
Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 03/01/19

gan Richard E. Jenkins BA (Hons) MSc MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 07.02.19

Appeal Decision

Site visit made on 03/01/19

by Richard E. Jenkins BA (Hons) MSc MRTPI

an Inspector appointed by the Welsh Ministers

Date: 07.02.19

Appeal Ref: APP/H6955/A/18/3208119

Site address: Land at Mulsford Farm, Mulsford, Sarn, Malpas, SY14 7LP

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.
 - The appeal is made by Mr Huxley of D J Huxley Farms against the decision of Wrexham County Borough Council.
 - The application Ref: WOR P/2017/0799, dated 5 July 2017, was refused by notice dated 13 July 2018.
 - The development proposed is intensive poultry installation and associated works.
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Decision

1. The appeal is allowed and planning permission is granted for an intensive poultry installation and associated works on Land at Mulsford Farm, Mulsford, Sarn, Malpas, SY14 7LP in accordance with the terms of the application Ref: WOR P/2017/0799, dated 5 July 2017, subject to the conditions set out in the attached schedule.

Application for costs

2. An application for costs was made by Mr Huxley of D J Huxley Farms against Wrexham County Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The proposed development constitutes Schedule 1 development, as defined by the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017, and is therefore accompanied by an Environmental Impact Assessment (EIA). I am satisfied that the Environmental Statement, as supplemented by the associated technical assessments, provides sufficient information to effectively determine the environmental effects of the development.
 4. A unilateral undertaking submitted under the provisions of Section 106 of the above Act has been submitted by the appellant and the LPA has been provided with an opportunity to comment on this document. The effect of that obligation would be to require the provision of a scheme for a 1.5 hectare (ha) area of mitigation land for Great Crested Newts that shall be retained and managed in perpetuity. I shall set out the weight attributed to such an undertaking in the main body of the decision below.
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Main Issues

5. These are: whether the development is acceptable in principle, having particular regard to the development plan framework; the effect of the proposed development upon the character and appearance of the area, having particular regard to its siting within a designated Special Landscape Area; and whether other environmental impacts could be acceptably managed.

Reasons

6. The appeal relates to an irregular shaped parcel of land that comprises an arable field near Mulsford Farm in Sarn, Malpas. The appeal proposal seeks planning permission to erect an intensive poultry installation comprising two buildings, each measuring approximately 108.2 metres by 24.38 metres with an eaves height of 2.9 metres and ridge height of 5.58 metres. The buildings would each be capable of housing some 50,000 birds and would be supplemented by four feed silos and associated works. The development would be located within close proximity to an existing grain store and would incorporate a comprehensive landscaping scheme. The site was accessible via Mulsford Lane at the time of my site inspection, although the appeal scheme includes proposals for a new access to be provided onto Queensford.
7. The development would clearly be of substantial scale, with written representations referring to the development as being akin to an industrial use. Nevertheless, having regard to the definition of agriculture at Section 336 of the Town and Country Planning Act 1990, as amended, I am satisfied that the development clearly and unambiguously represents an agricultural enterprise. National policy set out in Planning Policy Wales (Edition 10, 2018) (PPW) and Technical Advice Note 6: *Planning for Sustainable Rural Communities* (2010) (TAN6) sets out a generally supportive approach to agricultural development. Indeed, agricultural development is considered as an exception to the general presumption against development in countryside locations. A number of representations have raised concern regarding the principle of intensive poultry farming. However, as planning policy does not differentiate such forms of development from more traditional farming practices, I consider that such concerns should be afforded limited weight in the planning assessment.
8. Broadly consistent with national policy, Policy EC3 of the adopted Wrexham Unitary Development Plan 1996 - 2011 (adopted 2005) (UDP) sets the local planning policy context for agricultural developments. Specifically, Policy EC3 states that the construction of new agricultural buildings will be permitted unless the development is materially detrimental in terms of its impact on the environment or surrounding landscape. It also goes on to state that such development should form part of an existing farm complex and take advantage of topography and other landscape features for screening. Moreover, isolated buildings should only be permitted in exceptional circumstances where there is an essential agricultural need and no reasonable alternative location for the development.
9. By specifying that agricultural development should form part of an existing farm complex, Policy EC3 clearly seeks to prevent isolated developments, not least because of the potential that such isolated developments would have on the landscape. The development proposed in this case would be remote from the appellant's main farm complex. However, I have already set out above that the development would be located within close proximity to a substantial grain store that extends some 30.42 metres by 15.24 metres, with an associated eaves height of approximately 6 metres and ridge height of some 8.15 metres. Moreover, whilst not grouped with the existing buildings at Mulsford Farm, I do not consider that the development would appear

isolated from such an established enterprise. I do not therefore consider that the development would represent an isolated form of development of the type that Policy EC3 seeks to restrict.

10. Notwithstanding this, the evidence has satisfactorily confirmed the agricultural need for the scale of development proposed, which is reflective of changing agricultural markets and the economics of production. Furthermore, having regard to the environmental impacts of the development and the effects on the living conditions of the occupiers of nearby residential properties, I am satisfied that thorough consideration has been given to the potential for the siting of such a development at alternative sites. Indeed, whilst some representations have raised concern that the alternative sites considered are limited to sites within the appellant's control, I do not consider such an approach to be unreasonable given the importance for such alternatives to represent viable and realistic options.
11. In terms of its impact on the landscape, and the character and appearance of the area more generally, it is notable that the site is located within a Special Landscape Area (SLA) as designated by the adopted UDP. Policy EC5 of the UDP sets out the policy context for developments within such designations, specifically stating that: *"Within SLAs, priority will be given to the conservation and enhancement of the landscape. Development, other than for agriculture... will be strictly controlled. Development will be required to conform to a high standard of design and landscaping and special attention will be paid to minimising its visual impact from nearby and distant viewpoints"*. In addition to this Policy GDP1 a), which sets out general development principles, states that: *"All new development should... ensure that built development in its scale, design and layout, and in its use of materials and landscaping, accords with the character of the site and makes a positive contribution to the appearance of the nearby locality"*.
12. I have already set out above that the development proposed comprises an agricultural enterprise. As such, I am satisfied that the development proposed in this case represents an exception to the 'strict control' advocated by Policy EC5. Nevertheless, the effect of the development upon the SLA, and the character and appearance of the area generally, is clearly a significant material consideration. Within this context, it is clear that the structures proposed as part of the intensive installation would be of significant scale whilst also incorporating a functional and utilitarian appearance. However, despite such factors, the buildings would clearly be agricultural in character and, in this respect, they would be comparable to many other farm buildings that characterise the rural landscape. Indeed, the agricultural character of the structures would be reinforced by the overall use of the land and the ancillary structures that include four feed silos.
13. It is clear that the buildings have been designed with a particularly low profile and I am satisfied that such a design solution would serve to minimise their visual impact. Moreover, the external finish of the building would be one of recessive nature to help assimilate the development into the local landscape which, in this case, comprises a low lying valley that slopes gently from south-west to north-east. It was also clear at the time of my site inspection that a significant proportion of the site is bounded by mature hedgerows which, when supplemented by the planting proposed as part of the development, would go some way to reduce the impact on the landscape. Indeed, the landscaping proposed would include increasing the height and the 'gapping-up' of existing hedgerows. Moreover, new native woodland planting would be undertaken to the rear of the buildings to the north-east. Such proposals would complement existing vegetation and the prevailing topography. As a consequence I am satisfied that the

development would be relatively well screened, thus minimising its visual impact from nearby and distant viewpoints in accordance with the requirements of Policy EC5.

14. There would clearly be short term effects, particularly during the construction and early implementation phases. However, as these would clearly be of a temporary nature, I do not consider that they weigh materially against the proposal. Moreover, whilst there is little doubt that the proposed development would result in a degree of visual change, I do not consider that the development would be unduly prominent or incongruous in the landscape once the full range of mitigation measures are implemented. In this respect, I concur with the content of the appellant's Landscape and Visual Impact Assessment (LVIA) which concludes that the development would not result in any significant adverse landscape or visual effects. There would clearly be some conflict with Policy GDP1a) which requires development to make a positive contribution to the appearance of the nearby locality. However, given that this policy represents a general design policy, and bearing in mind the fact that agricultural buildings are generally of utilitarian appearance, I do not consider that such conflict should be determinative to the development proposed in this case.
15. A number of concerns have been raised through the written submissions in relation to wider environmental impacts. However, concerns relating to pollution, and in particular odour, noise and river pollution, would be effectively controlled via environmental permit regulations. Pollution is clearly a material planning consideration. However, it is not necessary for the planning system to duplicate such controls, not least because nothing has been submitted to suggest that the environmental permitting regime would not effectively manage such matters. Notwithstanding this, I have not seen any cogent evidence that brings in to question the conclusions of the technical documents that support the appeal proposal, including the: *Odour Management Plan; Odour Report; Noise Management Plan; Ammonia Report; and Pollution Prevention Plan*.
16. The appeal submission is supported by a Manure Management Plan and it has been confirmed that all manure produced at the site would be exported to a local anaerobic digester, with no manure to be spread on land at Mulsford Farm, Bank Farm or Horse Mane Farm. The owners of the anaerobic digester have corroborated such arrangements and, in any event, such matters would be safeguarded through the environmental permit regime. Statutory consultees have raised no concerns regarding ammonia or air quality and the Council's Public Protection Team has not expressed any concerns in relation to odour, noise or air quality subject to the implementation of the measures recommended in the various management plans. I have no reason to dispute such conclusions. The proposed development is supported by a scheme for foul and surface water drainage, whilst proposed lighting could be effectively controlled through the imposition of a suitably worded planning condition.
17. Despite concerns raised, the appeal site has been subject to an ecological assessment which concluded that the development would be unlikely to impact upon the dormouse or badger, whilst potential impacts on bats, birds, otter and UK proprietary fish species could be satisfactorily controlled through the imposition of planning conditions. The appeal proposal is accompanied by detailed proposals for the provision of a 1.5ha dedicated area of mitigation for Great Crested Newts on land owned by the appellant that immediately adjoins the appeal site. The size of the mitigation area complies with Natural Resources Wales (NRW) requirements for a like for like compensatory habitat area. This element of the proposal would be implemented through a unilateral undertaking that would secure the provision of this compensatory habitat area, its long term management and maintenance, as well as the implementation of reasonable avoidance measures during construction. Both the LPA and NRW are satisfied that,

subject to such provisions, the development would not adversely impact upon the Great Crested Newt or the favourable conservation area status of the species locally. I have no reason to disagree with such conclusions and I am otherwise satisfied that the submitted unilateral undertaking meets the statutory and policy tests required of planning obligations. I shall therefore attribute it due weight in the determination of this appeal. The development would therefore accord with Policy EC6 of the adopted UDP.

18. A number of representations have been raised in relation to the effect the proposed development would have upon the living conditions of the occupiers of neighbouring residential properties. The evidence indicates that the proposed buildings would be located some 400 metres away from the nearest residential dwelling, although it is acknowledged that the residential curtilage of that dwelling would be closer to the proposed installation. Nevertheless, at such distances I am satisfied that there would not be any material harm to the living conditions of nearby residents in terms of loss of privacy, outlook or natural light. Moreover, for the reasons set out above, I am satisfied that matters of odour and noise would not cause material harm. The development would clearly be visible from some sensitive receptors. However, there is no right in law to a view over land in separate ownership and I have already set out above that the development would not be materially harmful in terms of its visual impact. Concerns relating to health remain unsubstantiated by specific evidence.
19. A significant number of concerns have been submitted on the grounds of highway safety. However, I have not seen anything to suggest that traffic movements would cause significant congestion or generate levels of noise and disturbance that would render the scheme unacceptable. Moreover, concerns regarding the potential for vehicle drivers to utilise different routes to those proposed in the appeal submission documents remain largely unfounded as the assumed route represents the most efficient route to the main highway network. Access arrangements to the site would also be substantially improved by the provision of a new access and egress route, directly off Queensford which comprises a classified road linking the A525 with Sarn/Tallarn Green. Indeed, whilst a number of concerns have been raised in this respect, I am satisfied that, subject to the imposition of suitably worded planning conditions, the proposal would provide safe access and egress with adequate visibility splays in each direction. The development would not therefore represent a material risk to highway safety.
20. I have considered the concerns relating to the effect of the proposed development upon the value of nearby properties and the effect upon local tourism. However, such concerns remain largely unsubstantiated given the degree of separation between the respective premises. Notwithstanding this, it is well-established that the planning system does not exist to protect the private interests of one person against the activities of another and there remains no tangible evidence to indicate that the development would have an adverse effect on tourism. I have considered all other matters raised, including the references to other appeal decisions. However, it is a well-established principle of planning that each case should be treated on its own particular merits and it is on this basis that I have determined this appeal. Indeed, it is the unique set of circumstances in this case, coupled with the planning policy framework in place at the time of determination, that have been determinative in respect of my findings.
21. Based on the foregoing I find that, having regard to the planning policy framework set at both a local and national level, the development would be acceptable in principle. Moreover, for the aforementioned reasons, I consider that the development would not result in any significant adverse visual or landscape impacts and, having regard to the

agricultural nature of the development, would not cause material harm to the character and appearance of the area more generally. I also find that there is nothing to indicate that the environmental impacts of the development could not be managed through a combination of the environmental permitting regime, the imposition of suitably worded planning conditions and the implementation of the provisions of the submitted planning obligation.

22. I therefore conclude that the development would be broadly compliant with Policies EC3, EC5 or EC6 of the adopted UDP. For the same reasons, it would also be compliant with the general thrust of national policy set out in PPW and TAN6. There would be some conflict with Policy GDP1a). However, given the fact that it is well-established that agricultural buildings are unlikely to make a positive contribution to their local context, I do not consider that such conflict should be determinative in this case. Indeed, I have already concluded above that the development is acceptable in terms of its impact on wider environmental, ecological, highway and residential amenity matters and, bearing in mind the clear and obvious economic benefits of the development that would include the provision of a number of local jobs that would include indirect contracting opportunities, I consider that the development should be allowed subject to conditions.
23. In coming to this conclusion, 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 (WBFG Act). I have taken into account the ways of working set out at section 5 of the WBFG Act and 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, as required by section 8 of the WBFG Act.

Richard E. Jenkins

INSPECTOR

Schedule of Conditions:

- 1) The development shall begin not later than five years from the date of this decision.

Reason: To comply with Section 91(3) of the Act

- 2) The development shall be carried out in accordance with the following approved plans and documents:
 - i) RJC-MZ63-Huxley-01: Location Plan received by LPA on 6.12.17
 - ii) RJC-MZ63-Huxley-02: Proposed Block Plan received by LPA on 6.12.17
 - iii) RJC-MZ63-Huxley-03 Proposed Floor Plan received by LPA on 6.12.17
 - iv) RJC-MZ63-Huxley-04 Proposed Elevations received by LPA on 6.12.17
 - v) RJC-MZ63-Huxley-05 Drainage Plan received by LPA on 2.1.18
 - vi) 1488.04 Revision B: Landscape Proposals received by LPA on 2.2.18

Reason: To define the scope of the planning permission

- 3) 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 strict accordance with the 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;
 - e) Details of the frequency of supervisory visits and procedures for notifying the findings of such visits to the Local Planning Authority;
 - f) Method for protecting retained trees during demolition works;
 - g) Details of all proposed tree works, including felling and pruning.

Reason: In the interests of character and appearance and ecology.

- 4) No part of the development shall commence until a scheme detailing the following has been submitted to and approved in writing by the Local Planning Authority:

- i) The detailed layout, design, drainage, construction and surfacing of the proposed site access onto Queensford;
- ii) A scheme for the permanent closure of the existing site access onto Mulsford Lane and the existing field access adjacent to the junction of Mulsford Lane and Queensford.

No part of the development shall be implemented until the scheme as approved has been implemented in full.

Reason: In the interests of highway safety.

- 5) 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 strict accordance with the RAMs scheme as approved.

Reason: In the interest of protecting statutory protected species.

- 6) No part of the development shall commence until the following have been submitted to and approved in writing by the Local Planning Authority:
 - i) A detailed plan of the compensation area shown in Appendix 2 of the Churton Ecology Addendum (relating to Great Crested Newt) to the Ecological Impact Assessment dated February 2 February 2018, to include fully details of all boundary treatment;
 - ii) An Ecological Method Statement in respect of the works to be carried out to establish the compensation area referred to above, to include a timetable for implementation of those works;
 - iii) A biosecurity risk assessment.

The compensation area shall thereafter be provided in strict accordance with the details as approved.

Reason: In the interest of protecting statutory protected species.

- 7) No part of the development shall commence until a long term Ecological Management and Monitoring Plan in respect of the habitat compensation area required by Condition No.06 has been submitted to and approved in writing by the Local Planning Authority. The land shall thereafter be managed and monitored in strict accordance with Ecological Management and Monitoring Plan as approved.

Reason: In the interest of protecting statutory protected species.

- 8) Soft landscaping shall be carried out in strict accordance with the details shown on drawing 1488.04 Revision B: Landscape Proposals during the first planting season (November to March) and seeding season (April to September) following the first use of the development and thereafter managed and maintained in accordance with the Landscape Management and Maintenance details specified on that drawing.

Reason: In the interest of safeguarding the landscape and wider character and appearance of the area.

- 9) The soft landscaping carried out with the details shown on drawing 1488.04 Revision B: Landscape 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 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.

Reason: In the interest of safeguarding the landscape and wider character and appearance of the area.

- 10) Within three months of the commencement of development a scheme of hedgerow planting shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall provide for hedgerows to be planted:
- i) Across the existing accesses required to be closed by Condition No.04; and
 - ii) To replace any hedgerows removed in order to provide the visibility splays required by Condition No.13.

The scheme as approved shall be implemented in full during the first planting season (November to March) following the first use of the development. The hedgerows planted in accordance with the scheme shall thereafter be permanently retained throughout the lifetime of the development. Any hedgerow that becomes severely damaged or seriously diseased, or is in poor physiological condition and/or are removed shall be replaced during the next available planting season by hedgerow species of the same specification as those originally planted.

Reason: In the interest of: safeguarding the landscape and wider character and appearance of the area; and highway safety.

- 11) 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 strict accordance with the details as approved.

Reason: In the interest of the character and appearance of the area and protected species.

- 12) No part of the development shall be brought into use until provision for the drainage of foul and surface water has been put in place and made operational in accordance with the details shown on approved Drawing No. RJC-MZ63-Huxley-05 Drainage Plan received on 2 January 2018. The means of foul and surface water drainage shall thereafter be permanently retained throughout the lifetime of the development.

Reason: In the interests of preventing pollution and to minimise flood risk.

- 13) Prior to first use of the development hereby approved the vehicular access shall provide visibility splays of 2.4 metres x 118 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.

Reason: In the interest of highway safety.

- 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.

Reason: In the interest of highway safety.