



Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 14/06/21

gan R Duggan, BSc (Hons) DipTP
MRTPI

Arolygydd a benodir gan Weinidogion Cymru
Dyddiad: 2/7/21

Appeal Decision

Site visit made on 14/06/21

by R Duggan, BSc (Hons) DipTP MRTPI

an Inspector appointed by the Welsh Ministers
Date: 2/7/21

Appeal Ref: APP/T6850/A/21/3266394

Site address: Forest View, Llanbister, Llandrindod Wells, LD1 6UL

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 Ivor Goodwin against the decision of Powys County Council.
 - The application Ref: 18/0826/FUL dated 23 October 2018, was refused by notice dated 17 September 2020.
 - The development proposed is described as construction of extension to an existing free-range egg production unit.
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Decision

1. The appeal is dismissed.

Main Issue

2. Having regard to the evidence before me, I consider the main issue to be the impact of the development on nature conservation interests and in particular the River Wye Special Area of Conservation (SAC) and the River Ithon and Lower Cefaelog Pastures Sites of Special Scientific Interest (SSSI).

Reasons

3. In refusing the planning application the Council has relied on advice from Natural Resources Wales (NRW) as well as its own ecologist, and found the development has failed to demonstrate that there will not be a detrimental impact on the River Ithon SSSI, River Wye SAC and the Lower Cefaelog Pastures SSSI with regards to ammonia and nitrogen deposition. The application was therefore found to be contrary to policies SP7 'Safeguarding of Strategic Resources and Assets' and DM2 'The Natural Environment' of the Adopted Powys Local Development Plan (LDP) 2018.
 4. The policies referred to by the Council, amongst other things, seek to safeguard and protect both designated and non-designated sites of nature conservation and biodiversity. These policies are consistent with national policy in Planning Policy Wales (PPW), which refers to development proposals which would be likely to result in disturbance or harm to the species or its habitat, and with similar wording in national
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guidance document Technical Advice Note 5 (TAN 5), Nature Conservation and Planning.

5. Forest View is located within the open countryside, approximately 1.3 miles north of Llanbister with access to the site taken via the U1135 unclassified highway. Planning permission was granted at the site in 2017 for the erection of a poultry unit for free range egg production¹ and the Appellant has a long-term contract to supply Bowler Eggs. It is proposed to erect an extension to the existing poultry unit to increase the capacity from 16,000 to 32,000 birds. The extension would measure approximately 86 metres in length, 16 metres in width, with a maximum height of 5.2 metres falling to 2.89 metres at the eaves. Two additional feed bins would be provided measuring a maximum of 6.8 metres in height.
6. The Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) transpose the Habitats Directive and the Birds Directive into law, and the aim of the Directives is to conserve key habitats and species. Sites designated under the Habitats Regulations include Special Areas of Conservation (SAC). The appeal site at its closest point is approximately 1.2 km to the north-west of the River Wye SAC, therefore, it has the potential to affect its interest features. In particular, this concerns airborne ammonia from the proposed poultry house and the ranging area because ammonia would be emitted from the birds' droppings. The outdoor range area would be approximately 120 metres from the nearest watercourse. Accordingly, there would be a pathway to affect the designated features of the SAC with the potential for increase of ammonia and nitrogen deposition.
7. As the decision has passed to me for determination, I am now the competent authority for the purposes of undertaking an assessment under Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended). As such, before deciding to give permission if the proposals are likely to have a significant effect on a European site (in this case the River Wye SAC), and the works are not directly connected with or necessary to the management of the site, I am required to undertake an appropriate assessment of the implications of the proposal in view of the site's conservation objectives².

Likely Significant Effects

8. The proposed development is not directly connected with or necessary to site management for nature conservation. Therefore, it is necessary to consider whether the proposal is likely to have a significant effect on the internationally important interest features of the sites, alone or in combination with other plans and projects.
9. The Appellant has submitted an ammonia report³ with the planning application submission which details the critical load and level which is used to assess the harmful effects from ammonia on sensitive habitats. The relevant threshold for the SAC/SSSIs is 1.0 µg/m³, and a 1% criterion is then used to determine whether or not an effect would be significant. Below this level the effect is not deemed significant and above it would be deemed potentially significant. The Appellant's ammonia report states that whether or not the predicted process contribution exceeds the 1% criterion at an

¹ Planning Application Ref: P/2016/1253 approved on 27 April 2017

² Article 6(3) of the Habitats Directive states that any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon shall be subject to an appropriate assessment.

³ A Report on the Modelling of the Dispersion and Deposition of Ammonia from the Existing and Proposed Free Range Egg-Laying Chicken Houses at Forest View, near Llanbister in Powys, April 2020 prepared by Steve Smith AS Modelling & Data Ltd.

internationally designated site depends on the proportions of the ranging and housing emissions.

10. In objecting to the development NRW states that for free range units proposing the installation of ammonia scrubbers on the building it is considered that 80% of the ammonia will originate from the building and 20% from the outdoor ranging areas. This is disputed by the Appellant's report which considers this to be an 'unsound scenario' as it's *"not based upon any peer reviewed literature and has not been included in the UK Ammonia Emission Inventory since 2015 (prior to which the figure was mentioned, but only as personal correspondence, with no reference to any peer reviewed work)"*. The Appellant argues that due to the low numbers of hens that would use the ranging area the level of ammonia emissions would be based on 7.24% ranging usage in a 'realistic scenario', or 12% ranging usage in a 'pessimistic scenario'. These scenarios are based on peer reviewed scientific research and papers on the use of outdoor range areas, the ranging behaviour of laying hens and ammonia emissions⁴.
11. The ammonia report acknowledges that in the 'unsound scenario' advocated by NRW (20% ranging usage), the process contribution to the annual ammonia concentration and the nitrogen deposition rate would exceed 1% of the Critical Level and/or Critical Load for the River Wye SAC. In the 'pessimistic scenario' (12%), the process contribution to the annual ammonia concentration and the nitrogen deposition rate would also exceed 1% of the Critical Level and/or Critical Load. However, in the 'realistic scenario' (7.4%) put forward by the Appellant, the process contribution to the annual ammonia concentration and the nitrogen deposition rate would be below 1% of the Critical Level and/or Critical Load at all statutory wildlife sites. In further support of this 'realistic scenario', the Appellant refers to the annually produced Inventory of Ammonia Emissions from UK Agriculture⁵.
12. In response to the Appeal, NRW has submitted a further consultation letter⁶ which counters the findings of the Appellant's ammonia report. NRW states that in 2008 the EC regulations on poultry farms was updated (EC Regulation 543/2008) to promote much greater "natural behaviour" in poultry farms leading to much greater use of the outside range area. NRW advises that on the basis of scientific studies carried out since 2008⁷, that ammonia impact assessments should assume that outside ranging areas receive 20% of the bird droppings and 80% of droppings are contained within the poultry housing. In addition, NRW has contacted Mr T. H. Misselbrook, the lead author of the Inventory of Ammonia Emissions from UK Agriculture referred to by the Appellant, who confirmed⁸ that he was *"not aware of any robust, peer-reviewed data on the proportion of time that free range hens spend outdoors...the industry have made efforts to encourage and ensure that hens spend a greater proportion of their*

⁴ 'Internal roosting location is associated with differential use of the outdoor range by free-range laying hens' 2017: Pettersson, Weeks, Norman, Knowles, and Nicol; 'Ranging behaviour of commercial free-range laying hens' 2016: Chielo, Pike and Cooper; 'Use of the range area in organic egg production systems: effect of climatic factors, flock size, age and artificial cover; Hegelund, Sorensen, Kjaer & Kristensen; 'Ammonia emission factors for UK agriculture' T.H. Misselbrook, T.J. Van Der Weerden, B.F. Pain, S.C. Jarvis, B.J. Chambers, K.A. Smith, V.R. Phillips, T.G.M. Demmers;

⁵ Annual Inventory of Ammonia Emissions from UK Agriculture, T H Misselbrook, S L Gilhespy, Rothamsted Research.

⁶ NRW consultation letter dated 9 April 2021

⁷ Larsen, H., Cronin, G.M., Gebhardt-Henrich, S., Smith, C.L. Hemsworth, P.H. and Rault, J-L. (2017) - Individual ranging behaviour patterns in commercial free-range layers as observed through RFID tracking. *Animals*, 7 (21); Campbell, D.L.M., Hinch, G.N., Dyal, T.R., Warin, L., Little, B.A. and Lee, C (2016) - Outdoor stocking density in free-range laying hens: radio-frequency identification of impacts on range use. *Animal*: 1 - 10; Pettersson, I.C., Freire, R. and Nicol, C.J. (2016) - Factors affecting ranging behaviour in commercial free-range hens. *World Poultry Science Journal*, 72.

⁸ Email from Tom Misselbrook, Rothamsted Research to NRW, dated 20 March 2020

time outdoors and the revised estimate based on these newer systems and practices is 20% and that is the value that we use for current years."

13. NRW is also a member of the Interagency Intensive Farming Group which includes the Environment Agency, Northern Ireland Environment Agency and Scottish Environment Protection Agency, and it meets monthly to discuss cross sectoral issues including emission factors with recent focus on free range poultry. NRW confirms that based on existing evidence and expert advice all agencies within the group are using the 20% figure for outdoor ranging estimates.
14. Whilst I have taken into account the evidence presented by the Appellant, it is clear that the individual environmental protection agencies for the countries of the UK are currently using the 20% outdoor ranging usage figure, especially as the industry is promoting much greater natural behaviour in poultry farms thus leading to much greater use of the outside range areas by laying hens. In addition, the lead author of the Inventory of Ammonia Emissions from UK Agriculture has confirmed that the 20% figure for outdoor ranging areas is currently being used.
15. Therefore, based on the 20% figure advocated by NRW, or even the 'pessimistic scenario' of 12% put forward by the Appellant, the process contribution of the proposed development to the annual ammonia concentration and the nitrogen deposition rate would exceed 1% of the Critical Level and/or Critical Load at the River Wye SAC, as well as the Lower Caerfaelog Pastures and River Ithon SSSIs.
16. Since the refusal of the planning application new evidence has also been published by NRW relating to the deterioration in the condition of riverine SACs in Wales due to the potential increase in phosphate levels within the SAC. As a result, NRW has set new phosphate standards for the riverine SACs following the revised Common Standards Monitoring guidance updated in 2016 by the Joint Nature Conservation Committee (JNCC). A compliance assessment, conducted by NRW, against these standards found a failure to meet the targets on certain rivers in Wales including the river Wye. In waterbodies which already fail to meet the target there is no headroom, and so further increases in phosphate will further worsen the condition of the SAC. NRW advise that any proposed development within the catchment or waterbody that might increase the amount of phosphate within the catchment or waterbody could lead to additional damaging effects to the SAC. The Planning Position Statement published by NRW in combination with the Compliance Assessment Report⁹, applies to all development proposals yet to be determined.
17. Given these circumstances and applying the precautionary approach, I consider that the proposal has the potential to cause likely significant effects to the River Wye SAC. In accordance with the Conservation of Species and Habitats Regulations 2017 (the Regulations), as the competent authority, I have therefore undertaken an Appropriate Assessment of the implications of the proposal on the European site.

Appropriate Assessment

18. The appeal site lies wholly within the catchment area for the River Wye SAC, the qualifying habitats or features for which include water courses of plain to montane levels; Rivers with floating vegetation often dominated by water-crowfoot; Transition mires and quaking bogs; Very wet mires often identified by an unstable 'quaking' surface; White-clawed (or Atlantic stream) crayfish; Sea lamprey; Brook lamprey; River lamprey; Allis shad; Twaite shad; Atlantic salmon; Bullhead; and Otter.

⁹ Compliance Assessment Report of Welsh River SACs against Phosphorous Targets - NRW Report No: 489

19. The conservation objectives for each European site are similar. In broad terms they focus on ensuring that the integrity of the site is maintained or restored as appropriate and on ensuring that the site contributes to achieving, in the case of SACs, the Favourable Conservation Status of its qualifying features. To do so, the requirement is to maintain or restore the habitats of qualifying species/features and the populations and distributions of qualifying species or qualifying features.
20. It is clear from the evidence presented above that the proposed development would have a likely significant adverse impact on the European Site through increased ammonia and nitrogen deposition from the outdoor ranging areas. The next step is to determine whether the adverse effects are able to be overcome by measures intended to avoid or reduce the harmful effects on the site.
21. In addition to the installation of ammonia scrubbers within the existing and proposed buildings to treat and clean the used air before it leaves the sheds and is discharged into the atmosphere, the Appellant is proposing additional woodland planting within the ranging area. It is proposed to retain existing hedgerows and that 20% of the total ranging area would be planted with native tree species of a woodland mix. I saw that this has already been undertaken as part of the planting approved for the existing building. This additional planting is intended to improve bird welfare, increase biodiversity and provide some mitigation against ammonia concentration and nitrogen deposition.
22. The ranging area adjoining the existing unit is operated on a paddock system of rotation, whereby splays have been created to enable bird walk out areas to be rotated for each group of 4,000 birds. This system allows management of the area in an attempt to avoid bare soil areas adjoining the shed and also provide opportunities for maintenance of the spays, such as re-seeding, to be undertaken. It is intended to operate the range for the proposed extension on the same basis to minimise the risk of run-off.
23. A Manure Management Plan has been submitted (prepared in 2018)¹⁰ which aims to show that there is sufficient land available at Lower Esgair Farm and Llwyn to safely spread manures from Forest View. However, the Council has requested that an amended manure management plan should be submitted to include further detailed phosphate calculations. The Council has suggested that this could be submitted through an appropriately worded condition should I be minded to allow the appeal. However, due to the recent work undertaken by NRW relating to the deterioration in the condition of riverine SACs in Wales, I consider this to be a significant issue that cannot be left to be addressed through a condition. Whilst I have had regard to the content of the Manure Management Plan, in the absence of further information relating to the management of the manure from the development, it is not clear how manure will be prevented from entering the SAC and whether there is potential to increase the amount of phosphorus within the designated site.
24. The Appellant has also submitted a Pollution Prevention Plan¹¹ which includes measures to protect the surrounding environment, neighbouring watercourses and groundwater during construction. However, the Plan is dated June 2018 and was prepared by reference to a document entitled '*Working at Construction and Demolition sites: PPG6 Pollution Prevention Guidelines*' which was withdrawn on 14 December 2015. Therefore, I have given this Plan little weight in the determination of this appeal.

¹⁰ Manure Management Report, prepared by ADAS Cymru Wales, dated May 2018

¹¹ 051-G419-PL- Pollution Prevention Plan, dated June 2018

25. From my observations, the Appellant currently manages the facility and the outdoor ranging areas to a good standard, and I note that the Wye and Usk Foundation recently visited the site and walked the area specifically looking at run-off, drainage, tree planting areas and maintenance, and that they were satisfied that the range was maintained to a high standard. Nevertheless, it is clear that the process contribution of the proposed development to the annual ammonia concentration and the nitrogen deposition rate would exceed 1% of the Critical Level and/or Critical Load at the river Wye SAC. The potential for runoff and increased ammonia/nitrogen deposition from the proposed outdoor ranging area into the nearby watercourse and on into the River Wye remains a distinct possibility. Simply put, significant effects cannot be ruled out even with the Appellant's mitigation measures put in place.
26. Acting as the competent authority for the purposes of the Regulations I must be convinced that there will not be an adverse effect, and where doubt remains as to the absence of adverse effects, the plan or project must not be authorised unless there are imperative reasons of overriding public interest. No such reasons have been submitted.
27. Concerns have also been raised by the Council and NRW regarding the impact of the development on the Lower Caerfaelog Pastures and River Ithon SSSIs. Given my conclusions above, I am also unable to conclude that the proposal would not have an adverse effect on the SSSIs.
28. For the reasons set out above, I am of the opinion that the proposed development would adversely affect nature conservation interests and particularly the integrity of the River Wye SAC and the River Ithon and Lower Cefaelog Pastures SSSI's. As such, it would conflict with Policies SP7 and DM2 of the LDP, PPW and TAN5.

Other Matters

29. The proposal would inevitably bring some economic benefits by way of the local economy and increasing egg production. However, this would not outweigh the harm to nature conservation interests.
30. Interested parties have raised concerns over highway safety, construction traffic and damage to the highway. As I am dismissing the appeal on other grounds, such matters do not alter my overall conclusion and have therefore not had a significant bearing on my decision

Conclusions

31. Having regard to the above and considered all other matters raised by the Appellant in support of the proposals, I conclude that the appeal should be dismissed.
32. 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 objective of building healthier communities and better environments.

R Duggan

INSPECTOR