



Appeal Decision

Site visit made on 6 February 2024

by Gareth W Thomas BSc(Hons) MSc(Dist) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 April 2024

Appeal Ref: APP/W1850/W/22/3312574

Park Top Poultry Unit, Uphampton, Shobdon, Leominster HR6 9PA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by Corbett Farms Ltd against Herefordshire Council.
 - The application Ref is 222642.
 - The development for the proposed redevelopment of site including demolition of two life expired poultry houses and one domestic dwelling, proposed construction of 4 poultry houses and one replacement domestic dwelling, together with associated equipment (feed bins, generator, gate house etc.).
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this appeal are the effects of the proposed development upon:
 - firstly, the character and appearance of the surrounding area including the Grade II Listed Registered Shobdon Historic Park and Garden; and
 - secondly, the River Lugg Site of Special Scientific Interest (SSSI) within the Lugg catchment of the River Wye Special Area of Conservation (SAC) and SSSI together with the area's biodiversity

Procedural Matters

3. The appellants point to the appeal proposal being prepared to overcome an earlier planning application that was refused permission on 22 February 2022 (Council Reference 2027/13/F) on four grounds, in summary, impacts on landscape character, effects on biodiversity interest, impacts on the Grade II listed Registered Park and Garden Shobdon Park and effects on living conditions of nearby residents arising from noise. I have taken the reasons for refusal as putative reasons for the
4. Later in this decision, I will deal with an unsigned draft Unilateral Undertaking (UU) submitted by the appellants that would result in the cessation of poultry rearing and demolition of agricultural buildings at nearby Ledicot Lane, which is under the control of the appellants. The Council point out that the Ledicot Lane site falls outside the red line boundary of the application; consequently, it has not assessed the planning implications of development (presumably demolition works) that would be proposed in the UU for Ledicot Lane.

Reasons

The effect on the character and appearance of the surrounding area including the Grade II Listed Registered Shobdon Historic Park and Garden

5. Two of the Council's putative reasons for refusal touch on matters to be considered under this first main issue. The first alleges that the proposed development would harm the character and appearance of the landscape; the second alleges that the proposal, although within the outer edge of the listed park and gardens at Shobdon Park, would adversely affect its setting. Both reasons for refusal intertwine to a large extent with the Council claiming that there would be an adverse effect on the character and appearance of the area and conflict with policies SS1, SS6, LD1, LD4 and RA6 of the Herefordshire Local Plan Core Strategy (CS) and the Shobdon Neighbourhood Plan (NP).
6. By contrast, the appellants argue that the proposal would comprise a betterment in landscape terms by removing buildings that are of poor design and appearance and replaced by newer ones which could be successfully accommodated within the local landscape without any unacceptable landscape or visual effects upon the wider landscape character area. It points out that the proposed development would be set within a robust green infrastructure, with key landscape features such as existing woodland areas being retained and further supplemented by additional trees thereby helping to integrate the buildings of an improved design quality within the landscape.
7. In considering these conflicting views, I have had regard to the Landscape and Visual Impact Assessment (LVIA) undertaken in accordance with the document 'Guidelines for Landscape & Visual Impact Assessment – Third Edition' published by the Landscape Institute and Institute of Environmental Assessment (2013) as well as the 'Proposed Ecological Works' drawing submitted by the appellants in support of the proposal, along with my own observations made during my unaccompanied site visit. For heritage related matters, I have had regard to the appellants' Archaeological and Heritage Desk-based Assessment.
8. I deal firstly with what I refer to as general landscape matters before turning to consider heritage issues.

General landscape matters

9. The appeal proposal would clearly result in a significant change to the nature of the appeal site by reason of the enlarged development footprint and encroachment into rising land to the south although it does not automatically follow that such a change would be unacceptably harmful.
10. The LVIA fails to record the designation of the registered park and garden of Shobdon Park, which undermines the veracity of the LVIA to a certain extent. Furthermore, it assigns the wrong landscape character area designation while the Council points to the fact that a visual assessment has not been carried out from all relevant public footpaths. These shortcomings are not however fatal although this is a consequence of the Council's Landscape Officer's careful analysis and corrections which has contributed to a better understanding.
11. From what I observed principally from looking back towards the appeal site from the public footpath to the north, the wider landscape is one of undulating wooded farmland with the registered park containing areas of dense woodland

blocks and vestiges of ancient woodland. From the elevated position of PF SO20, the roofs of the existing buildings jar against the otherwise distinctive continuous woodland that occupies the full frame of this viewpoint. I agree with the Council that the existing buildings detract significantly from the otherwise continuous woodland containing a mix of species when viewed from the north. There is little doubt that the increased building footprint and further encroachment into the sloping woodland foreground would become an even greater detractor from these viewpoints. While mitigation in the form of a stand of trees behind the frontage will assist in softening the new build, this form of planting cannot be said to be amorphous and will be unlikely to connect with or integrate successfully with the existing woodland mosaics. The lack of details of levels of the site has meant that I have had to rely on my own observations and in this context, given that the land rises towards the woodland, considerable engineering operations are likely to be necessary to accommodate the proposed new buildings mass.

12. I am not persuaded by the conclusions of the appellants' landscape analysis suggesting that the scale and nature of the proposed development will be of medium landscape character sensitivity with the magnitude of change being small and thereby resulting in no material change in landscape effect. Although the existing development has taken on a level of maturity and tolerance and there are other agricultural buildings in the locality, they all represent incongruous features in this high-quality landscape, which by virtue of its listed status, represents a valued landscape in terms of the Framework.
13. Within this context, the sensitivity of the landscape to change is major to moderate while the magnitude of change that would arise would be moderate. This is significant in landscape terms. Similarly, in terms of visual effects, I have little doubt that the combination of the increased footprint of buildings, the creation of level building platforms resulting in considerable earthworks and lack of purposeful landscaping opportunities would result in significantly detrimental effects on the visual amenity of the area. In combination, the proposal would have a deleterious and unacceptable impact on landscape character and visual amenity.
14. As a consequence, the proposed development would be contrary to Policies SS1, LD1, SS6 and RA6 of the Herefordshire Local Plan Core Strategy 2011-2031 which, alongside Policy S14 of the Shobdon Neighbourhood Development Plan, collectively seek to ensure that new developments conserve and enhance environmental quality and local distinctiveness and that schemes put forward demonstrate that the character of the landscape has positively influenced site selection and conserved and enhanced important landscapes.

Heritage Issues

15. As a Registered Park and Garden, Shobdon Park does not benefit from any statutory protection, but as a designated heritage asset does fall to be considered under Section 16 and in particular, paragraphs 205-208, inclusive, of the National Planning Policy Framework (the Framework). This indicates, amongst other things, that local planning authorities should recognise that heritage assets are an irreplaceable resource and should conserve them in a manner according to their significance. The Framework defines "significance" as the value of the heritage asset to this and future generations because of its heritage interest. It explains that this interest may be archaeological,

architectural or historic, and that significance derives not only from a heritage asset's physical presence, but also from its setting.

16. The Council in its reasons for refusal at No3 expresses its concerns in respect of the proposed development's overall scale, form and location, which in its opinion, would have a significantly harmful impact on the integrity, character and setting of the Grade II listed Registered Park and Garden. This echoes the concern of the statutory national advisor English Heritage. English Heritage describe Shobdon as an important mid-18th century landscape park of national significance containing notable rococo and gothic features with both earlier and later formal gardens. The significance of the park at Shobdon is derived from the designated landscape setting itself, and of the important listed buildings and scheduled ancient monuments situated within. Although Shobdon contains a number of Grade 1 and Grade 2* listed buildings and two scheduled ancient monuments (SAMs) of national significance, I would agree with the appellants that the appeal development would have no effect upon the setting of those heritage assets.
17. The appellants focus on the fact that the existing buildings at the appeal site pre-date the listing of the registered park and garden and that the appeal farm complex is located on the margins of this heritage asset and can no longer be read as legible components of the historic asset and certainly not the listed structures or SAMs. Notably however, the designation of Shobdon Park did not exclude the appeal site, which suggests to me that the integrity of the wider landscape was an important factor and importantly, a retrievable one. As noted in the previous section, the character is much degraded by the appeal site buildings and other existing sporadic agricultural buildings. Although there is little physical and visual connection with existing listed and scheduled structures, the landscaped park continues to be appreciated by the network of footpaths and lanes that run within and which circulate the Park. The historic landscape contributes to further the better understanding of the heritage assets of Shobdon, their relationship with one another and set within this designated landscape.
18. I consider that the surrounding landscape represents several layers of a rural estate, from the Rococo-Gothic Church of St John the Evangelist, its formal 18th and 19th century gardens, the medieval motte castle later integrated into the wider 18th century landscaped designed park as well as a number of other listed buildings and within which the appeal site lies. There is sequential relationship between these elements which is not simply about visual connectivity, but also about historic connectivity. There is a clear design intention at Shobdon Park and the landscape is important in telling the story of this 18th century rural estate.
19. The proposal would result in approximately doubling in the area of the poultry buildings which would lead to an unacceptable intensification by industrial-agricultural buildings cutting into the landscape. This would lead to a further erosion to the integrity and character of the designed listed Park. Further, the proposed two storey dwelling would be taller and appear more prominent in the landscape. The appeal development would therefore cause harm to the significance of the heritage asset derived from the designed landscape setting containing significant historic interest as noted above.

20. Consequently, the proposed development would cause harm to the significance of the Registered Park and Garden at Shobdon contrary to Policy LD4 of the CS and Policy S14 of the NP, which seek amongst other things to protect, conserve and enhance heritage assets and settings thereof in a manner appropriate to their significance while also ensuring that the character of the landscape positively influences site selection.
21. Having found harm to the significance of a heritage asset, the Framework suggests that great weight should be given to such harm. I have concluded that in accordance with paragraph 208 of the Framework, the harm would be less than substantial and consequently, should be weighed against any public benefits arising from the development. The appellants have not identified any potential such public benefits. Although the proposal would inevitably lead to a more modern operation leading to a potentially more manageable effluent discharge and possible improvements to noise and odour release, together with enhanced modern architectural design for the buildings, these would be necessary mitigating factors of any development proposal and do not weigh heavily in terms of public benefits. As a consequence, the harm to the significance of the heritage asset would not be outweighed by other factors.

Impact on SSSI and Biodiversity

22. CS Policy SD4 relates specifically to wastewater treatment and river water quality. It seeks to ensure that water quality targets for rivers within the county are maintained. Further, the policy requires that permission may only be granted after having ascertained that it will not affect the integrity of the European site. The site lies within an ecologically sensitive area lying within 2km of the River Lugg SSSI which is within the catchment area of the River Wye SAC and SSSI. It is understood that the River Lugg is experiencing significant pressure from pollutants, with the present levels of phosphates exceeding water quality objectives, which in turn significantly impacts on the River Wye. The Council has undertaken a Habitat Regulations Assessment (HRA) as required by the Conservation of Habitats and Species Regulations 2017 and EC Habitats Directive 92/43/EEC. As competent authority, I would be charged with undertaking an Appropriate Assessment under the Habitat Regulations were I in a position to grant planning permission.
23. The Council acknowledges that in terms of biodiversity interest and having regard to submissions from an ecologist at application stage and subject to biodiversity enhancement mitigation, there would be no net loss in biodiversity value. Similarly, it was accepted that subject to safeguarding conditions in respect of bat mitigation and avoidance measures, the proposal would not cause unacceptable adverse effects on bats or other protected species.
24. Notwithstanding, the Council identified that the development would have the potential to cause impacts on the above-mentioned designated sites in terms of water quality on the basis of run off of livestock manure/dirty water and from foul water from the proposed dwelling and farm welfare facilities carrying phosphate/nitrogen discharging into watercourses and hence into the River Wye SAC. In addition, the proposed poultry units have the possibility to give rise to impacts from air-borne ammonia emissions on surrounding land that feed into watercourses and hence to the River Wye SAC.
25. The Council predict that the proposed new dwelling and welfare facilities are unlikely to result in significant effects on the River Wye SAC or have an adverse

effect on the integrity of the SAC primarily as they either comprise replacement facilities or are drained to more sophisticated drainage systems.

26. Turning to the proposed new poultry buildings, the appellants explain that the proposal is linked to an intention to decommission another poultry enterprise at Ledicot Lane, some 1 mile to the south-east of the appeal site. Whilst the proposed enterprise would see an increase in the number of birds kept at the appeal site, this would be balanced out in the decommissioning process meaning that overall, the numbers would not increase. The Council concedes that the new operation at the Park Top would be likely to result in a slight betterment in both aerial impacts, manure volumes and dirty water volumes. However, it remains concerned that manure management has not been satisfactorily resolved. Presently, all manure associated with both the Ledicot Lane and Park Top enterprises are disposed of through the appellants' anaerobic digester plant at Shobdon airfield. The manure management protocol and the volumes of the manure generated would remain unchanged by the appeal proposal following the decommissioning of the Ledicot Lane enterprise.
27. The Council believes that the appeal site should be considered alone as 'the project' for the purposes of Habitats Regulation Assessment (HRA). Its calculations on likely ammonia emissions arising from the increased throughput of poultry at the new poultry buildings as well as an increase in manure tonnage and dirty water volumes to be treated at the anaerobic digester facility have not been challenged by the appellants. Instead, the appellants rely on mitigation explained above in order to offset these emissions and additional volumes.
28. The appellant has submitted a draft Section 106 Unilateral Undertaking (UU) proposing that the operations at Ledicot Lane cease and the poultry buildings demolished prior to either first occupation of the proposed dwelling or operation of the first building the subject of appeal, whichever is sooner. The UU remains unsigned and incomplete. While the principle of a legal undertaking also finds some support from the Council, it remains concerned that the mechanism by which this would occur would be legally insecure on the basis that the demolition of buildings outside the application red line boundary have not been the subject of the usual publicity requirements and did not feature in the ecological assessment or technical reports associated with the application. Moreover, the Council believes that separate planning permission would be necessary for operational development comprising demolition, which further adds to uncertainty.
29. I do not share this pessimism about the security of the mitigation that would arise in this case and am surprised that the Council did not fully engage to resolve this issue during the application, particularly as the application was presented to overcome the Council's previous refusal of planning permission with a key plank being the UU. Demolition of the Ledicot buildings would be permitted development and subject only to prior notification rather than planning permission, which would enable the Council to be satisfied as to the method of demolition and site restoration. From what I have gleaned from the wording of the draft UU, there would be nothing to prevent the Council controlling poultry numbers. The section 106 process would not, in my view, necessarily require the Ledicot Lane buildings to form part of the red line planning application boundary. Moreover, and according to the appellants, the

proposed operation would result in a small decrease in poultry waste tonnage although would not change the digestate distribution and spreading operation or quantity that occurs at present. All the above to my mind heavily influenced the HRA and AA undertaken on behalf of the Council with the Council's interpretation of permitted development rules and setting to one side the opportunity afforded by a section 106 Obligation to deal effectively with land outside the application boundary given undue weight by Natural England.

30. In reaching a view as to acceptability of the spreading of the digestate, I note the reference by the appellants to the Judicial Review proceedings¹ involving a poultry unit at Wern Halog Farm, Llanfarred, Builth Wells where it was held that the operator was entitled to proceed on the basis that the third-party anaerobic digester plant was subject to its own (regulatory) regime. A third-party objector points out that the decision of the High Court to refuse to bring the case to judicial review may be subject to further challenge and that this should reduce the weight to be attached to this case in the context of this appeal. For the time being, the relevance of those proceedings to the present appeal is that given planning permission exists for the processing of manure at the anaerobic digester (AD) at Shobdon, which is also subject to Environment Agency's Environmental Permit regime, and that there would no increase in poultry waste tonnage subject to appropriate safeguards through UU obligations and planning conditions, there would be no requirement to consider impacts arising from the AD plant nor indeed the treated manure spreading processes that emanate at this site.
31. Turning to potential impacts arising from air-borne ammonia emissions, the appellants' modelling of processes at the appeal site and Ledicot Lane in combination would be lower following commissioning of the single development at the appeal site. The modelling exercise undertaken by the appellants also suggests that the process contributions to the annual mean ammonia concentration and nitrogen deposition rates would fall below the Environment Agency lower percentage thresholds of the relevant 'critical level' or 'critical load' standards at all sites considered including the SAC and SSSI. Despite a lowering of concentrations, the processes at the appeal site would still exceed the critical level in relation to annual mean ammonia concentrations at the very closest part to SSSI. Whilst the appellants claim that the magnitude of the exceedance at the SSSI would be significantly reduced, which amount to a betterment in terms of ammonia emissions impacts overall, I am unable to see that the modelling undertaken by the appellants has taken account of omissions arising from clean-out of buildings, which has the potential to worsen air borne pollution levels. I particularly note the effects of air pollutants probably arising from the numerous poultry enterprises that appear to have impacted on the avenue of trees at Shobdon Arches some 300m or so from the appeal site.
32. Having regard to the above findings, and despite the opportunity to satisfactory conclude the UU, the proposed development may still have the potential to give rise to additional impacts on the integrity of Protected Sites. As the competent authority under the Habitats Regulations, there remains a degree of uncertainty from the evidence on what the effects would be on the Protected Sites and how they would be reduced and minimised through design. Had I not found harm to designated heritage assets in the manner as explained in the

¹ Judicial Review Proceedings CO/1512/2022 [2022]

first main issue, I would have undertaken an Appropriate Assessment; I have not done so given these findings. Consequently, I am also not satisfied that the proposed development would comply with policies SS1, SS6 and LD2 of the CS and the Framework. These policies seek amongst other things to avoid harm to sites of European significance by permitting development only where the conservation status can be protected by conditions and appropriate mitigation and requiring new biodiversity features and wildlife habitats. The conservation status of the River Lugg SSSI and River Wye SAC remain for the time being at critical exceedance levels in terms of nitrogen and ammonia levels.

Planning balance and overall conclusion

33. I have found that the appeal development would cause less than substantial harm to the significance of a designated heritage asset. I have undertaken the balance as set out in paragraph 208 of the Framework and in the context of paragraph 205, which makes it clear that in considering the impact of development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. I found that the appellants underplayed the significance of this heritage asset of national importance to a remarkable degree. There was an absence of identifiable public benefits that would outweigh the identified harms.
34. Although there is certainty on the mitigation measures that could be secured by way of a properly executed planning obligation, the scheme remains in conflict with the Habitats Regulations, the Framework and policies of the development plan that are relevant to biodiversity matters. The scheme would deliver ecological and biodiversity enhancements as negotiated by the Council but would lead to unacceptable harm to protected species.
35. I am required to determine the proposal in accordance with the development plan unless material considerations (which include the Framework) indicate otherwise. The harms to both the heritage asset and protected species that have been identified and which conflict with the development plan would significantly and demonstrably outweigh the benefits that would arise from the scheme.
36. Accordingly, I conclude that the appeal be dismissed.

Gareth W Thomas

INSPECTOR