



Appeal Decision

Site visit made on 10 April 2024

by Alison Partington BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 May 2024

Appeal Ref: APP/P2365/W/23/3324305

Bungalow Farm, Heaton's Bridge Road, Scarisbrick, Lancashire, L40 8JQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for 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 Smithy Mushrooms Limited against West Lancashire Borough Council.
- The application Ref is 2022/0769/FUL.
- The application sought planning permission for the construction of a mushroom farm in conjunction with the agricultural business, Smithy Mushrooms Limited, to include portal frame buildings, car parking, hardstanding and sustainable drainage system without complying with conditions attached to planning permission Ref APP/P2365/W/21/3269788, dated 22 November 2021.
- The conditions in dispute are Nos 2, 3, 5, 6, 8 and 18 which state that:
 - No 2 – "The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan - SK.32.3 - 19/07/19; Site Layout Plan - Proposed - SK.32.2E - 19/07/19; Plans as proposed - SK.0.1F - 28/11/19; Elevations as proposed - SK.0.2B - 26/07/19; Proposed Site Access Plan - VN81164-D104 - 12/11/2020; Swept Path Analysis, Articulated Vehicle - VN81164-TR102 - 12/11/2020."
 - No 3 – "The materials to be used on the external surfaces of the development (brickwork, cladding and roofing materials along with materials used in any hard surface) shall be as outlined on the planning application form."
 - No 5 – "Prior to the buildings hereby approved being brought into use, surface water drainage shall be carried out in accordance with the submitted FRA (EPG8954FRA-01 25/03/19 Rev 4.0) & Below Ground Drainage Strategy (EPG-8954-RPDS-01 25/03/19 Rev V 4.0). Thereafter the drainage scheme shall be managed and maintained in accordance with the maintenance measures identified."
 - No 6 – "Notwithstanding the details provided in the Below Ground Drainage Strategy by Environmental Protection Group (reference EPG -8954-RP-DS-01; dated 25/03/19), the development hereby permitted shall not be commenced until such time as a scheme to dispose of foul drainage has been submitted to, and approved in writing by, the local planning authority. The scheme shall be implemented as approved, prior to the buildings being brought into use."
 - No 8 – "No development, other than works to implement the access, shall begin until the access and road have been implemented in accordance with the Proposed Access Layout drawing numbers VN81 164-D104 (including visibility splays measuring 2.4m x 160m in both directions) and VN18 164-TR102 and constructed in accordance with the Lancashire County Council Specification for Construction of Estate Roads to at least base course level, and all construction vehicles shall enter and leave the site from the new site access."
 - No 18 – "The development hereby permitted shall not be brought into use until a scheme detailing the proposed lighting (including all floodlighting, external building lights and car park lighting) to be installed on the site has been submitted to and approved in writing by the local planning authority. All external lighting shall be

implemented in accordance with the agreed details and maintained and retained for the life of the development.”

- The reasons given for the conditions are:
 - No 2 – “to provide certainty.”
 - No 3 – “in the interests of the character and appearance of the area.”
 - No 5 – “to ensure that the local environment is protected from flooding.”
 - No 6 – “to ensure that foul water is satisfactorily disposed.”
 - No 8 – “to ensure highway safety.”
 - No 18 – “to ensure that there is no significant harm to character and appearance or the living conditions of local residents.”
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Decision

1. The appeal is allowed and planning permission is granted for the construction of a mushroom farm in conjunction with the agricultural business, Smithy Mushrooms Limited, to include portal frame buildings, car parking, hardstanding and sustainable drainage system at Bungalow Farm, Heatons Bridge Road, Scarisbrick, Lancashire, L40 8JQ in accordance with the application Ref 2022/0769/FUL, without compliance with condition numbers 2, 3, 5, 6, 8, and 18 previously imposed on planning permission Ref APP/P2365/W/21/3269788 dated 22 November 2021 and subject to the conditions set out in Annex A.

Application for costs

2. An application for costs was made by Smithy Mushrooms Limited against West Lancashire Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The appellant has stated that due to the delays in obtaining a signed S278 agreement from the local highway authority (LHA), permission was obtained in November 2022 from the LHA for a temporary access to the site to enable construction to commence. Due to this, the application was amended to include the construction of the temporary access. However, the S278 agreement has now been obtained, the approved access has been constructed and the temporary access has been closed. As a result, the temporary access no longer forms part of the appeal.

Background and Main Issue

4. Permission was granted on appeal¹ in November 2021 for the development of the site for a mushroom farm as set out in the description in the above banner heading, subject to various conditions. This included a condition (No 2) which required the development to accord with a number of approved plans that are listed in the condition. Implementation of this permission has commenced on the site.
5. This application seeks to amend the proposed design of the incubation and growing room element of the mushroom farm to exclude the portal framed buildings that would have covered the polytunnels in which the mushrooms were to be grown. As a result of the proposed changes the incubation and growing area would now consist solely of polytunnels. Revised plans show the proposed change to the design. In addition, updated air quality, drainage, flood

¹ Appeal reference APP/P2365/W/21/3269788

risk and lighting strategies have been submitted which take account of the revised design. These require a number of other conditions, which refer to these documents, to be amended.

6. Although the application was considered by the Committee of the Council responsible for planning on a number of occasions, each time it was deferred for various reasons. The appeal was then submitted against the non-determination of the application. The Council's appeal statement outlines the reason the application would have been refused had the appeal not been submitted. I have had regard to this putative reason for refusal in my consideration of the appeal.
7. In the light of the above, the main issue in the appeal is the effect of the amended design on ecology.

Reasons

8. The appeal site is within 2.5km of the Martin Mere Special Protection Area (SPA), Ramsar and the Martin Mere, Burscough Site of Special Scientific Interest (SSSI) and within 9.5km of the Ribble and Alt Estuaries SPA and Ramsar and Ribble Estuary SSSI. The importance of the former is as a refuge for a large and diverse wintering, passage and breeding bird community, whilst the latter supports populations of waterfowl and seabirds in winter and the sand dunes support vegetation communities and amphibian populations of international importance.
9. In allowing the previous appeal on the site, the Inspector concluded that having undertaken the appropriate assessment, and being satisfied that methods of mitigation could be secured by condition, the development would not adversely affect the integrity of the nearby protected sites.
10. Condition 18 attached to the planning permission for the development required the submission of a scheme detailing the proposed lighting to be installed on the site to be submitted and approved prior to the development being brought into use. The Council's evidence shows that this condition has been discharged. As such, it was clearly considered the lighting scheme would not have an adverse impact either on ecology, or to nearby residents.
11. Some of the proposed lighting would have been attached to the portal framed buildings that under the appeal scheme would no longer be constructed. As a result, a revised lighting scheme was submitted with the appeal which showed the lighting so affected being provided on steel columns instead. The Council's Committee reports indicate that this revised lighting scheme had been assessed by both Environmental Health and the Merseyside Ecological Advisory Service (MEAS) and considered to be acceptable.
12. In addition, MEAS also assessed the updated shadow Habitats Regulation Assessment² (HRA) submitted by the appellant, which included the revised elements of the proposal. This concluded that the proposed changes, which would not alter the footprint of the proposal, would not have any additional HRA impacts. It is indicated in the Committee report that MEAS accepted the shadow HRA and confirmed that the application remains HRA compliant.

² Shadow Habitat Regulations Assessment undertaken by The Environment Partnership (dated October 2022)

13. There have been no changes to the lighting scheme since it was submitted and assessed by the Council's technical advisors and considered acceptable. I note also that the reasons given by the Council for the conditions suggested relating to external and internal lighting do not relate to ecology but to the living conditions of nearby residents.
14. The shadow HRA concluded that the development of the site could have a significant effect upon the important interest features of the four internationally designated sites either alone, or in combination with other projects or plans, due to the loss of habitat functionally linked to the sites by being used for foraging by overwintering birds. So, an appropriate assessment is necessary.
15. The shadow HRA proposes mitigation to ensure that there will not be a significant impact and indicates that consideration should be given to adequate screening along the site boundaries. This should include tree and hedgerow planting as well as 2m high fencing during the duration of the construction phase and until the boundary landscaping has matured to the extent that it provides acceptable natural screening. It was previously considered that this screening would not harm the character and appearance of the area, and as there has been no change to this, I agree with this conclusion.
16. I am satisfied that this mitigation could be effectively secured by condition, and having undertaken the appropriate assessment, I am satisfied that the revised scheme would not adversely affect the integrity of nearby protected sites.
17. The Council has raised concerns about the potential impact of lighting within the polytunnel themselves. However, the appellant has stated that their mushrooms are grown in the dark so the only lighting within the tunnels would be used when harvesting the mushrooms, which would be done in normal operating hours. Moreover, to prevent light entering the polytunnels they are made from a thick "black out" material that would also prevent any internal light being seen outside of the tunnel. Given this I am satisfied that any necessary internal lighting would not have any adverse impact on ecology or nearby residents.
18. Therefore, I consider that the amended design would not have an adverse impact on ecology. Consequently, it would accord with Policy EN 2 2 of the *West Lancashire Local Plan 2012-2027 Development Plan Document (adopted October 2013)* (LP) which requires that developments are accompanied by the appropriate surveys and reports to assess their impact on priority species and habitats.

Other Matters

19. The application was accompanied by an updated Flood Risk Assessment and Drainage Strategy. These address the revised design but do not result in any significant alteration to the already approved schemes. Nor do the changes result in any change to the amount of permeable and impermeable areas on the site. The updated reports were assessed by the Council and various statutory consultees including the Lead Local Flood Authority and the Environment Agency, none of whom raised any objections to the proposed changes, despite the revised Strategic Flood Risk Assessment for the borough. From what I have seen and read I see no reason to conclude differently.

20. Whilst I note the concerns of various third parties regarding the operation of the approved drainage strategy that has been implemented on the site, the proposed changes do not significantly alter this and so the principle of this strategy is not a matter before me.
21. A significant number of concerns have been raised by third parties regarding the adequacy of the access, highway safety and capacity, the potential for waste water to contaminate the soils and water table, construction methods utilised and issues they have experienced during the construction period, whether the appellant has complied with other conditions on the planning application, the loss of trees on the site and the principle of the development in this location. However, none of these are matters that are affected by the proposed changes to the design under consideration in this appeal and so are not matters that are before me. Any alleged breaches of conditions on the extant permission would be a matter the Council would need to investigate in the first instance.
22. In addition, the proposed change to the design, reduces the height of that part of the development. This would slightly reduce the overall visual impact of the proposal on the landscape, which was in any case considered acceptable previously. Whilst it has been suggested that the polytunnels have already been constructed in advance of the application/appeal being determined, the appellant has confirmed that the polytunnels formed part of the extant permission with the only change now being that they would no longer be within a portal framed building.
23. Although the polytunnels would no longer be enclosed within a building there is no compelling evidence to show that the polytunnels would leak spores and / or cause any problems to human health. In fact, the appellant has stated that the polytunnels would still be airtight and sealed, even though not within a building. The factsheet provided regarding potential health hazards in commercial mushroom growing relates specifically to workers on such farms and so does not indicate that there are risks for people living in the vicinity of such farms.
24. It was previously determined that the development, which includes mushroom growing and log production, met the definition of agriculture, and this is not changed by the appeal scheme. In any case the principle of the development is not before me in this appeal as the proposed changes do not impact on this.

Conclusion and Conditions

25. For the reasons set out above, I conclude the appeal should be allowed. I have therefore granted a new permission which replaces the disputed conditions with revised conditions that reflect the revised plans and technical documents submitted.
26. The *Planning Practice Guidance* makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission unless they have already been discharged. The Council have provided a list of suggested conditions which reflects the fact that a number of the original conditions have been discharged.
27. To provide certainty I have imposed condition 1 which specifies the relevant plans to which the scheme must accord. In the interests of the character and

appearance of the area and to accord with Policy GN3 of the LP condition 2 is required. For the same reason and also in the interest of ecology and to comply with LP Policy EN2 condition 6 is necessary. Also, to protect both the character and appearance of the area and ecology and to accord with Policies GN3 and EN2 of the LP, condition 12 is required. In the interest of ecology and to comply with LP Policy EN2 conditions 20 and 21 are required

28. To ensure the site is properly drained, to manage the risk of flooding and to accord with Policy GN3 of the LP conditions 3-5 are imposed. For highway safety reasons and to comply with Policies GN3 and/or IF2 of the LP, conditions 7-11 and 22 are necessary. To protect the living conditions of nearby residents and to accord with LP Policy GN3 conditions 13-19 and 23-24 are required.
29. Given my conclusions above regarding internal lighting in the polytunnels, I do not consider condition 4 suggested by the Council is necessary.

Alison Partington

INSPECTOR

Annex A

Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan drawing no. SK.32.3; Site Layout Plan - Proposed drawing no. SK.32.2F; Plans as Proposed drawing no. SK.0.1G; Elevations as Proposed drawing no. SK.0.2C; Proposed Site Access Plan drawing no. VN81164-D104; Swept Path Analysis, Articulated Vehicle drawing no. VN81164-TR102; and Proposed external lighting layouts and lux plots drawing no. 019.040.E016 rev P2
- 2) The materials to be used on the external surfaces of the hereby approved portal framed buildings (brickwork, cladding and roofing materials) along with materials used in any hard surface shall be as outlined on the planning application form submitted under application reference 2019/0747/FUL.
- 3) Foul and surface water shall be drained on separate systems.
- 4) The development hereby permitted shall not be brought into use until the surface water drainage has been carried out in accordance with the submitted Flood Risk Assessment EPG-8954-FRA-01 Rev 5.0 (June 2022) & the Below Ground Drainage Strategy EPG-8954-DS-RP-01 Rev 5.0 (30 June 2022). Thereafter the drainage scheme shall be managed and maintained in accordance with the maintenance measures identified.
- 5) Foul water shall be drained in accordance with the scheme as approved in writing by the local planning authority under application reference 2022/0211/CON. The scheme shall be implemented as approved, prior to the buildings being brought into use.
- 6) The development shall be implemented fully in accordance with the mitigation strategies described in: Shadow Habitats Regulation Assessment (ref:8076.01.001 Version 1, TEP, October 2022); Badger Survey- Land at Smithy Mushrooms, Pennine Ecological, 27th April 2020; and Water Vole Survey- Land at Smithy Mushrooms, Pennine Ecological, 27th April 2020.
- 7) The development hereby permitted shall not be brought into use until the access and road have been implemented in accordance with the Proposed Access Layout drawing nos. VN81164-D104 (including visibility splays measuring 2.4m x 160m in both directions) and VN81164-TR102 and constructed in accordance with the Lancashire County Council Specification for Construction of Estate Roads to at least base course level. All construction vehicles shall enter and leave the site from the new site access.
- 8) The development hereby permitted shall not be brought into use until the areas for the movement, loading, unloading and parking of vehicles have been provided, constructed and surfaced in accordance with the approved plans. These areas shall be retained as such at all times thereafter.
- 9) The development hereby permitted shall not be brought into use until the land between the existing highway boundary and the visibility splays indicated on the approved plan VN81164-D104 (visibility splays measuring 2.4m x 160m in both directions) has been cleared of all

obstructions exceeding 1 metre in height. The land shall be so maintained thereafter at all times that the development is in use/operation.

- 10) The development hereby permitted shall not be brought into use until the scheme for cycle and motorcycle parking as approved in writing by the local planning authority under application ref: 2022/0211/CON has been implemented in accordance with the agreed details. Thereafter the cycle and motorcycle parking shall be maintained and retained for the life of the development.
- 11) The development hereby permitted shall not be brought into use until the scheme for Electric Vehicle Charging Points as approved in writing by the local planning authority under application ref: 2022/0211/CON has been implemented in accordance with the agreed details. Thereafter it shall be maintained and retained for the life of the development.
- 12) The development hereby permitted shall not be brought into use until the landscaping scheme as approved in writing by the local planning authority under application ref: 2022/0211/CON has been implemented in accordance with the agreed details.

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

- 13) The rating level of noise from deliveries, internal activities and plant/machinery shall not exceed 41dB LAeq at the boundary of any nearby residential premises between the hours of 0700hrs and 2300hrs and 24 dB LAeq, between the hours of 2300hrs and 0700hrs on any day. All measurements and assessments shall be done in accordance with BS4142:2014+A1:2019 Method for rating and assessing industrial and commercial sound.
- 14) There shall be no diesel powered vehicle/trailer mounted refrigeration units operated on stationary vehicles. Vehicle/trailer mounted refrigeration units must be connected to an electrical supply if required to power the unit. There shall be no vehicle/trailer mounted refrigeration units operated outside the hours of 0600hrs to 1900hrs on any day, whether or not on an electrical supply.
- 15) Any sound produced by reversing alarms or indicators on vehicles on the site (other than delivery vehicles) shall not be clearly distinguishable above background noise at the boundary of any nearby residential premises.
- 16) Heavy Goods Vehicles shall not enter or leave the site outside the hours of 0600hrs to 1900hrs on any day.
- 17) The development shall be carried out in accordance with drawing no 019.040.E016 rev P2 Proposed external lighting layouts and lux plots. No additional external lighting shall be installed on the land and buildings without the prior approval in writing from the local planning authority. The development shall be carried out in accordance with any approved lighting scheme and retained as such thereafter.

- 18) The development hereby permitted shall not be brought into use until the biomass boiler has been installed and is operational in accordance with the scheme approved in writing by the local planning authority under application reference 2022/0211/CON. It shall thereafter be retained, maintained and operated to the approved specification.
- 19) No manure or other based substrate not detailed in the planning application shall be used for the growing of mushrooms unless and until, a further odour assessment has been first submitted to, and approved in writing by, the local planning authority.
- 20) The development shall be implemented in accordance with the Ornithological Watching Brief approved in writing by the local planning authority under planning reference 2022/0211/CON.
- 21) High disturbance works must be temporarily suspended if local temperatures (as recorded by nearest Met Office data and/or available site specific measurements) are below zero degrees centigrade for a period of 7 consecutive days, and remain suspended until temperatures reach above zero degrees centigrade for a period of 3 consecutive days. The relevant nature conservation bodies should be informed of when works are suspended and re-commenced.
- 22) The development shall be implemented in accordance with the Construction Management Plan approved in writing by the local planning authority under application reference 2022/0211/CON.
- 23) Only mushrooms grown at the application site hereby approved or at Smithy Mushrooms Limited, 229 Smithy Lane, Scarisbrick shall be packed on the application site.
- 24) The development hereby permitted shall be carried out in accordance with the Air Quality Assessment (Miller Goodall Ltd report no. 101986 Version 3).