



Appeal Decision

Site visit made on 3 October 2023

by C Rose BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 November 2023

Appeal Ref: APP/Y3940/W/23/3318629

Christian Farm, Foxham Road, Foxham SN15 4NE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Adrian Rushby, P D Hook (Breeders) Ltd against the decision of Wiltshire Council.
 - The application Ref PL/2021/11198, dated 1 December 2021, was refused by notice dated 7 December 2022.
 - The application sought planning permission for Demolition of Existing Poultry Buildings and Replacement with 4 New Poultry Buildings and Associated Infrastructure without complying with a condition attached to planning permission Ref 18/00523/FUL, dated 1 May 2018.
 - The condition in dispute is No 11 which states that: *Prior to the commencement of the development, an operational statement shall be submitted to and approved in writing by the Local Planning Authority and shall provide details of HGV routeing arrangements to and from the site; the timings and frequency of HGV arrivals and departures; and the method and destination for waste disposal.*
 - The reason given for the condition is: *To ensure the safe operation of the highway, and the provision of adequate parking on the site.*
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Decision

1. The appeal is allowed and planning permission is granted for Demolition of Existing Poultry Buildings and Replacement with 4 New Poultry Buildings and Associated Infrastructure at Christian Farm, Foxham Road, Foxham SN15 4NE in accordance with the terms of the application, Ref PL/2021/11198, dated 1 December 2021, without compliance with condition numbers 1, 9 and 11 previously imposed on planning permission Ref 18/00523/FUL dated 1 May 2018 and subject to the conditions in the attached schedule.

Application for costs

2. An application for costs was made by Mr Adrian Rushby, P D Hook (Breeders) Ltd against Wiltshire Council. This application is the subject of a separate Decision.

Preliminary Matter

3. As part of their appeal evidence, the Council confirmed an error within the reason for refusal that should have referenced Policy CP34(e) of the Wiltshire Core Strategy (January 2015) (CS) rather than CP34(ix). The appellant has had an opportunity to comment on this and I have considered the appeal on this basis.

Background and Main Issues

4. The appeal site comprises a poultry farm located off Foxham Road following the grant of planning permission in 2018. The poultry farm forms part of a wider business served by a national fleet of vehicles. The consent was subject to a number of conditions including Condition No.11 the subject of this current appeal. The details approved as part of Condition No.11 established the detailed routing for HGV traffic accessing and leaving the appeal site. The approved route is via Station Road at Christian Malford, the B4069, through Sutton Benger to the B4122 and finally to Junction 17 of the M4.
5. Due to a change in the appellant's national fleet of vehicles, and presence of a height restricted railway bridge at Station Road on the approved HGV route, the appellant's larger fleet of HGVs can no longer use the agreed routing. As a result, this current appeal proposal seeks to change the agreed routing of HGVs to travel from Foxham Road to the A3012 at Catcombe, enabling a stop at another farm in the ownership of the appellant, before travelling onward to Junction 16 of the M4 at Royal Wootton Bassett.
6. In light of the above, the main issues are the effect that varying the agreed routing for HGVs would have on:
 - highway safety; and,
 - the character and appearance of the area and living conditions of nearby residents, with particular regard to noise and activity.

Reasons

7. The appeal site is located within the countryside only accessible via roads that are restricted in width. Access to the appeal site by HGVs necessitates access either through the residential settlements of Christian Malford broadly to the north of the site or Foxham broadly to the south. The wider area is characterised by sporadic development and settlements dispersed within a landscape comprising farms and farmland off country lanes.
8. In light of the rural character of the wider area, the number of different routes from the site to the M4 and location of the site necessitating access via small settlements and roads with restricted widths, a condition controlling the routing of HGVs in the interests of highway safety and ensuring suitable levels of noise and activity is both reasonable and necessary.

Highway Safety

9. The consented route to the M4 is the shortest and most direct minimising the potential for conflict with other road users. I note that the alternative route proposed as part of this appeal was originally described by the Highway Authority as 'tortuous and has limitations in terms of width and alignment to accommodate the type and level of traffic proposed'. However, I am required to assess the suitability of the proposed alternative route. To this end the appeal is accompanied by detailed evidence in relation to the number and frequency of HGV movements, traffic surveys and highway safety records.
10. With regard to the number of movements, the appellant's evidence demonstrates that the use of larger HGVs by the appellant has significantly reduced the number of vehicle movements compared to the use of smaller

vehicles, albeit to a level similar to that originally predicted but not limited by the original consent. At an average of one inbound and one outbound HGV movement every three days, the predicted traffic movements from the proposal, noise generation and activity levels in terms of the number of vehicles would be low.

11. The traffic surveys carried out by the appellant demonstrate that a number of HGVs/buses already use the proposed route. In comparison to these movement numbers, the increased number of movements would not be significant or severe. Moreover, I note only one Personal Injury Collision (PIC) between a car and cyclist between the appeal site and the A3102 over the last 3 years which does not support a conclusion that the road is particularly unsafe.
12. In light of the reduction in overall vehicle movements, small percentage increase in the number of overall HGVs using the single width nature of part of the proposed route, and low level of PICs, I do not find the alternative route to be unsuitable for vehicles associated with the poultry farm. It would not result in an unacceptable impact upon highway safety or result in a severe residual cumulative impact. It is noteworthy that the Highway Authority found similar in this regard.
13. It follows from the above that I conclude that the alternative routing for HGVs would have an acceptable effect on highway safety. As a result, the proposal complies with Policies CP34(e), CP51(vii) and CP65 of the CS. Amongst other things, these seek to ensure that development is supported by adequate infrastructure and to encourage Heavy Goods Vehicles (HGVs) traffic to use those roads where a minimum of community and environmental impacts will occur.
14. In light of the overall reduction in vehicle numbers, acceptable impact upon highway safety and lack of severe cumulative impact, the proposal also complies with Paragraphs 110 and 111 of the National Planning Policy Framework. For the same reasons, the proposal does not conflict with the policies, vision and objectives of the Bremhill Parish Neighbourhood Plan Part 1: policies, evidence & context and Part 2: evidence reports & appendices (Made February 2018) (NP) that seek to reduce HGV/LGV vehicles, minimise their adverse impact and ensure users of the highway safely coexist whilst acknowledging that the area comprises a farm community with farming practices involving the greater use of the highway system by HGVs.

Character and appearance and living conditions

15. The location of the site necessitates vehicular access either through the residential settlements of Christian Malford or Foxham. As a result, HGVs would pass close to dwellings regardless of the route taken with some noise and activity to be expected from vehicles using the road network.
16. I appreciate that additional HGV movements through Foxham and past other properties on the proposed route would not be welcomed by some local residents and other users of the highway including walkers, cyclists, and horse riders. However, I have found above that the vehicle movements from the appeal site would be low, with the numbers very low in comparison to existing traffic using the route with limited evidence of harm to highway safety. For these reasons, there would be no significant harm to the character or appearance of the area and no significant harm to residents and other road

users from the additional vehicles' associated noise or activity. Moreover, I note that the appellant has used the proposed alternative route without reports or complaints to the local highway authority.

17. In light of the number of HGVs/buses already using the proposed route, and the presence of posts, signage and other obstructions that I viewed at my site visit preventing vehicles from using verges, there is little evidence before me that the proposal would in itself result in significant damage to the roads and verges other than that to be expected from regular road usage.
18. It follows from the above that I conclude that the alternative routing for HGVs would have an acceptable effect on the character and appearance of the area and living conditions of nearby residents, with regard to noise and activity. As a result, the proposal complies with Policies CP34(e), CP51(vii) and CP65 of the CS. Amongst other things, these seek to ensure that development is supported by adequate infrastructure, demonstrate that tranquillity and the need to protect against intrusion from light pollution, noise and motion are adequately mitigated, and to encourage Heavy Goods Vehicles (HGVs) traffic to use those roads where a minimum of community and environmental impacts will occur.
19. In light of the lack of significant harm to the character and appearance of the area or living conditions of nearby residents, the proposal does not conflict with the policies, vision and objectives of the NP that seek to reduce HGV/LGV vehicles, minimise their adverse impact and ensure users of the highway safely coexist.

Other Matters

20. Although I acknowledge the comments questioning the decision of the appellant's company to knowingly purchase HGVs that can no longer fit under the railway bridge at Station Road, this does not outweigh my findings above in relation to the alternative route being acceptable. Moreover, I note the associated business efficiency savings from the use of larger HGVs resulting in fewer journeys, potential for reduced mileage and fuel costs for the appellant and I am required to consider the proposal on its merits.

Conditions

21. The Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. I note that the Council has provided a list of the remaining conditions. The conditions have been amended from the conditions on the original planning permission to reflect the subsequent discharge of some of the conditions and the implementation of the consent. The appellant has had an opportunity to comment on these conditions.
22. For the avoidance of doubt, as the planning permission has been implemented, there is no need for a time limit condition (Condition No. 1 of planning permission Ref: 18/00523/FUL). However, a condition listing the approved plans is again necessary for the avoidance of doubt.
23. Conditions are necessary to ensure that the approved landscaping scheme is provided and retained in accordance with the approved details and that the approved lighting scheme details are complied with. These are necessary in order to protect the character and appearance of the area.

24. Conditions are necessary to ensure that the approved planting specification and noise data and odour management details are complied with in the interests of protecting the living conditions of nearby residents.
25. A condition is required to ensure that the approved surface water details are complied with in order to ensure that the site is adequately drained in the interests of preventing the risk of flooding.
26. A condition requiring that the surface water drainage be constructed prior to first occupation is no longer required as first occupation has already occurred (Condition No.9 of planning permission Ref: 18/00523/FUL).
27. A condition is necessary to ensure the provision of the ecological precaution and enhancement measures in accordance with Section 7 of the submitted Eco-Check Consultancy Survey. This is in the interest of protecting biodiversity and nature habitats.
28. Condition number 11 on the original planning permission relating to the routing of HGVs is amended in light of my findings above and becomes new condition number 9. As they were a requirement of condition number 11 as originally imposed, I have added reference within the condition to the timing and frequency of HGV arrivals and departures and method and destination for waste disposal as detailed within the amended Operation Statement Oct 2022.
29. A condition is necessary to ensure that the approved details for the provision and maintenance of car and HGV parking and turning areas are complied with in the interests of highway safety.
30. I have slightly amended the wording of the conditions relating to landscaping, parking and turning, noise, odour, lighting and drainage in the interests of conciseness.

Conclusion

31. For the reasons given above I conclude that the appeal should succeed. I will grant a new planning permission without the disputed condition but substituting with the amended condition and restating those undisputed conditions that are still subsisting and capable of taking effect.

C Rose

INSPECTOR

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall be carried out in accordance with the following approved plans:
Site Location Plan; Proposed Block Plan CHRIS-PDH-01 Rev 4; Proposed Layout Plan CHRIS-PDH-02 Rev 3; Proposed Elevation CHRIS-PDH--03 Rev 2; Proposed Roof Plan CHRIS-PDH-06; Proposed Gatehouse Plans PDH-LF-PLAN-05.
2. The development shall be carried out in accordance with the approved Landscaping Plan ref: 200-01 & Parking and Turning Plan ref: 200-02, submitted under the discharge of condition application relating to condition 3 of 18/00523/FUL approved on 10 September 2018.

3. All soft landscaping comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the first occupation of the building(s) or the completion of the development whichever is the sooner; All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority. All hard landscaping shall also be carried out in accordance with the approved details or in accordance with a programme to be agreed in writing with the Local Planning Authority.
4. The development shall be carried out in accordance with the approved Acoustic Assessment by MATRIX ref: M1822/R01, including plant specification and noise data, submitted under the discharge of conditions application relating to condition 5 of 18/00523/FUL approved on 10 September 2018.
A post installation noise assessment shall be carried out by the applicant where required, to confirm compliance with the noise criteria and additional steps to mitigate noise shall be taken, as necessary.
5. The development shall be carried out in accordance with the approved Odour Impact Study by AS Modelling & Data Ltd., submitted under the discharge of conditions application relating to condition 6 of 18/00523/FUL approved on 10 September 2018. The details as approved shall be permanently retained.
6. The development shall be carried out in accordance with the approved Lighting Plan ref: CHRIS-PDH-05, submitted under the discharge of conditions application relating to condition 7 of 18/00523/FUL approved on 10 September 2018.
7. The development shall be carried out in accordance with the approved drainage strategy by Acorus dated May 2018, submitted under the discharge of conditions application relating to condition 8 of 18/00523/FUL approved on 10 September 2018.
8. The development hereby permitted is to be carried out in accordance with the recommendations for ecological precaution and enhancement in Section 7 of the submitted Eco-Check Consultancy Survey (February 2018).
9. HGV movements to and from the site shall use the route set out in the approved Operational Statement Oct 2022. The timings and frequency of HGV arrivals and departures, and the method and destination for waste disposal shall also be carried out in accordance with the details specified within the approved Operational Statement Oct 2022.
10. The development shall be carried out in accordance with the approved Parking and Turning Area Plan ref: 200-02, submitted under the discharge of conditions application relating to condition 12 of 18/00523/FUL approved on 10 September 2018.

*****END OF SCHEDULE*****