



Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 02/03/20

gan Mr A Thickett BA(Hons) BTP Dip
RSA MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 20.04.2020

Appeal Decision

Site visit made on 02/03/20

by Mr A Thickett BA(Hons) BTP Dip RSA
MRTPI

an Inspector appointed by the Welsh Ministers

Date: 20.04.2020

Appeal Ref: APP/H6955/A/19/3242966

Site address: Cinders Farm, Cinders, Ruabon, LL14 6HL

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- 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 Soaltar Ltd against the decision of Wrexham County Borough Council.
 - The application Ref RUA P/2019/0455, dated 12 June 2019, was refused by notice dated 7 October 2019.
 - The application sought planning permission for the erection of four agricultural buildings for rearing livestock (poultry), ancillary buildings and plant, associated infrastructure, landscaping and access arrangements without complying with a condition attached to planning permission Ref RUA P/2018/0577, dated 4 March 2019.
 - The condition in dispute is No. 19 which states that:
Subject to the exceptions detailed separately in this condition, all works in relation to the implementation of this permission, including deliveries to or from the site shall be undertaken only between the hours of 07:30 and 18:00 Monday to Friday, and 08:00 to 14:00 on a Saturday and at no time on a Sunday, Bank or Public Holiday. Vehicles associated with the delivery or collection of the birds shall be allowed to be on site from 06:30 hours with loading and unloading taking place from 07:00 hours. The removal of manure from the site shall not take place on Saturdays, Sundays, and Bank or Public Holidays.
 - The reason given for the condition is:
To protect the amenities of the occupiers of nearby properties.
-

Decision

1. The appeal is allowed and planning permission is granted for the erection of four agricultural buildings for rearing livestock (poultry), ancillary buildings and plant, associated infrastructure, landscaping and access arrangements at Cinders Farm, Cinders, Ruabon, LL14 6HL in accordance with the application Ref RUA P/2019/0455, dated 12 June 2019 without compliance with condition number 19 previously imposed on planning permission Ref RUA P/2018/0577, dated 4 March 2019 and subject to the conditions set out in the Schedule at the end of this decision.

Application for costs

2. An application for costs was made by Soaltar Ltd against Wrexham County Borough Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue is the impact of the removal of condition 19 of planning permission RUA P/2018/0577 on the living conditions of nearby residents with regard to noise and disturbance.

Reasons

4. Cinders Farm lies in open countryside about 1 mile east of Ruabon and roughly half a mile to the north of the A539 along a narrow country lane. In addition to Cinders Farm house there are dwellings in the vicinity of the proposed development. In March 2019 the Council granted planning permission for the erection of four agricultural buildings for rearing poultry at the farm. The reason for imposing condition 19 is stated to be to protect the amenities of the occupiers of nearby properties. Does it do this and is it necessary?
5. Circular 16/14 'The Use of Planning Conditions for Development Management' sets out 6 tests for conditions. These include, amongst others, that conditions must be necessary, enforceable and precise, I will return to necessity later. The Circular advises that a condition '*should be sufficiently precise for the applicant to know exactly what they need to do to comply with it*'. The question of enforceability follows; if the requirements of a condition are unclear or vague it will be difficult to enforce.
6. The first part of condition 19 says: '*Subject to the exceptions detailed separately in this condition, all works in relation to the implementation (my emphasis) of this permission, including deliveries to or from the site shall be undertaken only between the hours of 07:30 and 18:00 Monday to Friday, and 08:00 to 14:00 on a Saturday and at no time on a Sunday, Bank or Public Holiday*'. It is not clear to me whether this condition is meant to bite on the construction of the buildings or the operational phase or both. The '*implementation of this permission*' arguably relates only to the construction phase of the development and not to its use. In my view, this part of the condition could reasonably be construed as only relating to the times at which the builders could work and accept deliveries.
7. Read in that light the middle section relating to the delivery and collection of birds becomes meaningless as it does not say when loading and unloading may not take place. The last sentence is clear with regard to weekends and bank holidays but, in my view, does not preclude the removal of manure at any hour of the day or night on weekdays. In my view the condition is poorly drafted and fails the precision and enforceability tests.
8. I am satisfied that it is reasonable and necessary to place controls on the construction phase and to prohibit the removal of manure at weekends and bank holidays. That leaves the question as to whether controls on the hours of the other parts of the operation are necessary?
9. The original application was accompanied by an Environmental Statement (ES). The ES considered the impact of the development on the living conditions of surrounding residents in relation to traffic movements and noise impact. The ES concluded that the operation could occur, including night time bird collection and deliveries, without causing adverse impacts on those living nearby. The assessment included noise sensitive receptors near the site and along the route proposed to be taken by HGVs serving the operation. A baseline survey was undertaken and the noise generated by HGV movements was predicted based on the number and time of movements.

10. According to the ES, in the 48 day poultry rearing cycle there would be around 27 days without vehicle movements and 4 days when HGVs would arrive during the night. The ES goes on to conclude that although there may be up to 10 vehicle movements over the course of an 8 hour night-time period the noise impact would be negligible to minor. I have considered the argument that the impact is unknown as the operation has not yet started. However, I have seen nothing to suggest that the ES does not provide a robust empirical and reliable analysis of the impacts of the proposed development. In recommending that condition 19 be removed Council officers reported that there was no '*technical counter argument*' to question the findings of the ES or the views of statutory consultees including NRW. No new or additional technical evidence is before me and I see no reason to come to a different conclusion to the Council's officers.
11. I conclude, therefore, that a prohibition on night time movements on HGVs is not necessary to safeguard the living conditions of nearby residents and not imposing such a prohibition does not offend Policy GDP1 of the Wrexham Unitary Development Plan 1996 – 2011, adopted 2005 (UDP). I consider that it is necessary, to safeguard the living conditions of nearby residents, to limit the hours of delivery for construction traffic and preclude the removal of manure at weekends and bank holidays.

Conditions

12. The Development Management Manual states that decision notices for the grant of planning permission under section 73 should repeat the relevant conditions (which are considered necessary) from the original decision notice. As I have no information before me about the status of the other conditions imposed on the original decision notice, I shall impose all those which I consider remain relevant. In the event that some have been discharged, that is a matter which can be addressed by the parties.

Conclusions

13. In light of my findings I see no need to consider the economic or welfare aspects of the appellant's case. For the reasons given above and having regard to all matters raised, I conclude that the appeal should be allowed.
14. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards the Welsh Ministers' well-being objectives of supporting people and businesses and promoting good health and well-being for everyone.

Anthony Thickett

Inspector

Schedule

APP/H6955/A/19/3242966

Conditions

1. The development hereby permitted shall be commenced before the expiry of five years from the date of this permission.
2. The development shall only be carried out in accordance with the details shown on the approved drawing(s) numbered:
 - GM-MZ228-191 - Location Plan
 - GM-MZ228-181 - Site Layout
 - GM-MZ228-201 (A) - Livestock rearing house elevations
 - GM-MZ228-201 (B) - Livestock rearing house floor plan
 - GM-MZ228-201 (C) - Livestock rearing house roof plan
 - GM-MZ228-202 - Biomass Building Elevations
 - GM-MZ228-203 - Gatehouse Elevations
 - GM-MZ228-204 - Water Tank & Gas Tanks
 - Q9222653-KNI-205 - Generator elevations and plan
 - Q9222653-KNI-206 - Energy Dist. Building elevations and plans
 - GM-MZ228-207 - Substation Elevations and Floor Plans
 - GM-MZ228-301 - Site Sections
 - 1484.04 - Landscape/Biodiversity Proposals
 - 1484.06 Rev A - Off-site hedgerowsand as contained within the application documentation.
3. The development hereby permitted shall only be used for the purpose of a poultry rearing unit and shall not be used to house any more than 225,000 birds in total.
4. Prior to their first use on the development hereby approved a detailed specification of all facing materials shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
5. With the exception of the hedge translocation works as detailed on approved plan 1484.06 Rev A - Off-site hedgerows, soft landscaping shall be carried out in accordance with the details shown on drawing nos. 1484.04 - Landscape/Biodiversity Proposals during the first planting season and seeding season following the first use of the development hereby permitted and thereafter managed and maintained in accordance with the Landscape Management and Maintenance details specified on that drawing.
6. The soft landscaping carried out in accordance with the details shown on drawing 1484.04 - Landscape/Biodiversity Proposals shall be permanently retained throughout the lifetime of the development. Any planting or seeding becoming severely damaged or seriously diseased, is in poor physiological condition and/or is removed within the first 5 years shall be replaced during the next available planting

or seeding season by trees, hedgerow or grass species of the same specification as those originally planted.

7. Hedge translocation works as detailed on approved plan 1484.06 Rev A - Off-site hedgerows shall be carried out prior to the first use of the development hereby permitted in accordance with a detailed methodology, management and maintenance regime which has first been submitted to and approved in writing by the local planning authority. The scheme as approved and implemented shall be retained for the lifetime of the development.
8. No part of the development shall commence until a detailed Arboricultural Method Statement has been submitted to and approved in writing by the Local Planning Authority. No development or other operations shall take place except in accordance with Method Statement as is approved. The Method Statement shall include the following:
 - a) A specification for tree protection fencing and ground protection measures that comply with British Standard 5837:2012;
 - b) A Tree Protection Plan showing the location of the trees to be removed and retained with their crown spreads, Root Protection Areas, Construction Exclusion Zones, and location of protective fencing and ground protection measures accurately plotted;
 - c) A full specification for any access, driveway, path, underground services or wall foundations within retained tree Root Protection Areas or Construction Exclusion Zone, including any related sections and method for avoiding damage to retained trees;
 - d) Details of general arboricultural matters including proposed practices with regards to cement mixing, material storage and fires; and
 - e) Details of all proposed tree works, including felling and pruning.
9. No development shall take place until there has been submitted to and approved in writing by the local planning authority a scheme of great crested newt mitigation, compensatory measures and management regime. The approved scheme shall make provision for a compliance audit and report and its submission to and approval in writing by the local planning authority. Development shall be carried out in accordance with the approved scheme of great crested newt mitigation.
10. Development shall not commence until a scheme of Reasonable Avoidance Measures (RAMs) in respect of great crested newts has been submitted to and approved in writing by the Local Planning Authority. Development shall thereafter only take place in accordance with the RAMs scheme as approved.
11. No development shall take place until there has been submitted to and approved in writing by the local planning authority a Biosecurity Risk Assessment that shall include measures to address invasive non-native species. Development shall be carried out in accordance with the approved Biosecurity Risk Assessment and its measures shall be retained thereafter.
12. No external lighting shall be installed on the buildings hereby permitted until full details of the light fittings, to include the location of all external lights and all cowls/shielding have been submitted to and approved in writing by the Local Planning Authority. No lighting shall thereafter be installed on the buildings or on any part of the site other than in accordance with the details as approved.
13. Prior to first use of the development hereby approved the vehicular access shall be laid out in accordance with the details contained in drawing no. SK21685-05 Rev A

and shall provide visibility splays of 2.4 metres x 43 metres in both directions measured to the nearside edge of the adjoining highway. Within these splays there shall be no obstruction above the level of the adjoining carriageway. The splays shall thereafter be permanently retained clear of any such obstruction to visibility.

14. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking, re-enacting that Order with or without modification), no gate, fence, wall or other means of enclosure shall be erected, constructed or placed across the access within 20 metres of the highway boundary under Class A, of Schedule 2 Part 2.
15. The proposed works to the private drive, internal access, parking and turning areas shall be completed and laid out in accordance with the approved drawing no. GM-MZ228-181 - Site Layout prior to the poultry units first being brought into operation. The approved parking and turning areas shall thereafter be maintained at all times for that purpose.
16. All highways works as shown on drawing nos. SK21685-08 Rev A, SK21685-09 Rev A, SK21685-10 Rev A and SK21685-11 Rev A, SK21685-20 in relation to junction improvements, passing places and visibility splays on the A539 and Cinders Lane shall be implemented prior to the first use of the development and shall be retained in this condition thereafter.
17. No part of the development shall commence until a scheme for the comprehensive and integrated drainage of the site indicating provision for foul water, surface water and land drainage has been submitted to and approved in writing by the Local Planning Authority. In accordance with the submitted Flood Consequence Assessment & Drainage Strategy (Cinders Farm, Ruabon Environmental Statement - Volume II: Main Report Appendix 11.1), any scheme must demonstrate compliance with the latest Sustainable Drainage Systems (SuDS) Standards for Wales. The submitted details shall:
 - i) Provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of receiving ground water and/or surface waters;
 - ii) Specify the responsibilities of each party for the implementation of the SuDS scheme, together with a timetable for that implementation; and,
 - iii) Provide a timescale for implementation, management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
18. Prior to the first use of the development hereby approved, junction warning Vehicle Operated Signs (VAS) shall be erected to the east and west of the junction of Cinders Lane and the A539 junction in accordance with detail which has been submitted to and approved in writing by the local planning authority. The signage shall be installed in accordance with the approved scheme and retained for the lifetime of the development.
19. No construction deliveries shall take place outside the hours of 0730 and 1800 Monday to Friday, and 0800 to 1400 on a Saturday and at no time on a Sunday, Bank or Public Holiday.
20. Manure shall not be collected on Saturdays, Sundays or Bank and Public Holidays.

21. Prior to the commencement of the development a construction and operational traffic management plan including provision for contractor parking shall be submitted to and approved in writing by the Local Planning Authority. The plans as approved shall be fully implemented and maintained for the duration of the use hereby permitted.

Reasons

- 1 - To comply with Section 91(3) of the Town and Country Planning Act, 1990.
- 2 - To define the scope of the planning permission.
- 3, 19, 20 & 21 – To safeguard the living conditions of local residents and to ensure that the development accords with policy GDP1.
- 4 to 8, In the interests of the visual amenity of the area and to ensure that the development accords with policy GDP1.
- 9 to 12 - In order that the development makes provision for species which are protected by statute and in the interests of their habitat.
- 13 to 16 & 18 - In the interests of highway safety and compliance with policy GDP1
- 17 - To ensure satisfactory drainage of the site and to avoid flooding in accordance with policy EC13.