



Appeal Decision

Site visit made on 10 August 2021

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 November 2021

Appeal Ref: APP/P2365/W/21/3269788

Land to the rear of Bungalow Farm, Heatons Bridge Road, Scarisbrick, Ormskirk, Lancashire L40 8JQ

- 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 John Dorrian of Smithy Mushroom Limited against the decision of West Lancashire Borough Council.
 - The application Ref 2019/0747/FUL, dated 19 July 2019, was refused by notice dated 13 November 2020.
 - The development proposed is described as: 'construction of mushroom farm in conjunction with the agricultural business, Smithy Mushrooms Limited, to include portal frame buildings, car parking, hardstanding and sustainable drainage system'.
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Decision

1. The appeal is allowed, and planning permission is granted for the construction of a mushroom farm in conjunction with the agricultural business, Smithy Mushrooms Limited, to include portal frame buildings, car parking, hardstanding and sustainable drainage system at Land to the rear of Bungalow Farm, Heatons Bridge Road, Scarisbrick, Ormskirk, Lancashire L40 8JQ in accordance with the terms of the application, Ref 2019/0747/FUL, dated 19 July 2019, and the plans with it, subject to the conditions in the attached schedule.

Procedural Matters

2. For clarity, I have taken the name of the appellant from the appeal form as it is more precise.
3. The occupier of 79 Heatons Bridge Road has expressed her concern at the address of the appeal site, which refers to her property. In this instance it is appropriate to change the address in the banner heading to remove any ambiguity surrounding the involvement of No 79 / Bungalow Farm. I have therefore for clarity and precision, replaced 'at' with 'to the rear of' in the address, as this is factually correct, but removes any implication of involvement of No 79 / Bungalow Farm in the proposed development.
4. The Government published the revised National Planning Policy Framework on 20 July 2021 (the Framework), which forms a material consideration in the determination of the appeal. The main parties have had an opportunity to comment on the significance of the changes.

Main Issues

5. There is agreement between the main parties that the development does not amount to inappropriate development inside the Green Belt. Therefore, it is not

necessary to consider the effect of the proposed development on Green Belt openness. Additionally, the demonstration of very special circumstances is not required. Furthermore, as the proposed development is for agricultural purposes and whilst the land will be used for a different agricultural purpose to what it is currently used for, it will not be lost to a non-agricultural use. On the evidence before me, I have little reason to disagree with the main parties on these matters.

6. Therefore, the main issue of this appeal is the effect of the proposed development on the character and appearance of the appeal site and the surrounding area.

Reasons

7. The proposed development seeks to erect a number of buildings that would produce a variety of mushrooms. The appellant is established in this sector and based locally on Smithy Lane, where the proposed development would be an extension to the existing business. It is asserted that the existing business has exceeded its capacity at the Smithy Lane site and now needs to expand its mushroom production, as well as to produce its own growth substrate.
8. The site is located off Heatons Bridge Road and in addition to the buildings, the proposed development would involve a car park, hardstanding and sustainable drainage system. An existing field gate currently serves the site, providing access onto Heatons Bridge Road. On this boundary is a mature hedgerow of notable height, which returns along the shared boundary to the right when viewing the existing field gate from Heatons Bridge Road.
9. In front of the site are a number of buildings, comprising Bungalow Farm, which includes a number of agricultural barns. Although, I note that directly behind the bungalow and in the direction of the proposed access there is little built development. On the boundaries facing Lime Kiln Farm and to the rear of the site, these are less enclosed, as the amount of vegetation decreases, although some vegetation and mature trees are still present.
10. The site is identified as falling within the 'Cleves Hills and Scarisbrick' (LCA 2A) landscape character area in the Council's Natural Areas and Areas of Landscape History Importance 1996/updated 2007 (the SPD). The SPD identifies the general characteristics of LCA 2A character area as low, undulating land rising to Cleves Hills, prominently visible from mosslands to west, with panoramic views to south, west and north from higher ground and that the farmland is mainly intensive arable.
11. The SPD further advises that the introduction of tall, columnar constructions, or other developments, which will be prominent should be avoided and that particular care is needed with built development, especially in terms of siting and use of materials to minimise visual impact on surrounding mossland areas. It is also common ground between the main parties that the front of the site is identified as being of an Area of Local Landscape History Importance, where there are fragments of historic landscape in areas of major landscape change, where the retention historic field boundaries are recommended in the SPD.
12. Policies EN2 of the West Lancashire Local Plan 2013 (LP) seeks to preserve and enhance West Lancashire's natural environment. One facet of this policy is surrounding landscape character, which requires new development to take

advantage of its landscape setting and historic landscapes through regard to the different landscape character types in the borough, maintaining or enhancing the landscape character area in which it is located and respecting the historic character. Additionally, there is requirement for sensitive design, including siting, orientation, scale, materials, landscaping, amongst other things. LP Policy GN3 requires development to be sustainable, which reinforces many of the design issues raised on LP Policy EN2 but requiring like for like replacements or enhancement of features of ecological value when the removal of trees or hedgerows are unavoidable and providing a minimal level of lighting, amongst other things.

13. The proposed development would be visible from 2no. footpaths, firstly on Heatons Bridge Road, particularly, when traveling from Barrison Green towards Smithy Lane and then along the footpath of the Leeds-Liverpool Canal (the canal footpath), and from a number of residential properties. Given the overall appearance of the proposed development and its height, I do not consider that the proposed development would have a detrimental effect on users of Heatons Bridge Road or the canal footpath. Although, local residents may experience changes to their views, this would not be detrimental to their living conditions.
14. Whilst they may not be as large as the proposed development, there are other examples of similar styled buildings to the appeal scheme in the immediate locality of the site, such as those present at Heatons Bridge Farm. There are also examples of instances of buildings occupying large footprints in the wider locality, such as the nursery on Martin Lane. Thus, the proposed development would not be incongruous or represent an uncommon feature in the local or wider landscape.
15. The Council has provided a Landscape Statement of Case (LSoC) within its submission. The LSoC disagrees with many of the findings contained within the appellant's Landscape Appraisal (LA). I also viewed the site from the majority of locations identified in the LA and I have found no good reason to conclude that the LA is unreliable in this or any other significant respect and generally complies with the objectives contained within the Guidelines for Landscape and Visual Impact Assessment (Third Edition 2013).
16. Whilst the site is not a valued landscape for the purposes of paragraph 174 a) of the Framework, the site is locally valued. However, this change would not represent a significant harmful effect as the landscape value of the site itself is medium/low, as confirmed in the LSoC. I also acknowledge the notable amount of opposition to the proposed development from interested parties, including, but not limited to local residents; Scarisbrick Parish Council; elected Members and Campaign for the Protection of Rural England; whom, in some instances have commissioned their own professional reports.
17. I am unable to share all of the main findings of the Council's LSoC, although I agree that in the wider landscape the proposed development would not be prominent and that it is not entirely unprecedented. The proposed tree planting programme would significantly soften the resultant appearance of the proposal, provide additional screening and compensatory / additional habitat. I accept that the benefits of such a planting scheme would take a number of years to mature, but do not consider this to be to the detriment of the proposal in this instance, given its agricultural nature. Additionally, I do not see any reason

why a future landscaping scheme could not incorporate further native evergreen trees to complement any proposed deciduous species.

18. Concern has been raised at the loss of historic field boundaries and the removal of hedgerow on the front boundary facing Heaton's Bridge Road, to provide the proposed access. Nonetheless, the creation of an access is not an uncommon feature in the wider area. The proposed development would extend over the existing drainage ditch, which currently separates the existing 2no. fields comprising the site and would result in some trees and vegetation being lost, but mitigation would be possible through a landscaping scheme. Even though the existing field boundary dividing the site would be removed, this would not be to the detriment of the existing historic pattern, especially as it is not well vegetated, albeit containing a number of trees that would need to be removed, as identified in the LSoC.
19. For the reasons given above, I conclude that the proposed development would result in limited harm to the character and appearance of the appeal site and surrounding area due to the permanent change to the landscape character of the area through the development of a greenfield site. Therefore, the proposed development would result in a minor conflict with the design, character and appearance aims of LP Policies EN2, GN3, the SPD and the requirements of paragraph 130 of the Framework.

Other Matters

20. The application site is within 2.5km of the Martin Mere Special Protection Area (SPA), Ramsar and the Martin Mere, Burscough Site of Special Scientific Interest (SSSI) and within 9.5km of the Ribble and Alt Estuaries SPA and Ramsar and Ribble Estuary SSSI. The development of the site could have a significant effect upon the important interest features of the sites.
21. These effects would be borne from the site as a supporting habitat that may be used by SPA populations or some individuals of the population for some or all of the time. Such supporting habitats can play an essential role in maintaining SPA bird populations, and proposals affecting them may therefore have the potential to affect the SPA. The Shadow Habitats Regulation Assessment¹ (SHRA) carried out by the appellant concludes that, without mitigation, the development could potentially affect the integrity of four internationally designated sites alone or in combination with other projects or plans. Although, it was noted that there was limited evidence of the pink-footed geese and whooper swan using the site.
22. The SHRA proposes mitigation to ensure that there will not be a significant impact, and consideration should be given to adequate screening along the site boundaries. This would comprise landscaping screening through tree planting and the installation of a solid 2m hoarding during the construction phase along the northern, eastern and south-eastern boundaries of the site, which would remain in place during the immediate operational phase until such time as the post development boundary landscaping has matured to an extent to create acceptable natural screening. I am also satisfied that the installation of such screening would not significantly harm the character and appearance of the appeal site or surrounding area during this period. Natural England have no objections to the proposed development on this basis.

¹ Shadow Habitat Regulations Assessment undertaken by TEP dated May 2020

23. Therefore, I am satisfied that the methods of mitigation could be effectively secured by condition, and having undertaken the appropriate assessment, I am satisfied that the scheme would not adversely affect the integrity of the nearby protected sites. Thus, the proposed development complies with the biodiversity aims of LP Policy EN2 and the Framework.
24. A significant number of interested parties, including, local residents, Parish Council's², elected Members and Campaign to Protect Rural England have also expressed a wide range of concerns including, but not limited to the following; cross contamination of crops; available housing stock; increased traffic movements and highway safety; noise, light and air pollution, odours; ecology; waste / contamination; health of residents; climate change; flooding and visitor economy, amongst other things. However, I note that these matters were considered where relevant by the Council at the application stage and did not form part of the reason for refusal, which I have dealt with in the assessment above. Whilst I can understand the concerns of the interested parties, there is no compelling evidence before me that would lead me to come to a different conclusion to the Council on these matters.

Planning Balance

25. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires this appeal to be determined in accordance with the development plan unless material considerations indicate otherwise.
26. Sustainable development has three dimensions. The proposed development would involve a loss of greenfield land but in considering the environmental role, this is balanced against its intended agricultural use and appearance. There would be very significant benefits to the economic and social roles through the construction of the proposed development, the support of the existing local business and the generation of a notable number of job opportunities, particularly available to those in the local community.
27. In my view the benefits of the proposed development notably outweigh the minor conflict with the development plan. I conclude therefore that these are material considerations which mean that in this case the proposed development can be determined other than in accordance with the development plan. I therefore conclude that the proposed development is suitable for the site.

Conditions

28. The Council has suggested conditions which it considers would be appropriate in its submission. I have reviewed these in accordance with the tests set out in the Planning Practice Guidance (PPG) and have amended the wording where necessary in the interests of clarity and simplicity.
29. I attach a condition specifying the approved plans, for certainty and a condition for materials is necessary in the interest of the character and appearance of the area. Conditions relating to drainage are necessary to ensure that the local environment is protected from flooding and to ensure that foul water is satisfactorily disposed. Conditions relating to the development being carried out in accordance with the SHRA and others suggested by Natural England are both reasonable and necessary to ensure that protected sites are not harmed.

² Scarisbrick, Wrightington, Newburgh and Burscough Parish Council's

30. Conditions relating to the proposed access, visibility splay and internal loading / parking areas are necessary to ensure highway safety. Conditions surrounding cycle and motorcycle parking spaces, and to electric vehicle charging points are necessary to ensure alternative methods of transportation. A condition for hard and soft landscaping is necessary for the character and appearance of the site and surrounding area.
31. Conditions relating to noise and operational activities, including restriction of Heavy Goods Vehicle movements are reasonable and necessary to ensure that the amenity of local residents is not significantly harmed. A condition surrounding external lighting is required to ensure that there is no significant harm to character and appearance or the living conditions of local residents. A pre-commencement condition is required for the bio-mass boiler to ensure that there are no visual or environmental issues arising from its installation. A condition surrounding the substrate is reasonable and necessary to ensure that the approved development operates in accordance with the submitted details.
32. A pre-commencement condition for a method statement for an Ornithological Watching Brief and a condition for high disturbance works are both reasonable and necessary to ensure that protected sites are not harmed from the approved development. A pre-commencement condition for a Construction Management Plan is reasonable and necessary given the scale of the development and to ensure that there are no adverse effects on the surrounding area during the construction phase. A condition limiting the packing of mushrooms to those grown by the appellant is also reasonable and necessary to define the permission and ensure that the development operates within the confines of that applied for.

Conclusion

33. For the reasons given above, I conclude that the appeal should succeed.

W Johnson

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan - SK.32.3 - 19/07/19; Site Layout Plan - Proposed - SK.32.2E - 19/07/19; Plans as proposed - SK.0.1F - 28/11/19; Elevations as proposed - SK.0.2B - 26/07/19; Proposed Site Access Plan - VN81164-D104 - 12/11/2020; Swept Path Analysis, Articulated Vehicle - VN81164-TR102 - 12/11/2020.
- 3) The materials to be used on the external surfaces of the development (brickwork, cladding and roofing materials along with materials used in any hard surface) shall be as outlined on the planning application form.
- 4) Foul and surface water shall be drained on separate systems.
- 5) Prior to the buildings hereby approved being brought into use, surface water drainage shall be carried out in accordance with the submitted FRA (EPG8954FRA-01 25/03/19 Rev 4.0) & Below Ground Drainage Strategy (EPG-8954-RPDS-01 25/03/19 Rev V 4.0) . Thereafter the drainage scheme shall be managed and maintained in accordance with the maintenance measures identified.
- 6) Notwithstanding the details provided in the Below Ground Drainage Strategy by Environmental Protection Group (reference EPG -8954-RP-DS-01; dated 25/03/19), the development hereby permitted shall not be commenced until such time as a scheme to dispose of foul drainage has been submitted to, and approved in writing by, the local planning authority. The scheme shall be implemented as approved, prior to the buildings being brought into use.
- 7) The development shall be implemented fully in accordance with the mitigation strategies described in: Revised SHRA (Version 2, TEP, May 2020, ref: 8076.002); Badger Survey- Land at Smithy Mushrooms, Pennine Ecological, 27th April 2020; and Water Vole Survey- Land at Smithy Mushrooms, Pennine Ecological, 27th April 2020.
- 8) No development, other than works to implement the access, shall begin until the access and road have been implemented in accordance with the Proposed Access Layout drawing numbers VN81 164-D104 (including visibility splays measuring 2.4m x 160m in both directions) and VN18 164-TR102 and constructed in accordance with the Lancashire County Council Specification for Construction of Estate Roads to at least base course level, and all construction vehicles shall enter and leave the site from the new site access.
- 9) The development hereby permitted shall not be brought into use until the areas for the movement, loading, unloading and parking of vehicles have been provided, constructed and surfaced in complete accordance with the approved plans. These areas shall be retained at all times thereafter.
- 10) The development hereby permitted shall not be brought into use until the land between the existing highway boundary and the visibility splays indicated on the submitted plan VN81 164-D104 (visibility splays measuring 2.4m x 160m in both directions) has been cleared of all obstructions exceeding 1 metre in height. The land shall be so maintained thereafter at all times that the propose development is in use/operation.

11) The development hereby permitted shall not be brought into use until a scheme for the provision of cycle and motorcycle parking, in accordance with the Council's current standards, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the agreed details and maintained and retained for the life of the development.

12) The development hereby permitted shall not be brought into use until a scheme for the provision of electric vehicle charging points throughout the development and timetable for implementation shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the agreed details and maintained and retained for the life of the development.

13) The development hereby permitted shall not be brought into use until full details of both hard and soft landscaping works have been submitted to and approved in writing by the Local Planning Authority. The details shall relate to all land surfaces not built upon and shall include:

- Land-levels and gradients resulting in the formation of any banks, terraces or other earthworks
- hard surfaced areas and materials,
- planting plans, specifications and schedules, planting size, species and numbers/densities and a scheme for the timing / phasing of work.
- existing plants / trees to be retained
- A detailed regime for the ongoing and longer-term maintenance of all soft landscaping is also required to be submitted for approval.

The approved landscaping works shall be implemented and completed prior to the use of the building commencing. Any trees or shrubs planted or retained in accordance with this condition which are removed, uprooted, destroyed, die or become severely damaged or become seriously diseased within 7 years of planting shall be replaced within the next planting season by trees or shrubs of similar size and species to those original required to be planted.

14) The rating level of noise from deliveries, internal activities and plant/machinery shall not exceed 41dB LAeq at the boundary of any nearby residential premises between the hours of 0700hrs and 2300hrs and 24 dB LAeq, between the hours of 2300hrs and 0700hrs on any day. All measurements and assessments shall be done in accordance with BS4142:2014+A1:2019 Method for rating and assessing industrial and commercial sound.

15) There shall be no diesel powered vehicle/trailer mounted refrigeration units operated on stationary vehicles. Vehicle/trailer mounted refrigeration units must be connected to an electrical supply if required to power the unit. There shall be no vehicle/trailer mounted refrigeration units operated outside the hours of 0600hrs to 1900hrs on any day, whether or not on an electrical supply.

16) Any sound produced by reversing alarms or indicators on vehicles on the site (other than delivery vehicles) shall not be clearly distinguishable above background noise at the boundary of any nearby residential premises.

17) Heavy Goods Vehicles shall not enter or leave the site outside the hours of 0600hrs to 1900hrs on any day.

18) The development hereby permitted shall not be brought into use until a scheme detailing the proposed lighting (including all floodlighting, external building lights and car park lighting) to be installed on the site has been submitted to and approved in writing by the local planning authority. All external lighting shall be implemented in accordance with the agreed details and maintained and retained for the life of the development.

19) Prior to commencement of works on site, details of the biomass boiler should be submitted to and agreed in writing by the Local Planning Authority. Details shall include:

i) the siting and height of any emission stack; ii) details of any measures which are necessary to attenuate noise from the emission stack; and, iii) confirmation that the boiler will meet the Target Emission Rates quoted within the Air Quality Assessment Report Number 101986V2 submitted with this application.

The approved scheme shall be fully installed and operating prior to the development hereby permitted being first brought into use. It shall thereafter be retained, maintained and operated to the approved specification.

20) No manure or other based substrate not detailed in the planning application shall be used for the growing of mushrooms unless and until, a further odour assessment has been first submitted to and approved by the Local Planning Authority.

21) Prior to commencement of works on site, a method statement for an Ornithological Watching Brief, including the identification of disturbance triggers and corrective measures shall be submitted to and agreed in writing with the Local Planning Authority. The development should be implemented in accordance with the agreed Watching Brief and method statement.

22) High disturbance works must be temporarily suspended if local temperatures (as recorded by nearest Met Office data and/or available site specific measurements) are below zero degrees centigrade for a period of 7 consecutive days, and remain suspended until temperatures reach above zero degrees centigrade for a period of 3 consecutive days. The relevant nature conservation bodies should be informed of when works are suspended and re-commenced.

23) Prior to commencement of works on site, a Construction Management Plan shall be submitted to and approved in writing by the local planning authority. The plan shall provide for; the parking of vehicles of site operatives and visitors; loading and unloading of plant and materials; storage of plant and materials used in constructing the development; the location of the site compound; suitable wheel washing / road sweeping measures and appropriate measures to control the emission of dust and dirt during construction. All works which form part of the approved scheme shall be implemented while any demolition/construction works are in operation.

24) Only mushrooms grown at the application site hereby approved or at Smithy Mushrooms Limited, 229 Smithy Lane, Scarisbrick shall be packed on the application site.

****End of Schedule****