitats sites and SSSI

7. The Morecambe Bay & Duddon Estuary habitats sites and SSSI are recognised for their dynamic intertidal habitats, mud and sand flats, saltmarsh and coastal marshes and other estuarine habitats. Together these support a marine foraging area with a diverse range of vegetation, invertebrates, molluscs and crustaceans and significant populations and colonies of waterbirds, seabirds, other bird assemblages and internationally significant populations of migrating birds.
8. The appeal site lies some 5km from the protected areas, however, its rainfall catchment area drains to Swarth Beck lying along the north-western boundary of the site and the onward flows via the River Keer. This provides a direct fluvial link to the estuary.
9. The scheme is aimed at providing for intensive use of the site for livestock of up to 16,000 laying birds. This will lead to large amounts of waste being generated. Waste would arise both within the proposed building and on the surrounding land. In addition, parts of the site are indicated to be subject to surface water flooding and overland flows. Accordingly, any pollutants entering Swarth Beck could affect the quality of the water within the protected areas. This leads me to the conclusion that a likely significant effect could arise from the construction and use of the site.
10. At my request, the appellant has provided additional information¹ to facilitate an Appropriate Assessment of the proposals. This provided details of potential sources of water pollution arising from the development and mitigation proposals to prevent them entering the watercourse. Potential effects via atmospheric deposition or on Curlew migration are not considered significant.
11. The original scheme included a number of measures to seek to manage surface and wash-water flows relating to the use and drainage of the building and new hard-surfaced areas. These include the use of independent wash tanks, on-site filter drains and foul water treatment plant. These would be sited outside of the surface water flood risk areas. On the basis of the information provided, I am satisfied that water arisings from within the building and associated external hard surfaces would be suitably treated and/or removed to effectively avoid pollution of the watercourse. These measures could be secured through suitably worded planning conditions to prevent pollution of the watercourse.

¹ Shadow Habitat Regulations Assessment by Envirotech NW Ltd 28/09/21

12. In response to the potential for water pollution arising during the construction phase of the development, the appellant has identified possible increases in silt wash or pollution arising from spillages as potential threats. A number of avoidance and precautionary measures including a temporary cut-off drain to protect the construction site, a silt barrier and spillage containment measures would be sufficient to protect the nearby watercourse. These could also be secured through planning condition/s.
13. Although the livestock would be restricted from direct access to Swarth Beck by fencing, washings from the external range areas would migrate towards the watercourse following the watershed topography. According to the appellant, any effects therein would be negligible and naturally mitigated through dilution, deposition and natural filtration by vegetation along the watercourses leading to the protected sites. No on-site mitigation is proposed in this respect.
14. I have sought the further advice of Natural England (NE) as the government's statutory nature conservation body and adviser on nature conservation in relation to both the individual and in-combination effects of the development. NE have also had regard to the appellant's assessment and I have carefully considered their response. I am subsequently satisfied that, given the distance over which any water would flow and the nature of the intervening land, no significant impact on the habitats sites would arise during the construction or use phases of the development. Furthermore, as an identified negligible impact, the contribution of the development to in-combination effects is also negligible in the particular circumstances of the case.
15. For the above reasons, I find there is sufficient basis to conclude that, subject to securing the identified mitigation measures, no adverse effects on the integrity of the habitats sites and SSSI would arise. The development therefore aligns with Policies SP8 and EN7 of the SPLA, Policy DM44 of the DMDPD and Paragraphs 180 and 181 of the Framework, as they seek to protect nationally and internationally important habitats and biodiversity.

Landscape

16. The site consists of a large grassed field sloping down from Kirkby Lonsdale Road which lies adjacent to the south-eastern boundary. The land is surrounded by open fields in agricultural use, pockets of woodland and the treed corridor of the road. A large linear poultry shed, associated feed silos and vehicle areas lies a short distance to the northwest. A public footpath across an adjacent field to the north-east makes up part of the Lancashire Way.
17. The proposal includes the erection of a large timber and metal sheet clad building of limited overall height. An apron of concrete hardstanding with turning areas would lie substantially to the north-west of the building but wrap about the gabled elevations. This would link from the adjacent poultry site to utilise an existing access from Birkland Barrow Road to the north.
18. The open countryside location is situated close to but outside of the boundary of the Forest of Bowland Area of Outstanding Natural Beauty (AONB). The Council's Landscape Character Assessment describes the area as the Docker-Kellet-Lancaster Drumlin Field noted for large rolling fields and drumlins formed by glacial activity. The area of generally walled or hedged fields is interspersed with pockets of mature woodland and considered to have a moderate to high level of sensitivity to change without compromise to those key characteristics.

19. There is no dispute between the main parties that the proposed agricultural use of the building is an acceptable type of development in the open countryside. Although the building would be of considerable length it would have a modest width and height. As a building designed to serve modern agricultural practices it is comparable to, and would be seen in conjunction with, similar buildings nearby so as not to appear isolated.
20. The building would be sited close to the lowest edge of the field where it sits within a dip in the local topography and limits any extent of encroachment into the more open areas of the field. Combined with nearby areas of woodland, the topography would provide moderate levels of screening to limit views to the building in the medium and long-distance. The scope to see the development in the context of the protected landscape of the AONB would be extremely limited such that no significant adverse effect on its setting would arise.
21. The main views of the building would be from Kirkby Lonsdale Road and the footpath to the east. Roadside trees would filter views to a varying degree throughout the year. Although they would not entirely screen the development, the downward views would present the building at distance and against the backdrop of the rising land beyond and an existing building of similar form.
22. The proposed natural Yorkshire boarding to the elevations and green roof would serve to provide some assimilation with the landscape and distinguish it from the more industrial appearance of other poultry buildings on Birkland Barrow Road. The building would also screen much of the proposed hardstanding which would be set behind it.
23. Implementation of a landscaping scheme and the reinstatement of a hedgerow close to the centreline of the field, which could be provided in a manner consistent with the characteristic elements of the landscape, would further assimilate the development.
24. I note the Council's concerns in relation to the type of fencing which could be used to retain stock within the intended foraging area of the site. However, existing examples of lightweight wire fencing supported by slender timber posts on the adjoining site demonstrate a low visual impact on the locality.
25. Taking all of the above together, I find that, as a building characteristic of a countryside area which utilises the topography and existing screening to its best effect, it would suitably nestle within the landscape. It would be substantially less prominent than other local examples. Furthermore, it would rely on existing infrastructure for access to minimise further development requirements. Accordingly, I find that it would not appear as an urbanising feature or an incongruous form of development within its setting. It would thereby align with the aims and requirements in Policy EN3 of the SPLA and Policies DM28 and DM35 of the DMDPD as they seek to protect the character and appearance of locations, their identity, and the quality of the landscape.

Other Matters

26. I acknowledge the concerns of third parties and individual representatives of the Council. I have little doubt that the operation of the agricultural enterprise would introduce additional noise and odour effects in the locality. However, these must be considered in the context of agricultural practices within a rural

setting and with regard to their location remote from sensitive land uses, including residential properties.

27. There is little before me to substantiate that significant impacts have arisen from existing similar operations managed by the appellant. At the time of my site inspection, I heard the effects of fans providing ventilation to an existing poultry building nearby and the noise associated with feed delivery. Although these were audible at some distance, I consider that their tone and intermittent nature would not cause undue harm to the living conditions of occupiers of the nearest residential properties which are distant from the proposed position of the building. For the same reason, any dust and odour would be largely localised and sufficiently dispersed before reaching local residences to cause significant effects on living conditions.
28. These views are supported by the Environment Agency's consultation responses as the responsible body for monitoring existing sites operated by the appellant in accordance with the Environmental Permitting Regulation (England and Wales) 2016, and the Council's Environmental Health advisors.
29. I note the concerns of nearby residents in respect of the number of planning proposals submitted by the appellant. However, this is not relevant to the consideration of the scheme, a proposal I have considered on its own merits.

Conditions

30. I have considered the suggested conditions from the Council and had regard to Paragraph 56 of the Framework and the National Planning Practice Guidance in terms of the use of planning conditions. Some have been edited for precision and clarity. In addition to the standard condition limiting the lifespan of the planning permission, I have imposed a condition specifying the relevant drawings as this provides certainty.
31. Conditions securing the appearance, external materials, finishes and landscaping of the development are reasonable and necessary to protect the rural character of the locality.
32. In the interests of achieving sustainable site drainage without elevating flood risk and to protect environmental interests on the site and elsewhere, I have imposed a requirement for drainage details to be agreed and implemented. This is of necessity a pre-commencement condition as the preliminary protection measures would be required before operations that could affect a local watercourse took place, and because drainage works are highly likely to be incorporated within the first construction phases.
33. Implementation of a protected species mitigation scheme is necessary to preserve and enhance biodiversity interests on the site.
34. A condition requiring agreement of delivery vehicle routing is not necessary having regard to the existing access and surrounding road network. A condition requiring a tree protection and arboricultural method statement are not reasonable as the existing site is substantially devoid of trees. Existing trees close to the access would not impede construction traffic.

Conclusion

35. For the reasons given above, I conclude that the proposal would be consistent with the local development plan taken as a whole and the appeal should be allowed.

R Hitchcock

INSPECTOR

Schedule of Conditions to planning permission Ref 20/00019/FUL

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 2033-030 Rev. A (Site Location Plan to Show Proposed Building and Range); 2033-040 Rev. A (Proposed Site Plan); 2033-041 Rev. B (Proposed Site Sections); and, 2033-042 Rev. A (Proposed Plans, Section And Elevations).
- 3) No development other than demolition and site clearance/preparation shall commence until details of the following materials (including colours and finishes) have been submitted to, and approved in writing by, the Local Planning Authority:
 - Colour and finish to the walls and roof of the building, vents and feed silos
 - All external surfacing materials
 - Boundary treatments including gates

The development shall then be constructed in accordance with the approved details and be retained as such at all times thereafter.

- 4) No development shall commence until final details of the design, based on sustainable drainage principles, of an appropriate surface water sustainable drainage scheme have been submitted to and approved in writing by the local planning authority.

Those details shall include:

- a) Final details of the proposed surface water diversion works including appropriate dimensions.
- b) Final sustainable drainage layout plan appropriately labelled to include all pipe/structure references, dimensions, design levels, finished floor levels in AOD with adjacent ground levels.
- c) The drainage scheme should demonstrate that the surface water run-off and volume shall not exceed the pre-development runoff. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed.
- d) Sustainable drainage flow calculations (1 in 1, 1 in 30 and 1 in 100 + climate change).
- e) Plan identifying areas contributing to the drainage network
- f) Measures taken to prevent flooding and pollution of the receiving groundwater and/or surface waters, including watercourses,
- g) A plan to show overland flow routes and flood water exceedance routes and flood extents.
- h) Evidence of an assessment in accordance with BRE365 of the site conditions to include site investigation and test results to confirm infiltrations

rates. An assessment of the groundwater conditions in accordance with section 25.2.2 of the SuDS Manual.

i) Details of an appropriate management and maintenance plan for the sustainable drainage system, including wash tanks, for the lifetime of the development. This shall include arrangements for adoption by an appropriate public body or statutory undertaker or management and maintenance by a Management Company and any means of access for maintenance and easements, where applicable.

j) Pollution protection measures and timing of their installation prior to and during the construction phase of the development. These shall include those measures identified in Section 6 of the Shadow Habitat Regulations Assessment by Envirotech NW Ltd 28/09/21.

The scheme shall be implemented in accordance with the approved details as an integral part of the development. Thereafter the drainage system shall be retained, managed and maintained in accordance with the approved details.

- 5) No development above ground shall commence until details of the hard and soft landscaping of the site (including wherever possible the retention of existing trees and hedges) and its maintenance regime have been submitted to, and approved in writing by, the Local Planning Authority. The approved scheme shall be implemented in the first planting season following completion of the development, or following first occupation/use, whichever is the earlier, and maintained at all times thereafter in accordance with the approved maintenance regime.
- 6) The development hereby permitted shall be implemented in full accordance with the protected species mitigation measures set out in the Ecological Appraisal submitted by Envirotech (Ref: 374). Where required by the approved mitigation, the measures shall be retained and maintained within the development at all times thereafter.

END.