



Appeal Decision

Site visit made on 17 August 2021

by L Page BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 October 2021

Appeal Ref: APP/C3105/W/20/3265598

Land off Palmers Avenue, Arccott, Bicester OX25 1TW

- 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 W Potters of W Potters & Sons Limited against the decision of Cherwell District Council.
 - The application Ref 20/00871/F, dated 16 March 2020, was refused by notice dated 19 June 2020.
 - The development proposed is erection of a free range egg production unit, gatehouse and agricultural workers dwelling including all associated works.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Notwithstanding the description of development in the banner heading of the decision letter, the appellant has confirmed within their appeal statement that the agricultural workers dwelling is no longer included in the proposal. Although this fundamentally changes the proposal, nothing new is being introduced. Consequently, the Council and other interested parties will have already had an opportunity to comment on the remaining components of the proposal. The change has been accepted and the appeal has been dealt with accordingly. Consequently, the Council's first reason for refusal has been treated as having fallen away.
3. Representations from the Environment Agency and the Lead Local Flood Authority in relation to flood risk emerged following the Council's planning committee resolution on the application. In essence, the technical basis for the original objections from these consultees was overcome. Consequently, the objections were withdrawn, and the Council has made clear in their appeal statement that they no longer dispute the matters. As such, their fifth reason for refusal has been treated as having fallen away.
4. The proposal was screened by the Council under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. The screening opinion determined that an environmental statement was not necessary, and the appeal has been dealt with accordingly.
5. The revised National Planning Policy Framework (the Framework) was published 20 July 2021 and introduced a number of revisions that may be pertinent to the proposal. Consequently, the main parties were given an opportunity to comment on the revised Framework and any subsequent implications that may have emerged.

6. In relation to disputes over the extent of the proposal and ranging area in particular, guidance¹ is clear that site area is defined as the area to which the application relates. This should be shown edged in red on plans accompanying an application, while other land in the same ownership not being developed should be outlined in blue. The appeal has been dealt with accordingly.
7. The draft Statement of Common Ground has not been signed by both parties. Consequently, the main issues in dispute have been derived from the Council's decision notice and the parties' respective statements of case.
8. Although the Landscape and Visual Impact Assessment (LVIA) and some other evidence under the appeal may be a resubmission from an earlier proposal, there is no compelling evidence in front of me demonstrating without doubt that it is not generally reflective of the proposal before me in this case. Consequently, and on balance, I have treated it as being suitable in terms of assessing the proposal under the appeal.

Main Issues

9. The main issues are the effect of the proposal on:
 - (a) the character and appearance of the area; and
 - (b) biodiversity including pollution.

Reasons

Character and Appearance

10. Located in the countryside, the site is around 1km to the east of Lower and Upper Arcott, and around 800m to the south of Blackthorn, which are sparsely developed settlements nearby. A number of government buildings are located a short distance to the east and south of the site, including a Ministry of Defence facility and Bullingdon Prison respectively. These are relatively large buildings set within a rural countryside location. However, they are relatively well screened by mature boundary features and during my site visit were inconspicuous in the landscape, especially in passing.
11. In terms of the landscape context, the site and surrounding area is predominantly covered by the Alluvial Lowlands Landscape Character Type (LCT), which is described as broad alluvial plains comprising a mixed farming pattern of fields of arable cropping and pasture, densely scattered hedgerows, whilst being sparsely settled, among other things. The site is made up of expansive open fields in agricultural use with limited small scale agricultural buildings on site and in the immediate locality. It is generally flat in terms of topography and possesses boundary features comprising mature hedgerows and trees. It was clear from my visit that the site and its immediate surroundings were typical of the LCT, and in particular contributed to the broad landscape and field pattern, creating a sense of openness.
12. The LVIA establishes a Zone of Theoretical Visibility (ZTV) of 3km where the site is theoretically visible from receptors within the surrounding area. However, the ZTV is based on terrain topography and not intervening vegetation or boundary features. It was clear from my site visit that it is difficult to obtain general views of the site from the surrounding area.

¹ Planning Practice Guidance - Paragraph: 017 Reference ID: 22-017-20141017

13. To this end, many of the viewpoints identified within the LVIA had minor potential for visual effects. In essence, this was either due to limited views of the site generally, or where the activities of visual receptors meant that they were less susceptible to change. For example, motorists would be less susceptible to change because views would be fleeting, whilst their attention should be focussed on driving and highway safety rather than the countryside landscape.
14. However, some viewpoints are of particular importance in this case, and include Viewpoints 3 and 4, where receptors would be walkers on public rights of way who may be more susceptible to change due to the way in which they are actively engaging with the existing countryside landscape.
15. The proposal would deliver a significant structure comprising the main building of the egg production unit including associated storage silos and containers measuring around 160 metres in length, 35 metres in width and 8 metres in height. Whilst the ancillary building of the gatehouse would be much smaller, altogether the built form introduced at the site, which is currently largely undeveloped and open fields with flat topography, would be significant.
16. Consequently, notwithstanding the assessment within the LVIA, I cannot conclude that it would be any less than substantial in magnitude. Ultimately, it would be a very noticeable addition to the landscape, even in the context of existing sparse development and pylons that traverse the area.
17. The proposal would be visible to walkers from Viewpoints 3 and 4 along the public right of way and entrance to it. Consequently, as already mentioned, due to the way in which walkers engage with the countryside landscape they would be highly susceptible to change resultant from the proposal.
18. It would be readily apparent to them that the proposal is incongruous with the wider landscape covered by the LCT and the sensitivity of these viewpoints has been placed at high to medium within the LVIA. Based on the substantial magnitude of change, the overall visual effect would be major to moderate. Consequently, there would be material harm in terms of visual effects.
19. Mitigation has been put forward in order to avoid any harmful effects. The main building is said to be sited so that it occupies a slight depression in the land. However, this would appear limited to the extent that there is no meaningful relief to the casual observer, the land appears as if it is flat in reality. Consequently, the building would still appear at close to its full height in the landscape. Furthermore, landscaping including tree planting has been put forward in an attempt to screen the proposal in conjunction with existing vegetation.
20. Given the relatively limited scale of the gatehouse, it is reasonable to accept the principle that existing mature boundary features in conjunction with additional planting may be able to reduce its visual effect to an acceptable degree. Indeed, there are other small buildings dotted throughout the landscape, so it would be viewed in this context and not be incongruous. However, the main building and associated storage silos and containers are far more significant in scale and it is not clear that the level of landscaping proposed would be sufficient to soften their appearance within the landscape.

21. This is illustrated by the photomontage taken from Viewpoint 4, which to my eye shows very little discernible difference between day 1 without planting and with planting after 5 years. For all intents and purposes, the building has the same visual footprint. There is no evidence that this would be different or improved elsewhere along the public right of way. In addition to the above, it is not clear how the planting would become established in the context of the site being in a flood risk zone. For example, would the species proposed be resistant to flooding and could the integrity of the landscaping scheme be maintained so it remained effective during and after flooding events.
22. Altogether, the mitigating effects of landscaping would be very limited and would not change the overall visual effect, which would remain major to moderate in significance. Logically, it also follows and is somewhat self-evident that given my conclusions on landscape mitigation, landscape enhancements would not be realised either.
23. In this context, it is not appropriate to draw parallels with other large buildings in the locality when trying to justify the proposal. Based on the evidence before me, these are much more inconspicuous by comparison due to intervening landscaping features which filter views much more effectively and are not comparable to the proposal, which is highly visible to walkers from a public right of way.
24. Leading on from the preceding assessment of visual effects, in terms of landscape effects, it is clear that the proposal would also erode a significant proportion of the field pattern and broad landscape that is characteristic of the LCT. Consequently, even if a sensitivity is not formerly ascribed to the LCT in guidance, and it is regarded as being medium value due to its local rather than national designation, it would still be moderately susceptible to change due to the clarity and robustness of prevailing characteristics and views from public rights of way, among other things.
25. This would give rise to a medium location sensitivity as ascribed within the LVIA. This, in conjunction with my preceding assessment of magnitude would equate to an overall landscape effect of moderate. Consequently, there would be material harm in terms of landscape effects. Furthermore, in accordance with my preceding assessment of potential mitigation, the landscaping proposed would not temper these harmful effects to an appropriate degree. In this context, Paragraph 174 of the Framework is clear that planning policies and decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside.
26. Overall, the proposal would generate harmful landscape and visual effects on the character and appearance of the area. This would conflict with Policies ESD13 and ESD15 of the Cherwell Local Plan 2011-2031 Part 1 2015 (CLP15) and saved Policies AG2, C8 and C28 of the Cherwell Local Plan 1996 (CLP96), and Paragraph 174 of the Framework. Among other things, these policies require development to respect and enhance local landscape character, securing appropriate mitigation where damage to local landscape character cannot be avoided.

Biodiversity and Pollution

27. The site comprises improved grassland and ponds of minimal ecological value with mature boundary features including hedgerows. The majority of the site is within the Ray Conservation Target Area, Field South of River Ray Local Wildlife Site (LWS) lies to the north west around 340 metres away and Meadow Farm Meadows LWS lies to the north east around 440 metres away, whilst Arccott Bridge Site of Special Scientific Interest (SSSI) lies to the west around 1.2 kilometres away.
28. The River Ray flows across land approximately 410m north of the site and a large area of the application site falls with the flood plain of this main river. Consequently, although the site itself may be limited in its ecological value, it is in proximity to a number of designated sites that have a high degree of ecological value, and where there may be pathways for effects through the water environment and wider catchment of the River Ray.
29. The proposal would deliver a large egg production unit and associated development, which among other things would include a ranging area for hens delineated with a 1.2m boundary fence. The number of hens would be around 59,000. This is a substantial number, illustrated by the fact that the threshold limit for an environmental permit is 40,000. Accordingly, it is reasonable to assume that this could give rise to a significant amount of faecal matter being accumulated on the land throughout the ranging area.
30. Consequently, at times of flooding there is potential for this faecal matter to become washed away into the wider water environment. This could potentially pollute and affect the integrity of those aforementioned designated sites. This appears to be a perfectly plausible scenario, raised by the Council and other consultees including Berks, Bucks and Oxon Wildlife Trust. However, there is no evidence submitted by the appellant to demonstrate the proposal can come forward in an acceptable manner in this regard.
31. The Lead Local Flood Authority has withdrawn its objection because a sustainable drainage solution controlling surface water flood risk may be achievable in principle. However, it is not clear how any sustainable drainage solution would safeguard against faecal matter on the land.
32. For example, the submitted flood risk assessment presents a surface water management plan for the site based on attenuation, with runoff from the main impermeable surfaces to be routed to an attenuation basin. However, it is also stated that in the event the attenuation basin cannot cope with a certain rainfall event, exceedance runoff will naturally flow north towards River Ray. Consequently, there remains a tangible risk and reasonable likelihood of polluted water coming from the land and entering the water environment. This in turn could act as a pathway towards harmful effects on the river network, wider water environment, and the integrity of designated sites nearby.
33. The method statement and pollution prevention plan submitted with the appeal addresses the matter of pollution but focusses on traditional forms of pollution prevention. For example, pollution resulting from construction and foul water drainage. It is not clear that the foul water drainage tank would deal with overland flows from the ranging area. It would appear to deal with foul water derived from the building and its hardstanding. Consequently, there would be no safeguards dealing with faecal matter on the land.

34. I acknowledge that there is commentary within the appellant's statement about faecal matter being controlled from within the main building. However, it is confirmed therein that birds will have direct access to dedicated pasture on the ranging area from the eastern and western elevations of the building. Whilst a degree of pasture management is proposed, this would appear to be in the context of bird health rather than safeguarding against pollution from faecal matter on the land.
35. Although Natural England did not object to the proposal, or the previous application, it is clear from the planning officer's report that a recommendation was made that the Council sought further information from the Berks, Bucks and Oxon Wildlife Trust to ensure there was sufficient information to fully understand the impact of the proposal on any nearby LWS. Berks, Bucks and Oxon Wildlife Trust subsequently objected on grounds of pollution; a position adopted by the Council.
36. The appellant has not demonstrated how the proposed biodiversity measures would meet the objectives of the Ray Conservation Target Area in specific terms. This is something which is required under Policy ESD11 of the CLP15. The supporting text at B.242 establishes that targets are in the process of being made more specific in terms of the amount of each habitat type to be secured within each conservation target area. It follows therefore, that the proposal should provide a specific set of biodiversity measures.
37. The landscaping plan submitted with the proposal does not include measures for improved species rich grassland or shallow scrapes. Consequently, it is unclear where they would be located. Notwithstanding their location, it has not been demonstrated that these features would be viable in the context of flooding and pollution from faecal matter on the ranging area. Consequently, notwithstanding potential discussions with Berks, Bucks and Oxon Wildlife Trust, the scale of benefits that could potentially be derived from the improved species rich grassland and shallow scrapes is unclear and carry limited weight.
38. Similarly, improving the ponds would seem at odds with the Lion Code of Practice (Version 7) updates to Biosecurity requirements 2017 (LCP) document for keeping hens, which suggests that birds should not be near water. The appellant states that DEFRA Code of Practice for the Welfare of Laying Hens and Pullets 2018 sets out in Paragraph 150 that if the ponds are located on or near to the ranging area, they should be fenced off and/or netted to discourage wild birds, in particular water fowl.
39. However, it is not clear how the improvements would be realised if the ponds are effectively sterilised through the introduction of netting or other such barriers to wildlife. Furthermore, the potential pollution of the ponds resultant from faecal matter on the ranging area during times of flood makes it even more unclear as to whether the improvements would be effective in reality.
40. Consequently, without clarity on the principle of measures to improve biodiversity in the context of flooding and pollution, I am unable to be confident that such an approach would be effective in basic terms. Consequently, it would not be appropriate to secure outstanding details by means of planning condition.

41. Paragraph 188 of the Framework is clear that the focus of planning policies and decisions should be on whether proposed development is an acceptable use of land, rather than the control of processes or emissions (where these are subject to separate pollution control regimes). Planning decisions should assume that these regimes will operate effectively. It is clear in this case that the risk of biodiversity impacts from pollution would be an inherent result of the use of the land. It is therefore necessary to ensure that it is properly assessed and controlled in land use terms.
42. Notwithstanding any significant hedgerow and tree planting, including nest boxes, an appropriate metric has not been used to quantify the potential net gain or how this would outweigh the harms previously identified. Consequently, it is very difficult to quantify the potential benefits and these components can only carry limited weight in this context. Moreover, it is not clear whether certain elements of the net gain proposals would be effective in reality, particularly some of the planting measures due to flooding constraints, as reasoned earlier in my decision in relation to mitigating landscape and visual effects.
43. Overall, the proposal is not supported by sufficient evidence to demonstrate that it would not give rise to pollution or harmful effects on biodiversity. It would therefore conflict with Policies ESD8, ESD10 and ESD11 of the CLP15 and Policies AG4 and ENV1 of the CLP96. Among other things, these seek to protect and enhance biodiversity and the natural environment.
44. On closer inspection of Policy AG3 of the CLP96 it appears to deal with pollution in the context of smell alone. Although the policy is cited within the Council's reasons for refusal, reading the evidence in detail it is clear that smell is not disputed between the main parties and therefore it has not been necessary to conclude on whether the proposal is in accordance with the policy.

Other Matters

45. The mechanical function of the building, including the importance of it in securing bird welfare, potential noise impacts, dead bird disposal, and ammonia control, among other things, are not in dispute between the main parties under the appeal.
46. Similarly, the requirement for the gatehouse to meet biosecurity requirements is not disputed either. However, whether these elements of the proposal are acceptable or not does not mitigate the other harms identified under the main issues and does not make the proposal acceptable in the round.
47. Paragraph 81 of the Framework sets out that significant weight should be given to supporting economic growth. There is little substantive evidence demonstrating that the proposal would benefit the rural economy or affordable food production to any material extent.
48. For example, the appellant's appeal statement has not articulated how the proposal would meet demands for egg production and therefore help the economy grow in a substantive way. The letter of intent submitted would appear anecdotal and cannot be relied upon in isolation or in the absence of evidence such as legal agreements which would provide a more robust covenant and give certainty about product demands.

49. The appellant has made a number of references to the Framework, but some of the paragraphs therein appear to be from a superseded version of the document, earlier than both the 2019 and 2021 revisions. Consequently, I cannot make a reliable assessment on the points they have made in this regard.
50. The full details of the previous application² are not in front of me. Consequently, matters related to the previous application leveraged in support of the proposal in this case cannot be comprehensively assessed and can only carry limited weight under the appeal.
51. The main issues have not required an assessment of the wider business's sustainability and therefore the matter has not been determinative under the appeal. I have not found it necessary to probe the matter any further with the parties.
52. Whether or not the appellant pursues a temporary rural worker dwelling in due course, as briefly mentioned within their final comments, is not a matter for me to speculate over under this appeal.

Conclusion

53. The proposal would generate harmful landscape and visual effects on the character and appearance of the area. Furthermore, the proposal is not supported by sufficient evidence to demonstrate that it would not give rise to pollution or harmful effects on biodiversity. Consequently, it conflicts with the development plan. The benefits advanced have not been fully quantified or are limited in their extent and do not outweigh the identified harms or associated conflict with the development plan. There are no material considerations indicating that a decision should be taken otherwise than in accordance with the development plan, and for the reasons given the appeal is dismissed.

Liam Page

INSPECTOR

² 19/00644/F