



Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 29/01/19

gan Iwan Lloyd BA BTP MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 14.03.2019

Appeal Decision

Site visit made on 29/01/19

by Iwan Lloyd BA BTP MRTPI

an Inspector appointed by the Welsh Ministers

Date: 14.03.2019

Appeal Ref: APP/H6955/A/18/3216674

Site address: Talwrn Farm, Talwrn Road, Legacy, Rhostyllen LL14 4ER

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 Mr Peter Molloy, Talwrn Farms Ltd against the decision of Wrexham County Borough Council.
 - The application Ref ESC P/2018/0724, dated 28/08/2018, was refused by notice dated 5/11/2018.
 - The application sought planning permission for erection of additional agricultural poultry barn building for barn egg production (to house 15,700 birds) including link to existing building and 2 no. feed silos without complying with a condition attached to planning permission Ref ESC P/2017/0053, dated 12/06/2017.
 - The condition in dispute is No 7 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 ensure a satisfactory standard of appearance of the development in the interests of the visual amenities of the area".
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Decision

1. The appeal is allowed and planning permission is granted for erection of additional agricultural poultry barn building for barn egg production (to house 15,700 birds) including link to existing building and 2 no. feed silos at Talwrn Farm, Talwrn Road, Legacy, Rhostyllen LL14 4ER in accordance with the application Ref ESC P/2018/0724 dated 28/08/2018, without compliance with condition number 7 previously imposed on planning permission Ref ESC P/2017/0053 dated 12/06/2017, and subject to the conditions in the schedule below.
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Background and Main Issue

2. Planning permission has been granted on appeal¹ for the erection of a building for egg laying in 2015. A second building was granted permission in 2017. Both buildings have been built and are linked. Planning conditions restrict the delivery/collection times of birds from the site and excludes deliveries on Sundays and Bank Holidays. The appellant has sought to change the times when the delivery/collection of birds occur to 24 hours a day and to remove the bank holiday restriction. The application was refused permission on the basis that traffic in the night and early hours of the morning would disturb residents.
3. The appellant has appealed this refusal and the main issue is the effect of removing the condition would have on the living conditions of nearby residents in relation to noise and disturbance.

Reasons

4. The site is located in the countryside and is adjoined by agricultural land and an electricity generating station to its south-west. Residential properties lie to the east on Talwrn Road, and to the north of the junction of Talwrn Road and Smithy Lane and on Bronwylfa Road to the north of the appeal site.
5. The enterprise operates an annual flock cycle with birds housed for 48 weeks in the buildings with 4 weeks left to clean and prepare the buildings for the next flock of birds. The birds are delivered at the beginning of the flock cycle and are collected at the end of the 48-week period. The appellant contends that this equates to 4 lorries delivering the birds and 4 lorries collecting the birds per year. The appellant also seeks to lift the bank holiday restriction. The eggs are collected for use as a culture medium for the flu vaccine and must be delivered within 3 days. The bank and public holidays impair the shelf life of the egg over long weekends such as Christmas and Easter.
6. The request to change the delivery/collection times is based on animal welfare requirements from the RSPCA which suggests that collection is undertaken at night or in the early hours of the morning when birds are resting. The delivery/collection period for the birds is governed by the flock cycle of the enterprise and 4 delivery and 4 collection lorries per year would not change the intended frequency of visits for this purpose. The change would arise from the arrival and departure times of vehicles which could be in the early hours of the morning because of animal welfare issues concerned with the delivery and collection of birds.
7. The Inspector dealing with the previous appeal noted that the movement of vehicles at 06:30 hours has the potential to disturb residents. However, the frequency of visits by lorries for this purpose was considered insignificant and that noise from this activity would be insufficient to cause an unacceptable level of disturbance to residents. The condition was imposed to ensure that restrictions on delivery/collections times were imposed. However, the rate of vehicles visiting the enterprise for the purposes of bird delivery/collection is not changing and this was previously considered acceptable because an appeal approval and subsequent permission establishes this point. The timing of the visits, in my view, would not significantly change or make worse the effect on living conditions given the distance from the appeal site to neighbouring properties, the low occurrence of the event during the whole year, and the necessity to load/unload the birds so as not to prolong the process for animal welfare reasons.

¹ APP/H6955/A/14/2228984

8. I have carefully considered the representations from residents on this appeal, but I have no compelling evidence to persuade me that this change in the timing of the visits would cause an unacceptable level of disturbance to residents for the reasons I have outlined above. The Council proposes to limit deliveries and collections to after 1400 on Saturdays and at no time on Sundays and or Bank or Public Holidays. The appellant has not opposed this suggestion and I consider it proportionate and necessary in the circumstances.
9. Turning to the proposal to change the egg collection period. The planning report on 5/11/2018 notes that collection is limited to two small lorries per week and that allowing bank holiday collections would result in 1-2 visits per annum. I would concur with the report that this increase would be negligible over the year and would not unacceptably affect the living conditions of residents. The Council seeks to limit egg collections on Saturdays not before 0800 or after 1400 or at any time Sundays. The appellant has not opposed this suggestion and I consider it is needed in the interests of living conditions of nearby residents.
10. Other components of the condition such as the delivery times of other materials and the collection of manure are not changing and remain unchallenged. I note the concern about shining headlights of turning lorries, but the permission includes extensive landscaping proposals and a landscaped bund, and these matters will assist in filtering these impacts. I also acknowledge the constrained highway network along parts of the route to the site, however, the Council has not refused permission on this basis and the previous Inspector and subsequently the Council in allowing the second building has considered that the flow of traffic from the development would not be detrimental to highway safety.
11. I consider that that the development would not conflict with Wrexham Unitary Development Plan Policy GDP1(f). I conclude that the effect of removing the condition would not harm the living conditions of nearby residents in relation to noise and disturbance.
12. The appeal is allowed without the disputed condition and a new planning permission is granted subject to conditions. I propose to include the Council's suggested varied condition in relation to the disputed condition and this is set out in condition 5 below. I also include all other Council suggested conditions which are still subsisting and capable of taking effect on the planning permission. All relevant reasons for the conditions are set out below.
13. I have considered the duty to improve the economic, social, environmental and cultural well-being of Wales, in accordance with the sustainable development principle, under section 3 of the Well-Being of Future Generations (Wales) Act 2015 (the WBFG Act). In reaching my decision, I have taken into account the ways of working set out at section 5 of the WBFG Act and I consider that this decision is in accordance with the sustainable development principle through its contribution towards one or more of the Welsh Ministers' well-being objectives set out in section 8 of the WBFG Act.

Schedule of conditions APP/H6955/A/18/3216674

- 1) The approved plans consist of the details shown on the approved drawing(s) numbered IP/PM/01 - Location Plan, IP/PM/02 - Site Plan A1 and IP/PM/03 - Elevations A1 and contained within the application documentation.
- 2) The building shall only be faced and refaced using materials matching those used on the existing building.

- 3) Visibility splays of 2.4 metres x 43 metres in both directions measured to the nearside edge of the adjoining highway shall be maintained at the point of access onto Talwrn Road. Within these splays there shall be no obstruction in excess of 1 metre in height above the level of the nearside edge of the adjoining highway.
- 4) The development hereby permitted shall only be used as a barn egg laying unit, as described in the application documentation.
- 5) 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 0730 and 1800 Monday to Friday, and 0800 to 1400 on a Saturday and at no time on a Sunday, Bank or Public Holiday. Manure shall not be collected on Saturdays, Sundays and Bank or Public Holidays. Egg collections shall not be made on Saturdays before 0800 or after 1400 or at any time Sundays. Bird deliveries and collections shall be permitted 24 hours a day but shall not take place after 1400 on Saturdays and at no time on Sundays or Bank or Public Holidays.
- 6) The rating level of any noise generated by air handling plant associated with the development shall not exceed the pre-existing background levels by more than 5dB(A) at any time. The noise levels shall be determined at nearby noise sensitive premises, and measurements and assessment shall be made in accordance with BS4142:2014 Methods for Rating and Assessing Industrial & Commercial Sound.
- 7) No further external lighting shall be erected until details have first been submitted to and approved in writing by the local planning authority. External lighting at the site shall thereafter only be provided in accordance with the approved scheme.
- 8) Within one month of the date of this permission a scheme detailing the protection of existing planting to be retained and the provision of new tree and shrub planting shall be submitted to and approved in writing by the local planning authority. The scheme shall include details of species, number, size of plants at the time of planting of all trees and shrubs to be planted in connection with the development and details for its management.
- 9) The development shall be carried out in accordance with the recommendations set out in the approved Construction and Operational Traffic Management Plan Ian Pick Associates dated 28 August 2018.
- 10) The planting scheme to be approved in connection with condition 8 shall be fully implemented within the first planting season following the approval of the scheme, and the scheme shall be retained permanently in association with the management plan. If within a period of two years from the date of the planting of any tree or shrub, that tree and shrub or any tree or shrub planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes in the opinion of the local planning authority, seriously damaged or defective, another tree of the same species and size as that originally planted shall be planted at the same place, unless the local planning authority gives its written approval to any variation.

Reasons for conditions APP/H6955/A/18/3216674

1. To define the scope of the planning permission.

2. To ensure a satisfactory standard of appearance of the development in the interests of the visual amenities of the area.
3. To ensure that adequate visibility is provided at the proposed point of access to the highway.
4. In the interests of defining the terms of the planning permission and amenity of the neighbouring occupiers of the site.
5. To protect the amenities of the occupiers of nearby properties.
6. To protect the amenities of the occupiers of nearby properties.
7. To ensure a satisfactory standard of appearance of the development in the interests of the visual amenities of the area.
8. To ensure a satisfactory standard of appearance of the development in the interests of the visual amenities of the area.
9. In the interests of highway safety.
10. To ensure a satisfactory standard of appearance of the development in the interests of the visual amenities of the area.

Iwan Lloyd

INSPECTOR