The Planning Inspectorate

Appeal Decision

Hearing held on 6 June 2023

Site visit made on 6 June 2023

by Ian Radcliffe BSc(Hons) MRTPI MCIEH DMS

an Inspector appointed by the Secretary of State

Decision date: 11 September 2023

Appeal Ref: APP/C3240/W/23/3317989
New House Farm, Barrack Lane, Lilleshall, Newport, Shropshire TF10 9ET

- 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 P Hill of P F and W Hill against the decision of Telford and Wrekin Council.
- The application Ref TWC/2021/0494, dated 22 April 2021, was refused by notice dated 14 September 2022.
- The development proposed is the erection of new farm cattle shed with associated concrete apron and cattle track.

Decision

1. The appeal is dismissed.

Procedural matters

2. In accordance with Regulation 63(3) of The Conservation of Habitats and Species Regulations 2017 ('the Regulations'), Natural England were consulted in relation to the information that should be taken into account in the Habitats Regulations Assessment I carried out as part of this appeal. Natural England did not respond.

Main Issues

3. The main issues in this appeal are:

- the effect of the proposed development on the integrity of the Aqualate Mere Site of Special Scientific Interest (SSSI) which is part of the Midland Meres and Mosses Phase 2 Ramsar which is a European Designated Site; and,

- whether the proposed development would result in acceptable living conditions for future residents of the permitted nearby housing development to the west, with regard to odour, flies and outlook.

Reasons

Ecology

4. All development proposals need to be screened and assessed as necessary to comply with the Regulations. Known as a Habitats Regulations Assessment (HRA) its purpose is to determine if the proposal alone or in combination with other plans or projects is likely to have a significant effect on the protected features of any habitats site. The HRA occurs before a decision is made on whether to grant planning permission.

5. In this case the proposed development is located within several kilometres of Aqualate Mere SSSI which is part of the Midland Meres and Mosses Phase 2 Ramsar which is a European Designated Site (EDS).

6. As the proposed development would be an agricultural building it is not related to the management of the EDS for nature conservation. In terms of whether the proposal could affect important features of the site, the cattle that would be housed by the proposed building produce manure which contains urea. As urea breaks down it produces airborne ammonia which can act as a fertiliser when it is deposited as nitrogen, encouraging plants that prosper in a nitrogen rich environment. Such deposition can result in an imbalance in the flora within EDS, such as the meres described above, to the detriment of its internationally important features of interest.

7. The quantity of ammonia and nitrogen that would be deposited on the EDS has been quantified using dispersion modelling based upon the regulated slurry storage capacity at the farm. It is common ground that the proposal alone would result in increases of nitrogen and ammonia of between 0.03 and 0.04% respectively of the Environmental Quality Standard, where 100% is the maximum amount or critical level / load above which the EDS should not be exposed to. Such levels are below the decision making thresholds in the Joint Nature Conservation Council guidance published in December 2021. It was on this basis that the scheme was initially considered by the Council not to have an adverse effect on the important features of interest of the EDS alone or in combination with other plans and projects.

8. Natural England though is now working to the Air Quality Risk Assessment Interim Guidance (AQRAIG) that was jointly published with the Environment Agency in May 2022. It points out that the vast majority of protected sites with features sensitive to nitrogen deposition are receiving loadings above the levels at which harm is expected. This is the case with the SSSI in this appeal where for the most sensitive designating species the unchallenged position is that it is receiving four times their biological threshold for ammonia and five times the threshold for nitrogen deposition.

9. Based on the caselaw[1] referred to relating to small scale increases in nutrients where an EDS is exceeding its environmental benchmarks and is in unfavourable condition NE's advice in the AQRAIG has changed. It now guides that even where an individual project only has a small negative effect, as is the case in the appeal scheme, an 'in combination' assessment with all other plans and projects should still be carried out. The relevant area this applies to is within 10km of the EDS. Where an 'in combination' assessment results in an increase of 1% or more of the relevant critical level or load it is considered a likely significant effect would occur and an appropriate assessment is required.

10. Circular 06/2005[2] suggests that there are three categories of plan or project that should be addressed in an 'in-combination' assessment: outstanding consents that are not fully implemented; ongoing activities or operations subject to ongoing regulation; and proposed plans or projects subject to a current application for any kind of authorisation, permission, licence or other consent. In accordance with regulation 63(2) of the Regulations, the appellants

[1] The Wealdon Judgement 2017 and the Dutch Nitrogen decision 2018
[2] ODPM Circular 06/2005 Biodiversity and Geological Conservation – Statutory Obligations and their impact within the Planning System

are required to provide details of any plans or projects that fall into the three categories. This occurred as part of their appeal statement submitted at the start of March 2023 and was updated at my request after the hearing.

11. In relation to the second category, the existing operations on the farm fall to be considered. In combination with the rest of the farm the position of the Council is that the appeal scheme would result in a farm contribution of 1.24% of the critical level of ammonia. This combined percentage has not been challenged by the appellant. As this is above 1% it is likely that a significant effect would occur and so an appropriate assessment is necessary.

12. In terms of the other two categories, the appellant has identified three relevant projects within 10km of the EDS. Two of these relate to planning applications. The appellant has stated that the first of the planning applications is now not progressing[3] and that the second[4] is a replacement building that will not increase cattle numbers. Located 8.5km away to the south east of the relevant EDS the appellants states that the second scheme would not affect the EDS given the prevailing westerly and south westerly winds. I have therefore not taken these projects into account in the 'in combination' assessment.

13. The final project[5] relates to a permission for new livestock buildings on a farm that has up to 6,000 pigs. At the hearing Mr Pick advised, based on his interactions with Natural England, that because the now constructed buildings are modern replacement buildings nitrogen from the farm deposited in the EDS has reduced. As a result, for the purposes of an in combination assessment, he stated that Natural England's view was that the contribution of this scheme should be treated as zero. No document verifying that this is NE's approach though has been provided.

14. It seems to me that if such an approach was adopted in relation to all plans and projects in an 'in-combination' assessment within the relevant area of an EDS when critical levels are being heavily exceeded, in part because of such activities, that such an approach would fail to protect the EDS. Moreover, the keeping of such numbers of pigs normally requires a permit from the Environment Agency. As a consequence, in the absence of evidence that a permit is not required, by virtue of Circular 06/2005 I find that this farm should not be excluded from the 'in combination' assessment. The Council states that the operations on this farm contribute 4.02% of the critical level of ammonia. In combination with the appeal proposal and the rest of that farm a total in combination of 5.26% of the critical level of ammonia is reached. This is significantly above the 1% level at which AQRAIG requires an appropriate assessment.

15. No other plans or projects within 10km of the EDS that could result in increased levels of nitrogen, were identified by the appellant.

16. Regulation 63 of the Regulations places a statutory duty on the competent authority to carry out an appropriate assessment of the implications of the proposal on the important features of interest of the EDS before granting planning permission. For the purposes of this appeal I am the competent authority.

[3] South Staffordshire Council ref21/01010/FUL – erection of an agricultural building for livestock housing
[4] Stafford Borough Council ref 21/34535/FUL – erection of new dairy calf housing
[5] New House Farm, Chetwynd

17. Aqualate Mere SSSI, which is part of Midland Meres and Mosses Phase 2 Ramsar EDS site, has open water, swamp, fen, wet pasture and carr habitat types with a rich collection of invertebrates. It is not a matter in dispute that it is in failing condition. As part of the appropriate assessment, a development such as the appeal proposal needs to demonstrate that its emissions would not adversely affect the integrity of the site, either by showing it would have net neutral emissions, or by a detailed site specific scientific investigation to demonstrate no adverse impact on its integrity.

18. Although the emissions from the proposed development would be small, they would not be neutral and the detailed ammonia assessment[6] does not appear to assess the 'in combination effect' of the proposal with the existing farm. Even if the existing farm has been taken into account in this assessment, for the reasons given above, it has not been demonstrated that New House Farm, Chetwynd, which has the potential to produce significantly greater quantities of ammonia, has been correctly excluded from the in combination assessment. As a result, it has not been shown that no adverse impact would occur on the integrity of the EDS if the development went ahead.

19. Trees would be incorporated into the scheme. However, this would be for landscaping purposes rather than ammonia and nitrogen mitigation. With no mitigation identified, proposed or secured, and no imperative reasons of overriding public interest why the development should go ahead, reasonable scientific doubt remains as to whether the in combination effect of the proposal would harm the EDS, which is already failing. As a consequence, applying the precautionary principle, I therefore find that it has not been demonstrated that the integrity of the EDS would not be adversely affected.

20. I acknowledge the appellant's concern that the approach of Natural England in the AQRAIG, which places strict requirements in relation to a HRA where new development would result in *any* increase in ammonia and nitrogen in EDS, is more onerous than previously was the case. However, given the protection in law afforded to EDSs, and their value in ecological terms, this is not a matter that alters my finding in relation to this issue.

21. Reference has been made to an application for poultry buildings that was dismissed on appeal[7], in part because of its adverse effect on a SSSI. This decision is now the subject of a high court challenge. The Inspector in that appeal exercised their judgement on the evidence in relation to that particular case, as have I in respect of the evidence before me. As a result, reference to this decision and the high court challenge has not altered my findings in relation to this appeal.

22. For the reasons given above, I therefore conclude that it has not been shown that the proposal would not have an adverse impact on the integrity of the EDS, contrary to policy NE1 of the Telford and Wrekin Local Plan (Local Plan) and the Regulations. Policy NE1, amongst other matters, requires that biodiversity assets must be protected and enhanced.

Living conditions

Odour and flies

[6] Ammonia Assessment, New House Farm, Newport 28/2/23 – Redmore Environmental
[7] Appeal Decision ref APP/L3245/W/21/3289216

23. The proposed cattle shed would be located to the south of the cluster of agricultural buildings associated with the farm. Separated by hardstanding from the farm buildings to the north, the appeal site has fields of pasture to the east and south. Close by to the west the land quickly rises a few metres and on the other side of an earth bund is a neighbouring development site where permission has been granted for three detached houses on a former builder's yard.

24. As part of the planning application for the three houses an assessment of the odour and flies on the farm from the nearby silage clamps and slurry storage was carried out. It found that the existing controls for odour and insects adopted by the farm were effective and no problems with odour or flies on the appeal site were observed.

25. Modelling of the odour from the proposed cattle shed has been carried out at appeal stage by the appellant. The assessment was carried out in accordance with the methodology outlined in the Institute of Air Quality Management's 'Guidance on the Assessment of Odour for Planning'. Based on the most intensive scenario of the cattle shed being in use all year round, it found that at the perimeter of the housing site the odour would be slight at one point and negligible at other points. As a result, when assessed against Environment Agency standards, the overall odour effects were found to be not significant and that the effect on living conditions would not be adverse. This finding is consistent with the assessment of the odour and flies from the farm's silage clamps and slurry storage that was carried out as part of the planning application for the three houses.

26. Whilst the years 2015-2019 were used for meteorological data, rather than the most recent 5 year period of 2018 to 2022, with such low predicted levels of odour I am not persuaded that this has materially altered the results of the submitted assessment. On the basis of what I have read and the discussion at the hearing, I find the evidence submitted in relation to odour is cogent and sufficient to demonstrate that a detrimental effect on living conditions would not occur.

27. In terms of flies, the report carried out in relation to their effect from the farm on the housing site included monitoring and a literature review. It found that with good farming practice, which is in the economic interests of the farm as well as the amenity of neighbours, flies were not likely to be a significant issue. The report is sufficiently detailed to justify reaching this conclusion. There is no suggestion that the appellant would manage the cattle shed poorly. However, as a planning permission runs with the land, rather than with the applicant, should the appeal be allowed, it would be sensible to ensure that the cattle shed is properly managed by the attachment of a suitably worded condition.

Outlook

28. The three houses were granted planning permission due to their exceptional design. However, it is a site enclosed by vegetation, with an earth bund and line of trees and bushes adjacent to its eastern boundary separating it from the farm. Between these trees and bushes and the western edge of the appeal site is a second line of trees and bushes. Taken together with the lower level of the appeal site, this would mean that the proposed cattle shed would not be visible when the trees and bushes are in leaf. Even when leaves have fallen, the density of intervening vegetation, in combination with the difference in ground

level, would mean that in private views from the proposed houses the cattle shed would not harmfully intrude.

29. In terms of public views, looking southwards at the junction of the public footpath and the access road to the farm, only the proposed houses would be visible. When passing the housing site walking along the footpath southwards, glimpses of the houses would grab the attention of walkers. In the context of the existing farm buildings that the footpath passes by, the proposed cattle shed set further away and at a lower level would not be overbearing or visually harmful. Instead, it would just be seen as an agricultural building in keeping with the farm and the rural context of the housing site. On the approach in the other direction from the south of the housing and appeal sites, views of the proposed cattle shed would be heavily screened by the density of trees and bushes even when not in leaf.

30. Whilst the tallest trees in the two bands of trees that separate the appeal site from the housing site are ashes, and so could be killed by ash dieback disease, a suitably designed landscaping scheme as part of the proposed development would be able to address this. If the appeal was allowed, such a scheme could be required by condition.

Conclusion on living conditions

31. For the reasons given above, I therefore conclude that the proposed agricultural building would not have a materially harmful effect on the living conditions of future residents of the permitted nearby housing development to the west, and so would not comprise its design quality. As a result, the proposal would comply with policies SP4 and BE1 of the Local Plan, which seek to prevent such harm, and would comply with paragraph 126 of the Framework, which requires good design.

Other Matters

32. The proposed development would have the economic benefit of supporting British agriculture and the farm, and I attach some weight to this in favour of the appeal.

33. Representations have been made in opposition to the proposed development, including in relation to land subsidence. Given my conclusion though in relation to the appeal it is not necessary for me to consider such matters further.

Conclusion

34. Policy EC3 of the Local Plan is supportive of new agricultural buildings and the proposal would result in acceptable living conditions for future residents of the permitted nearby housing development in compliance with policies SP4 and BE1 of the Local Plan. However, as it has not been demonstrated that the in combination effect of the proposal would not have an adverse effect on the EDS, it would be in conflict with policy NE1 of the Local Plan. As a consequence, I find that the proposed development would be contrary to the development plan considered as a whole, as well as being contrary to the Regulations.

35. The other considerations put forward in favour of the proposal, namely the economic benefit of the building to the farm and British agriculture, are insufficient to outweigh the conflict with the development plan and the

Regulations. Material considerations therefore do not indicate that the proposal should be determined other than in accordance with the development plan. For the reasons set out above, I therefore conclude that the appeal should be dismissed.

Ian Radcliffe

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr Locke	Stephen Locke Associates
Mr Hill	Appellant
Mr Pick	Livestock Planning Specialist

FOR THE LOCAL PLANNING AUTHORITY:

Mrs Bailey Senior Development Officer	Telford & Wrekin Council
Mr Turner Area Planning Manager	Telford & Wrekin Council
Mr Preece	Telford & Wrekin Council

INTERESTED PARTIES:

Mr Todd-Jones	Architect
Mrs Jones	Owner of nearby housing site

DOCUMENTS SUBMITTED AT THE HEARING

1 Appeal Decision ref APP/L3245/W/21/3289216
2 Objection from Mrs Jones the owner of nearby land where permission has been granted for the erection of three houses.
3 Extract from the Definitive Map of Public Rights of Way