



Appeal Decision

Hearing held on 25 July 2023

Site visits made on 24 and 25 July 2023

by S Dean MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 August 2023

Appeal Ref: APP/G2713/W/23/3316706

Land east of Pillrigg Lane Track and south east of Moor Lane, Thornton Le Beans, Thirsk, North Yorkshire DL6 3SZ

- 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 Steven Tweddle against the decision of Hambleton District Council.
 - The application Ref 22/00139/FUL, dated 21 January 2022, was refused by notice dated 31 October 2022.
 - The development proposed is the erection of 2 No. free range egg units with associated hardstandings, feed bins, access roads, attenuation ponds and landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development in the heading above has been taken from the planning application form. In Part E of the appeal form it is stated that the description of development has not changed but, nevertheless, a different wording has been entered. Neither of the main parties has provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the one given on the original application albeit with unnecessary narrative elements removed.
3. The application was determined by Hambleton Borough Council, which has since become part of a new combined authority, North Yorkshire Council. Despite this, the development plan for this area, principally the Hambleton Local Plan, adopted February 2022 (the Local Plan) remains in force.

Main Issues

4. The main issues are the effect of the proposal on
 - the character and appearance of the area,
 - the significance of designated heritage assets,
 - the amenity of users of nearby roads including public rights of way,
 - water quality, and
 - air quality with particular regard to its effect on the North York Moors Special Area of Conservation (the SAC) and Special Protection Area (the SPA).

Reasons

Character and appearance

5. The appeal site lies within a largely rural, agricultural landscape. Described in the appellants Landscape and Visual Impact Assessment (LVIA) as being in a mixed agricultural landscape, gently undulating and largely in arable use, with fields defined by hedgerows and trees, with occasional small groups of trees in the landscape. This was consistent with my observations on site, when I was also able to see nearby groups of farm buildings of various ages and sizes. The appeal site is clearly visible from surrounding public roads and public rights of way. A number of these are elevated above the sloping site, giving relatively long-lasting and easily gained views.
6. Whilst there are agricultural buildings in the area and relatively close to the site, there is nothing of the scale proposed here. The sheds proposed in the appeal would be, it was agreed at the hearing, big. Each would measure approximately 172 metres in length and 56 metres in width¹, with a floor area therefore, of around 9762² square metres, housing 64,000 birds, for a total of 128,000 across the site. It should also be noted that as a function of the welfare and legislative requirements around this type of development, the sheds are set in the centre of the appeal site, away from other buildings which would give a direct, visual comparison of scale.
7. Like other agricultural buildings, their design, form, scale, materials, appearance and relationship to their surroundings is ultimately driven by functional agricultural needs. This is, I consider, fundamentally the same as the development of agricultural buildings throughout history and in elsewhere in the area. During my site visits, I noted a number of agricultural buildings, of varying ages, sizes, forms and functions, including a very large, open sided shed close to the appeal site, and immediately adjacent to one of the public rights of way which passes it.
8. The proposed sheds are agricultural buildings and the proposed use is an agricultural one. The surrounding landscape is largely agricultural, with a number of farm and associated agricultural buildings within it. Many of these are also visible from local roads and public rights of way, and the landscape has a broadly open character, with long views towards and across the largely open, sloping site. To my mind groups of trees and hedging along field boundaries emphasise the largely open and undeveloped character of the appeal site and its immediate surroundings.
9. However, the appeal proposal differs from all of those in terms of both its size and its relationship to its surroundings. As noted, the proposed sheds are large; some five-times larger than the next closest large modern agricultural building, but also differ in that they are not located close to or within an established group of buildings, agricultural or otherwise, in the landscape.

¹ Approximate figures from discussion at the hearing and the Council's report to committee.

² Taken from the Design and Access Statement and Environmental Statement of the appellant.

10. Whilst I accept that there are practical reasons for this in this case, it does lead the proposal to be markedly more visible and, ultimately, intrusive in the landscape than other agricultural buildings. The proposed large buildings in an otherwise largely open landscape, typified by small groups of agricultural buildings (even where those small groups contain large buildings in close relationship to each other), with small blocks of trees and planting throughout, would, I consider be so different that their effect on the established and valued character and appearance of the area would be significantly harmful.
11. Adding to this is the combination of the size of the buildings and their relationship to the slope of the site. As noted, the site is not flat, so the construction of each building would require a degree of earthmoving to create a level base. No sections illustrating this, or assessment of such likely effects have been provided.
12. In reaching a conclusion on the acceptability of the landscape and visual effects of the proposal, I have carefully considered the LVIA evidence of the appellant, including the additional wireframe visualisations provided for the appeal. Prior to their decision on the application the Council also commissioned a review of this evidence as did the Parish Council in preparing their objections.
13. All of this LVIA evidence was prepared by experts, and all produced this evidence with the Guidelines for Landscape and Visual Impact Assessment (Third Edition) as a common starting point. Despite that, two-thirds of that evidence directly criticise the appellants LVIA as under-representing the landscape and visual effects. Both strongly suggest that the LVIA would require substantial extra work and detail in order to properly assess landscape and visual effects.
14. Given that criticism and my reasoning set out above, I do not find that the conclusions of the appellants LVIA alter my conclusions around the landscape and visual sensitivity of the site and the likely effect of the proposal.
15. I turn now to the potential effects of any outdoor lighting on the site. The appellant is clear that it would simply not be required. Whilst this seems somewhat difficult to imagine, given the questions raised over operational matters, the appellant is satisfied that no external lighting would be required, and there is no clear evidence to the contrary.
16. However, I would note appellants LVIA sets out requirement for external lighting during the construction phase to ensure a safe working environment. Given that, I do share the concerns raised at the hearing that, in winter months in particular, external lighting may be required on the site to ensure a safe working environment during operation. Nevertheless, a condition has been suggested and agreed which would deal with this issue. That condition, coupled with the assurances of the appellant and their explanation of likely working practices at the facility lead me to conclude that external lighting would not necessarily be required and would not therefore cause unacceptable harm to the character and appearance of the area.
17. In assessing this issue, I note that the applicant received pre-application advice from the Council which suggested that the site did have capacity for development. I do not seek to depart from that conclusion. However, I do not consider that I can on the face of the evidence before me, conclude that the site can accommodate this particular proposal.

18. Taking all of the above together, I therefore find that the proposal; its scale, location and presence on the site and in the area, would be atypical of surrounding agricultural development and the surrounding landscape, such that it would have an unacceptable effect on the character and appearance of the area.
19. The proposal would therefore be significantly contrary to Policies S1, S5, E1, E7, and EG8 of the Hambleton Local Plan, adopted February 2022 (the Local Plan). These policies seek, amongst other things, to protect the character and appearance of the area around a development proposal, particularly in relation to the high-quality natural environment, the countryside which contributes to the identity of the district, to ensure high-quality, contextually appropriate design, protect and enhance local landscapes and protect the visitor economy.
20. Policy EG7 of the Local Plan does support business in rural areas, including new agricultural uses or farm diversification. However, that support is qualified. Whilst I consider that there is a demonstrable need for a more isolated location for this type of development, I do not consider that the proposal would be well integrated with its surroundings so as not to harm the character and appearance of the area. As such, the proposal would not benefit from the support of Policy EG7.
21. As a result of the above, the proposal would also conflict with national policy in the National Planning Policy Framework (the Framework) which like Policy EG7 supports a prosperous rural economy, but requires such development to be sensitive to its surroundings.

Heritage assets

22. Crosby Bridge Farmhouse and Old Hall Farmhouse, to the north of the appeal site, but beyond the site boundary, are both Grade II listed buildings, and as such, designated heritage assets. As farm buildings in farmsteads and within a rural, agricultural landscape as described above, the appeal site, as part of that wider rural, agricultural landscape contributes to their setting. I also note that a variety of more modern farm buildings close to them also contribute their setting, giving them both a close functional, visual and spatial relationship to the agricultural landscape and practices which surround them. To my mind, the appeal site reinforces the rural, agricultural nature of the area, making a positive contribution to their setting and therefore their significance as heritage assets.
23. For the reasons set out above, I find that the proposal would, including by virtue of its scale and relationship to surrounding agricultural buildings, harm the established rural, agricultural character and appearance of the area. For the same reasons, I find that the proposal would cause some limited harm to the setting of the listed buildings.
24. The somewhat isolated location of the proposal, distinct from other groups of agricultural buildings (although I accept there is in this case a clear reason for that) and its scale would erode the open, rural, agricultural nature of the site and wider setting of the listed buildings. In this, I acknowledge however that the proposal is separated from the listed buildings by distance as well as intervening field boundaries.

25. Having given great weight to the conservation of the heritage assets, and to the desirability of preserving their setting, I therefore find that the proposal would result in less than substantial harm to the significance of the designated heritage assets.
26. The Framework requires that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. In this proposal, there are public benefits including initial capital investment, the creation of nine full-time jobs, an annual economic contribution, the supply of agricultural fertiliser and a contribution towards domestic food-security.
27. However, there is no detailed evidence before me to suggest that these benefits can only be delivered by this development in this location. Therefore, on the evidence before me and in light of the effects I have found on the setting of the listed buildings, I do not consider that the public benefits of the proposal would outweigh the harm I have found to the significance of the heritage asset.
28. The proposal would also therefore conflict with Policy E5 of the Local Plan, which seeks, amongst other things, to ensure that development proposals protect and conserve heritage assets in the area.

Amenity

29. The main parties agree, and it was confirmed again at the hearing that there is no highway safety objection to the proposal with regard to its technical acceptability, means of access or traffic volumes. The reason for refusal, and the Council's objection to the proposal on this issue instead relates to the amenity of users of Allerton Wath Road, which is a well-used part of the National Cycle Network, surrounding roads, and the surrounding public rights of way (PROW), many of which offer clear views into, across and of the site.
30. I also accept that as a public highway, there is nothing which currently restricts or controls the number, type, size or frequency of large vehicles, agricultural or otherwise, which might make use of Allerton Wath Road. Although they would be within the technical capacity of the road to accommodate, the proposal would give rise to such movements in connection with its operation, as detailed in the Transport Statement.
31. Whilst I accept that this would not cause a safety issue, it would clearly affect the experience of using Allerton Wath Road by pedestrians, cyclists and horse-riders. Having both walked and driven along Allerton Wath Road, and been passed by cars, large vehicles and agricultural machinery, I have a degree of sympathy with the third-party comments on this matter set out in detail and depth in representations and at the hearing.
32. Given therefore the importance of Allerton Wath Road, as part of a national cycle network, and as a well-used route for local residents, I find that the traffic generated by this proposal, set out in detail in the Transport Statement could harm the amenity of people using the public highway for recreation purposes, that is not for their day-to-day travel.

33. Turning to the amenity of users of public rights of way, the proposal would, as set out in my reasoning above on character and appearance, be visible to them. Whilst I accept that such views of the proposal as they might be afforded would be affected by the speed at which they might travel along the public rights of way, their views would be of a development which I have found to be harmful to the character and appearance of the area.
34. For that reason, I find that the proposal would harm the amenity of the users of the public rights of way, by virtue of its particular size, scale, relationship to its surroundings and its effect on the character and appearance of the area.
35. Accepting therefore that there are elements of the use of the land and the use of the public highway which could change beyond the scope of this proposal, I nevertheless find that the proposal would harm the amenity of users of nearby roads including public rights of way. This would conflict with Policies S1, E2 and EG7 of the Local Plan, which seek, amongst other things, to provide and maintain a high standard of amenity for all, and balance support for businesses in rural areas with protection of the amenity of the area in which they are located. It would also conflict with national policy in the Framework concerning amenity and well-designed places.

Water quality

36. Policy RM1 of the Local Plan will only give support to proposals where it can be demonstrated that there is no adverse impact on, or unacceptable risk to, the quantity, or more importantly for this case, quality of water resources.
37. As the proposal is for a free-range egg unit, it would result in the deposition of between 7% and 20% of the manure from the 128,000 birds on the ranging area around the sheds. This ranging area drains into surrounding watercourses, including the Cod Beck. At the hearing, there was much discussion around the levels of nitrates and phosphates which could run-off from this proposal into the surrounding watercourses. The appellant points out that at present, this land is subject to the application of fertiliser for intensive cropping, and that run-off associated with that already occurs. However, under the proposal, there would appear to be no crops on the ranging area which would benefit from such fertilisation as the manure could provide.
38. The appellant calculates that at its likely maximum, the proposal would lead to 832 tonnes of manure being deposited on the ranging area per year, less than the DEFRA limits set out in legislation, with the remainder being dealt with (dried, pelleted and removed from the site) within the sheds.
39. I accept, as put to me by the appellant that DEFRA, the Environment Agency (EA) and Natural England (NE) have in place regimes, legislation and guidance which control many elements of agricultural practice, including levels of stocking and various other details around permitting and control. I also accept that in setting these levels, particularly around the number of birds per hectare, it is reasonable to assume that DEFRA and other responsible bodies would have had regard to the likely effects of those levels in terms of emissions, manure, run-off and other effects, including upon surrounding water resources.

40. Likewise, I am mindful of the requirements in the Framework to focus on whether proposed development is an acceptable use of land, rather than the control of processes or emissions (where these are subject to separate pollution control regimes), and to assume that these regimes will operate effectively.
41. However, even taking all of that into account, Policy RM1 of the Local Plan is an adopted development plan policy, and I am required to take a decision in accordance with it, unless material considerations indicate otherwise. It is also important to note that Policy RM1 is found in a very recently adopted plan, examined to ensure its consistency with national policy, including that in the Framework. As such, I do not consider it appropriate to set aside consideration of such risks to water quality in favour of other pollution control regimes.
42. The appellant has focused their evidence on the effect of nitrogen deposition and the effect of nitrates on water quality, and I accept that the site is not located within a Nitrate Vulnerable Zone. However, I have been presented with significant evidence, from the Parish Council and local fishing groups around the effects of phosphates on water quality. These concerns are consistent with those of the Council with regard to unexplored and potentially unresolved risks to water quality.
43. The Council provided a number of potential routes for water borne pollution. I am satisfied, given the evidence on the systems and processes which could be put in place that the disposal of waste from the site, the clean out of the buildings, the storage and disposal of cleaning water, and run-off from dust from the building exteriors in the case of scrubber-unit failure would all be controllable and unlikely to have any adverse impact on, or unacceptable risk to the quality of water resources.
44. However, I remain unclear as to the potential effects of poultry manure deposition on the land upon the quality of water resources as a result of surface water run-off. Given the detailed criticisms and concerns raised by the Council and third-parties in this matter, I am not satisfied that it is appropriate to rely solely on separate pollution control regimes. In this, I accept that it would be possible, without recourse to the planning system to carry out agricultural practices or operations on the land which may have different surface-water run-off effects to the existing, or indeed, to the proposal. However, the case before me does stand to be assessed against the development plan.
45. It might be possible to demonstrate that the proposal would have no adverse impact on, or unacceptable risk to the quality of water resources. However, in my opinion, in this case and on the evidence before me, it has not been.
46. As a result, I find that I cannot be certain that the proposal would not have an adverse impact on or cause an unacceptable risk to the quality of water resources. It would therefore conflict with Policy RM1 of the Local Plan which specifically seeks to control this. It would also conflict with policies S1 and E2 of the Local Plan which seek, amongst other things, to protect and improve environmental conditions and ensure that pollution is controlled.

Air quality, the SAC and SPA

47. The proposal seeks to control the emission of ammonia and odours from the sheds and their effect on air quality through the use of chemical air-cleaners (scrubbers). It is claimed that these would, through their constant running, create a negative-pressure environment, such that ammonia emissions and odour inside the sheds would be abated and their effects mitigated by their use. These scrubbers are certified for use in a closed system by the relevant technical organisation (DLG).
48. However, in this instance, their use is proposed in a partially open system. As a free-range unit, pop-holes in the side elevations of each building would be open from 8am to dusk each day to allow birds free access to the ranging area.
49. Unfortunately, consistent with the issue of water run-off, detailed, technical concerns which I have been presented with are unanswered by the appellant. In the face of such concerns, from which a direct line can be drawn to the Local Plan requirements, I am again directed to consider the technical evidence of the scrubber suppliers, whose certification relates to a closed system and simply accept that the vast majority of the air within the unit would pass through the scrubbers, and this would abate any unacceptable ammonia or odour issues.
50. Despite the evidence of third parties, I do not consider that I am in a position to doubt the technical ability or performance of the proposed scrubbers, if used in a way similar to the testing and certification regime. However, it is clear that their proposed use here is inconsistent with that testing, and I do not consider that I have been presented with sufficient evidence to ensure that they would therefore work as intended. All of which adds to the concern raised by the council over the RM4 requirement to protect and improve air quality as a whole.
51. Again, I note the requirements in the Framework to focus on whether proposed development is an acceptable use of land, rather than the control of processes or emissions (where these are subject to separate pollution control regimes), and to assume that these regimes will operate effectively. However, again, the Local Plan, through Policy RM4 includes an explicit and clear requirement for the Council to protect and improve air quality within the district. Given the uncertainties identified within the air quality effects of the proposal, I find that I cannot be certain that the proposal would meet the headline requirements of Policy RM4. Again, I note that Policy RM4 is found in a very recently adopted plan, examined to ensure its consistency with national policy, including that in the Framework.
52. Given these conclusions on the broad, headline effects of the proposal on air quality, I find that there is no requirement for me to assess the effects of the proposal on the SAC or SPA as set out in the later parts of Policy RM4. Similarly, there is therefore no need for me to carry out an Appropriate Assessment under the Habitat Regulations as I have found against the proposal for other reasons. I note that NE concluded that, with mitigation, the proposal will not result in adverse effects on the integrity of any of the sites in question. However, that conclusion relates only to the European Sites, and does not engage with the requirements of Policy RM4 of the Local Plan.

53. I therefore find that on the basis of the evidence before me, I cannot be sure that the proposal would protect and improve air quality within the district. It would therefore conflict with Policy RM4 of the Local Plan which has that as a specific aim, as well as with Policies S1 and E2 of the Local Plan which seek, amongst other things, to protect and improve environmental conditions and ensure that pollution is controlled.

Conditions

54. I have had regard to the agreed, suggested conditions, as well as to the guidance in paragraph 55 of the Framework to consider whether otherwise unacceptable development could be made acceptable through the use of conditions or a planning obligation.

55. Despite the conditions agreed between the main parties, and the suggested other conditions which were discussed, I do not consider that the conditions proposed, or indeed, any such other conditions as I could draft, could appropriately overcome the harm and development plan conflict I have found.

Planning balance and conclusion

56. I have found that on the basis of the evidence before me, the proposal would cause harm to the character and appearance of the area, the significance of designated heritage assets, the amenity of users of nearby roads including public rights of way, and could cause harm to water and air quality. It therefore conflicts significantly with the development plan.

57. Despite this, there are material considerations which weigh in its favour, in particular, the initial capital investment, the creation of nine full-time jobs, the ongoing contribution to the local economy, the domestic production of agricultural fertiliser and a contribution towards domestic food-security through the efficient, modern production of food. I also do not doubt intention of the appellant to use best available technology in the proposal, nor do I doubt the intention to provide the best facilities taking into account all current and up-to-date welfare and standard requirements, from standard-setting and certification bodies, as well as from market-pressures and consumer demand. I also note, as set out elsewhere in my reasoning, that there is support for agriculture and rural businesses in Policy EG7 of the Local Plan and the Framework.

58. However, the harm and development plan conflict I have found is significant. I do not consider that any of the other material considerations in favour of the proposal are of such weight to indicate that a decision be taken other than in accordance with the development plan. The appeal should therefore be dismissed.

S Dean

INSPECTOR

Appearances

FOR THE APPELLANT:

Ian Pick BSc (Hons) MRICS
Steven Tweddle
Adam Dye

Ian Pick Associates Ltd
Director, Fairholme Farming
Director, Newquip Limited

FOR THE LOCAL PLANNING AUTHORITY:

Peter Jones MSc MRTPI
Stuart Ireland BSc, MCIEEM, CEnv WSP UK Ltd

FOR THORNTON LE-BEANS WITH CROSBY AND COTCLIFFE PARISH COUNCIL:

Helen Hamilton	Marches Planning & Environment
Carly Tinkler BA CMLI FRSA MIALE	
Michael Bull	Michael Bull & Associates Ltd
Norman Boden	
Geoff Davies	
Clare Booth MRTPI IHBC	CLB Heritage Ltd
David Brown	
Mark Harrison	
Mr McGowan	
Sarah Lill	
Ian Hunter	

THIRD PARTIES:

James Dack	Borrowby Parish Council
Gail Davidson	
Elise Swatton	
David Brown	
Suzanne Crane	
Robert Birch	
Dr Julie Birch	
Mr Briggs	
Cllr Baker	North Yorkshire Council