The Planning Inspectorate

Appeal Decision

Hearing Held on 14 August 2019

Site visit made on 14 August 2019

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 August 2019

Appeal Ref: APP/L3245/W/3216559
Newcastle Court, Craven Arms, Shropshire SY7 8QL

- 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 Peter Yeoward of J.C. Yeoward and Co against the decision of Shropshire Council.
- The application Ref 13/00519/FUL, dated 20 January 2013, was refused by notice dated 23 May 2018.
- The development proposed is a temporary change of use from agriculture to grow on pheasant poults for egg laying and breeding stock from 1st September until 31st December.

Decision

1. The appeal is dismissed.

Application for costs

2. At the Hearing an application for costs was made by Mr Peter Yeoward of J.C. Yeoward and Co against Shropshire Council. This application is the subject of a separate Decision.

Procedural matters

3. The description of development set out above has been taken from the planning application form. However, the main parties agreed at the Hearing that the dates referred to do not reflect the extent of the use and the basis on which the Council considered and determined the planning application. It was agreed that the use takes place between 1 May and the end of February each year. Hence, I agree with the view of both parties that the description of development should be *"A seasonal change of use from agriculture to site 21 pens and runs in fields C and D on the submitted plan for rearing pheasant chicks from the 1 May and to growing-on the pheasant poults for egg laying and breeding stock until end of February in fields A and B on the submitted plan".* I consider that this description better reflects the scheme that is before me and thus my findings relate to this description of development.

4. The proposal relates to a seasonal use of agricultural land for laying stock pheasants. The main parties agree that planning permission is required because the pheasants reared on the site are for sporting purposes, which takes the use outside of the definition of 'agriculture'[1]. I have no reason to doubt the main parties view on this matter given the evidence before me.

[1] Section 336, Town and Country Planning Act 1990 (as amended)

5. It is common ground between the main parties that the use for which planning permission has been sought and which is subject of this appeal commenced in 2010. Since that time, the use has expanded and continued until the present day. In due course, I will outline the use and its operation, but the use relates to four fields. For clarity and ease I have adopted the same references as those used by the main parties. All four fields are next to, and slope down to the Folly Brook. At the time of my site visit, the coops and runs used in conjunction with the use were not erect on the land. Instead, they were stored at the edge of several fields. There were no birds on the site at the time of my visit, but Fields C and D had recently been ploughed following the removal of the pheasant chicks. I have considered the appeal on this basis.

6. Following a change in procedure, the main parties were given an opportunity to update their evidence ahead of the Hearing. I have had regard to these submissions and the further technical evidence submitted by the appellant.

Main issue

7. The main issue is the effect of the proposal on the River Clun Special Area of Conservation (SAC) and the Shropshire Hills Area of Outstanding Natural Beauty (AONB).

Reasons

The Site, the SAC and AONB

8. The appeal site relates to a landholding of around 16.5 hectares within the steep sided valley of Folly Brook which cuts into the hills to the north of the River Clun. Two of the four fields are on the west side of Folly Brook (Fields A and B), whilst two fields are on the east side (Fields C and D). The site is situated below a wooded hillside and to the north of the village of Newcastle on Clun. A traditional pattern of hedged fields characterises the area, whilst the agricultural land quality is grade 4 and 5 and most suited to grazing sheep. The site is within the AONB. The valley is unspoilt with little built development other than a handful of scattered cottages along the road. Newcastle Court and related buildings are close to the village. Access to the fields is from Newcastle Court to the south and the C6194 which runs along the west side of the valley. There are three cottages situated along the lane with views across the valley. The rolling rural landscape is of particularly high quality.

9. The site lies within the River Clun catchment area. Folly Brook is a tributary of the River Clun[2] which is in turn a tributary of the River Teme, which is the second largest tributary of the River Severn, draining a hilly, predominantly rural catchment of Silurian and Devonian rocks. The River Teme is a Site of Special Scientific Interest (SSSI). Folly Brook is a designated Priority River Habitat and is one of the most naturally functioning river systems in England. The site is around 12 miles upstream of the SAC, a designated European site. The SAC is afforded protection under the EU Habitats Directive (92/43/EEC) and the Conservation of Habitats and Species Regulations 2010. The SAC includes only the lower reaches of the River Clun and extends upstream from its confluence with the River Teme to Broadward Bridge near Marlow. This section of the river holds an important population of the freshwater pearl mussel (FWPM), one of the few populations left in the lowlands of the UK. Although the FWPM is not a priority species, it is listed as a qualifying species for the SAC.

[2] River Clun catchment, Plan Ref: 1954/PE/01 Version 1

10. While the appeal site is upstream of the SAC, Folly Brook, which itself is served by numerous tributaries[3], provides a direct hydrological link to it. The Folly Brook catchment represents a small proportion of the River Clun catchment that feeds into the SAC, but it already has unacceptably high sediment load. The SAC is currently failing its Favourable Condition Targets (FCT) for in-river Soluble Reactive Phosphorus (SRP), Total Oxidised Nitrogen (TON) and sediment (suspended solids (SS)). The FCT targets[4] have been set to protect the FWPM from the adverse effects of nutrient enrichment and siltation. Above these targets there is significant risk for undesirable changes with associated negative effects on the interest features of the SAC.

11. To address this, the Council are working closely with Natural England (NE) and the Environment Agency (EA) on developments within the Clun catchment. The AONB is currently engaged in a project to improve the FWPM habitat in the Clun Catchment and the Folly Brook is a part of that catchment system.

12. FWPM burrow into sandy substrates, often between boulders and pebbles, in fast-flowing rivers and streams. FWPM require cool, well-oxygenated soft water free of pollution or turbidity. They inhale water to filter out minute organic particles on which to feed. The FWPM life cycle involves an adult stage, living as a filter feeder, a juvenile stage living in sediment, and a larval stage living attached to the gills of trout or salmon before eventually detaching and settling in the riverbed gravels where they grow to adulthood. All life stages are important, as is the viability of the host species of fish. FWPM do not reach reproductive maturity until at least 12 years old and individuals may live for over 100 years, making it one of the longest-lived invertebrates known[5].

13. FWPM population declines have been caused by factors such as human disturbance from pearl-fishing, water pollution, acidification, nutrient enrichment, siltation, river engineering, and declining salmonid stocks. Many of the UK's rivers now contain only scattered individuals, with no juvenile mussels recorded; such populations are at risk of extinction due to the lack of new FWPM being created. Despite serious declines in both range and total population, the UK is the remaining European stronghold for the FWPM, supporting functional populations in over 50 rivers. In the UK, the FWPM and its habitat are protected by law[6]. In the SAC, I understand that the population of FWPM is around 700; that there is little evidence of population growth and if no action is taken to improve the conditions in the SAC then the FWPM population will only survive for around 20 years.

14. Paragraph 172 of the National Planning Policy Framework (the Framework) states that great weight should be given to conserving and enhancing landscape and scenic beauty in AONB, which have the highest status of protection in relation to these issues. The conservation and enhancement of wildlife and cultural heritage are also important considerations in the AONB.

Planning Policy

15. Policy CS17 of the Shropshire Local Development Framework: Adopted Core Strategy (CS) seeks to ensure that all development: protects and enhances the

[3] Plan Ref: 1954/PE/02 Version 1
[4] Statement of Common Ground, Paragraph 10
[5] River Clun Special Area of Conservation European Site Conservation Objectives: Supplementary Advice on Conserving and Restoring Site Features (SAC Advice)
[6] Schedule 5 of the Wildlife and Countryside Act 1981 (as amended) and Schedule 2 of the Habitats Regulations

diversity, high quality and local character of Shropshire's natural, built and historic environment; and does not have a significant adverse impact on Shropshire's environmental assets. CS Policy CS18 was not cited by the Council in refusing planning permission but given the copy of the policy that is before me and the discussion at the Hearing, it requires, among other matters, development to enhance and protect water quality, including Shropshire's groundwater resources, and to provide opportunities to enhance biodiversity.

16. Policy MD12 of the Shropshire Council Site Allocations and Management of Development (SAMDev) Plan seeks to conserve, enhance and restore Shropshire's natural assets. This policy requires a project-level Habitats Regulations Assessment (HRA) for all proposals where it is considered that there would be a likely significant effect on an internationally designated site. Permission will be refused where a HRA indicates an adverse effect on the integrity of a designated site which cannot be avoided or fully mitigated.

17. Framework paragraph 170 states that planning policies and decisions should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils.

Site Operations

18. From early May for around six to eight weeks, Fields C and D are used to rear approximately 40,000 day-old pheasant chicks until they reach six weeks old. To facilitate this, twenty-one coops are erected within Fields C and D at the end of April. The coops are small, wooden structures (about 14.5 metres by 3.5 metres in size) with a roof and attached runs covered in netting (about 30 metres by 18 metres). The coops are heated by gas. The pheasants are housed in the coops for around six to eight weeks. At this point all the pheasant chicks leave the site and are taken to a local Sporting Estates and Game farms.

19. Around 10,000 breeder birds are then typically brought onto the site and kept in Fields C and D until September when they are moved into Fields A and B as they are grown on for egg laying and breeding stock. Once the pheasants move to Fields A and B the coops are washed down and removed. In Fields A and B the pheasants roam within purpose-built enclosures until they are removed from the farm at the end of December. However, this has been as late as January or February depending on ground conditions.

20. The pheasants are contained by tall wire fences within Fields A and B where a cover crop of kale and maize is grown. Sheep graze Fields C and D after the pheasants have left the farm.

Technical Evidence

21. The proposal is not a use directly connected with or necessary to the management of the SAC. Both parties recognise that the proposal is unusual, and that a 'pathfinding' approach has taken place with a view to providing/obtaining robust evidence to assess the proposal's potential influence on the water quality of Folly Brook and in turn the SAC. Framework paragraph 43 says that the right information is crucial to good decision-making, particularly where formal assessments are required such as HRA.

22. As the development started before the appellant started measuring the water quality of Folly Brook, it is impossible to be sure of the pre-development condition of the watercourse for the section running through the site.

23. The River Clun SAC Nutrient Management Plan (NMP) identifies the area around the site to have a bedrock geology of 'Ludlow Rocks – Mudstone, Siltstone and Sandstone. Having regard to NMP Map 6, the soil on either side of this part of Folly Brook is Barton 0541l, which is a brown well drained, silty soil that allows surplus winter rainfall to pass downwards through the permeable soil. The large silt and sand content can lead to capping during heavy rain and runoff which causes erosion on slopes. The risk is at its greatest during spring before crop cover is established and during summer storms which follow dry spells. The floodplain of Folly Brook has a soil type of Conway Association 811b. This silty alluvial gley soil is seasonally waterlogged. To the north, the soil type is Manod 611c which is a fine clay loam soil that is free draining, permeable and well-drained. Neither Manod or Conway Association soils pose an erosion risk.

24. The Statement of Common Ground (SoCG) confirms the main parties' agreement that there are active pathways between the appeal site and Folly Brook which could allow SS, SRP and TON not taken up by grass and crops to be washed into the watercourse[7]. There are also pathways such as from bank erosion, ammonia deposition from other livestock in the catchment, and due to SS, SRP or TON being washed into Folly Brook from non-pheasant rearing activities, which are outside of the appellant's control. One potential pathway discussed at the Hearing was a surface water flow which, in periods of high rainfall, can flow across Field B from the junction of two roads to the west down to Folly Brook.

25. Based on my own observations, ground levels generally fall from the C6194 through Fields A and B towards Folly Brook, and from the east through Fields C and D towards Folly Brook. The topography is not universal across the four fields and the land does appear to have a range of different slope angles. This is broadly supported by plan Ref: 1954/PE/08 Version 1 which is based on OS data. However, the plan is not of a scale that would pick up site-specific changes in topography. The appellant explained to me that ground levels slightly rise up towards Folly Brook. Yet, even if true for some of the site, this does not appear to universally apply to the Fields A, B and C. Without a site-specific topographic survey of the site, providing more precise analysis of the ground in and around the site, it is impossible to establish whether or not ground levels help prevent nutrients from being washed into Folly Brook. I therefore do not agree with the appellant's view, based on the available evidence, that the potential pollution pathways from the development to Folly Brook are negligible.

26. The appellant has submitted water quality evidence spanning several years. The appellant has also assessed airborne ammonia[8] given that large numbers of birds generate air borne ammonia which is highly soluble and can be absorbed by surrounding farmland and may be washed into the river.

27. The water quality evidence submitted can be split into two distinct phases. The first covers the period from October 2015 to February 2017. The Council's decision to refuse planning permission was solely based on the first period of water quality evidence. To support their decision, the Council completed a HRA Screening Report, dated 18 May 2018. While, earlier HRA's were completed by the Council during the planning application, these did not underpin the

[7] SoCG, Paragraph 11 a - d
[8] A Report on the Modelling of the Dispersion and Deposition of Ammonia from the Pheasant Rearing Site at Newcastle Court, near Newcastle in Shropshire, 11 July 2017

Council's decision to refuse planning permission. The second period of water quality testing was between August 2018 and July 2019. The results have been shared with the Council, who have provided comments on its content as part of their appeal submissions and at the Hearing.

28. Added to this, the appellant has assessed historical and current nutrient inputs and outputs in terms of Nitrogen which compare the site's use before pheasants first arrived on the land and the current operation (Document 1). The Council have not disputed this evidence, which shows a lower nutrient input into the land, falling from 3729.76 kgN/yr (former land use) to 2291.43 kgN/yr (current land use). No calculations have been undertaken for phosphorus, though I note the appellant's view that they would expect a not dissimilar reduction.

Pre-August 2018 sampling

29. Two monitoring points were established by the appellant to take water samples. The locations of monitoring point A old and monitoring point B are shown on plan Ref: 1954/PE/08 Version 1.

30. The Council and NE cite concerns about the robustness of the first period of water quality evidence submitted by the appellant. Their concerns relate to: the lack of flow data for Folly Brook; inappropriate position of monitoring location A old; a period where birds were not at the site due to disease; incorrect sampling of Phosphate and not SRP; and the level of detection (LOD) not being low enough.

31. The appellant recognises that there are 'reliability' issues with the water quality evidence during this first period, in particularly that before August 2016. Before this date, monitoring point A old was upstream of a tributary. Hence, the bearing that the tributary may or may not have on the water quality of Folly Brook was unknown. Consequently, the appellant confers that the evidence between October 2015 and July 2016 inclusive is of little value. I have no reason to disagree with the appellant's assessment.

32. From August 2016, a new monitoring point A was used to the south of the tributary (A new – Plan Ref: 1954/PE/08 Version 1). Even if I were to agree that this monitoring location is appropriate, it is difficult to understand the bearing that a further tributary (next to Fields C and D) may or may not have on the water quality of the section of Folly Brook measured between August 2016 and December 2016 as measurements from monitoring point T were only taken in January and February 2017. These two samples alone do not represent a meaningful period of sampling to arrive at any definitive conclusion. Aside to this, no pheasants were on the site between 7 July and 23 September 2016 due to disease.

33. Within this period of testing, Total Phosphate readings continued to be taken, but in addition SRP was measured. While, it may be rare for commercial laboratories to test river water for SRP to the LOD applicable to the SAC, the LOD used for SRP was not low enough before August 2018 to allow direct comparisons with the FCT for the SAC. Hence, even if I were to agree with the appellant that the results from August 2016 to February 2017 are 'more reliable' than the period between October 2015 and July 2016, there is significant uncertainty about its reliability for the reasons set out, notwithstanding the absence of any flow data.

34. The appellant's airborne ammonia modelling explains that the predicted maximum annual mean ammonia concentrations at all the nearby wildlife sites are at levels that would normally be deemed acceptable for permitting purposes. The report goes onto to say that the deposition to land over the parts of the River Clun catchment area outside the modelling domain is likely to be insignificant. There is no substantive evidence to counter the findings of this report even though it does acknowledge the difficulties of predicting with any certainty the ultimate fate of nitrogen that is deposited to flora and other surfaces. Even so, the deposition rate is a relatively insignificant amount in comparison to the likely normal nitrogen inputs to arable land and pasture in the area.

35. That said, with a view to addressing the Council's concerns, the appellant implemented a series of mitigation measures on the site before January 2018[9]. They were broadly considered to be a good idea by both parties if nutrients were being washed into Folly Brook. Although I do not know the exact date of when the various measures were implemented, January 2018 was the time when they were all referred to as being present on the site.

36. On 12 April 2018, the Court of Justice of the European Union issued a judgment[10] which ruled that Article 6(3) of the Habitats Directive must be interpreted as meaning that mitigation measures (referred to in the judgment as measures which are intended to avoid or reduce effects) should be assessed within the framework of an appropriate assessment (AA) and that it is not permissible to take account of measures intended to avoid or reduce the harmful effects of the plan or project on a European site at the screening stage.

37. The screening stage must be undertaken on a precautionary basis without regard to any proposed integrated or additional avoidance or reduction measures. Where the likelihood of significant effects cannot be excluded, on the basis of objective information the competent authority (CA) must proceed to carry out an AA to establish whether the proposal will affect the integrity of the SAC, which can include at that stage consideration of the effectiveness of the proposed avoidance or reduction measures.

Conclusion on whether likely significant effect alone or in combination

38. However, there is significant uncertainty about the objective evidence submitted by the appellant up until January 2018. A precautionary approach is warranted. Hence, I conclude that the proposal alone is likely to have a significant effect on the internationally important features of the SAC. This view is not altered even though the main parties and I agree that there will be no likely significant effects in combination with other plans or projects.

Effect

39. The SAC is currently failing its FCT for SRP, TON and SS. These targets have been set to protect the FWPM from the adverse effects of nutrient enrichment and siltation, which have caused a population decline of FWPM. FWPM require cool, well-oxygenated soft water free of pollution or turbidity. They inhale water to filter out minute organic particles on which to feed. Added to this, the effects of SRP, TON and SS have a bearing on trout and salmon stocks which are used by FWPM in their larval stage. Consequently, there is a lack of growth

[9] Shropshire Council Habitats Regulation Assessment, 24 January 2018, Paragraph 3.1.3
[10] Case C-323/17

in the FWPM population.

40. Having regard to the objective evidence submitted before January 2018, I cannot rule out the possibility that the proposal is or could be adding to the significant risk for undesirable changes with associated negative effects on the FWPM of the SAC through SRP, TON and SS. Therefore, there is uncertainty as to whether the development alone is or would be likely to have significant adverse effect on the integrity and conservation objectives of the SCA.

Mitigation measures

41. Part 2 of SAMDev Policy DM12 states that proposals which are likely to have a significant adverse effect, directly, indirectly or cumulatively, on any of the following: the special qualities of the Shropshire Hills AONB; and priority habitats will only be permitted if it can be clearly demonstrated that: a) there is no satisfactory alternative means of avoiding such impacts through re-design or by re-locating on an alternative site and; b) the social or economic benefits of the proposal outweigh the harm to the asset. In all cases, a hierarchy of mitigation then compensation measures will be sought.

Mitigation measures implemented before January 2018

42. The location and nature of the mitigation measures implemented by the appellant before January 2018 are detailed on a Mitigation Plan – May 2017. They include: fenced enclosures, a ditch between Fields C and D, a buffer strip between 4 and 10 metres in width, a grassed buffer strip in Fields C and D, ploughed furrows in Fields A, C and D, and a steep slope and berm in Field B. I observed each of these during my site visit.

43. These mitigation measures aim to intercept any run-off, prevent it from entering Folly Brook and encourage infiltration into the ground. Principally, they seek to address the potential for SS, SRP and N to be washed into Folly Brook by eliminating flow pathways that might carry sediment laden water into Folly Brook. SRP is generally transported adhered to SS particles due to its insoluble nature. Two more vulnerable areas[11] were identified by the appellant as having the potential for surface run-off to occur following exceptionally heavy rainfall. One of these is roughly in the path of the overland flow that can occur across Field B from the junction of the two roads to the west.

44. Based on the mitigation measures, the appellant says that there are no feasible pathways for surface water run-off to enter Folly Brook. However, the appellant recognises that there are no detailed specifications available of the mitigation measures, in terms of their construction or maintenance arrangements.

45. Aside to the physical mitigation measures, the appellant has removed land from Nitrogen fertilizer and farmyard manure application. This is with a view to 'off-setting' Nitrogen inputs and outputs, including in the form of ammonia. The areas which this applies to are detailed on a Mitigation Plan dated 22 December 2017. Document 1 bears out the appellant's approach in this regard.

August 2018 to July 2019 sampling

46. The second period of water quality testing has occurred with the mitigation measures discussed above in place. The main parties agree that the correct LOD for SRP has been used, since a suitable laboratory was found by the

[11] Plan Ref: 2284/WQM/01

appellant. There is also agreement about the locations of sample points T and B, but disagreement remains about the location of monitoring point A new.

47. The rationale for monitoring point A new is to establish a baseline for Folly Brook before the development can potentially affect its water quality. The Council and NE raised concerns that monitoring point A new is part way down Field A, and its location should be to the north of Field A further upstream. I accept the appellant's view that there would be difficulties and uncertainty with whichever location is used given the shape of the site, and due to the use of land to the north for grazing by cattle and sheep. There are also difficulties in gaining access to a location further upstream. On balance, I accept the appellant's view that monitoring point A new is a suitable location.

48. Across the last year, monthly samples have been taken typically at the start of each month. I agree with the main parties that there is an inherent degree of uncertainty in terms of measuring water quality given the number of variables involved. Variance is inevitable as Folly Brook is part of a natural water system which is affected by variable weather conditions. The appellant accepts that there will be variance in the catchment due to the topography and climate.

49. As I explained earlier, there is no site-specific topographic survey before me. It is therefore difficult to certain about the location and extent of the appellant's mitigation measures, and whether for instance they would address the surface water flow which can at times traverse across Field B to Folly Brook. There are also no records of the weather conditions at the time of each monthly sample. Even though this information would only represent a snap shot in time, it may provide a context as to why particular results have been obtained, especially if there had been a rainfall event. It would be difficult for monthly spot samples to pick rainfall events up, unless they occurred at the time when the sample is taken. In terms of the SS samples, I note higher figures are recorded during winter months when rainfall is typically at its greatest. This time of year is sensitive for trout and salmon eggs as a result of the watercourse being diluted. Thus, there could be possible implication for their stocks and consequently the larval stage of FWPM and any potential population stabilisation or recovery.

50. During the planning application, the Council asked the appellant for a six-month period of water quality samples. The appellant has endeavoured to fulfil that request in terms of the period of sampling undertaken. Even so, the NMP explains that where possible, compliance to the FCT targets should be assessed using 12 monthly samples taken over a period of three consecutive years. At best, despite monitoring Folly Brook since October 2015, the appellant can only rely on data from August 2018 in respect of SRP (12 monthly samples), and from January and February 2017 for SS and TON (14 monthly samples).

51. While more frequent sampling may be unusual, and proportionality is needed, this would, in tandem with other evidence sources, have provided a broader evidence base capturing any rainfall or flood events that typically occur over shorter periods of time. Details and analysis of the mitigation measures would have widened this collective evidence base further and have helped understand the effect of SS, SRP and TON. I recognise that there would be a financial implication for more frequent sampling, and there may well be issues with monitoring equipment becoming blocked if left on site, but samples could still be taken in person, and the onus does rest, in this case, with the appellant to provide the objective evidence to support their case.

52. The NMP explains that the precise importance of high flow vs low flow events in terms of driving deposition is not currently understood for the River Clun. At the Hearing there was considerable discussion about the use and relevance of flow data. The appellant confirmed that they have not measured the flow of Folly Brook as they consider that it could present errors due to the site's physical constraints, the flow of Folly Brook, and in terms of issues with ensuring measurements are taken at the correct depth. They also explained that the EA measure flows on a catchment scale and not on a single watercourse scale such as that suggested by NE.

53. The availability of flow data varies across the UK, and the NE accepted, through questioning, that having flow data available for Folly Brook would not conclusively, on its own, rule in or rule out potential nutrient and sediment loading of Folly Brook. However, NE did suggest that a 'driver' could be used to take water flow measurements and by having flow data available, it would reduce the potential variables and understand the proposal's influence on the water quality of Folly Brook. Both parties' make valid points, but by having flow data available, in tandem with the other strands of evidence I have referred to, it would help understand the proposal's effect.

54. The FCT targets apply to the SAC downstream of the site. Comparisons have been drawn by the appellant between their results over the last year against the FCT targets. However, NE say that a lower target should be applied to Folly Brook given that it is further up the catchment, and there are other parts of the River Clun catchment to feed into the SAC which may affect whether the short or long term FCT targets could be met. While their approach is logical, NE accepted that there is no fixed lower target that can be applied to test the appellant's water quality evidence.

55. The NMP indicates that the Folly Brook catchment contributes roughly 5% of the total River Clun catchment load for Phosphate; 4% for Nitrogen; and 2 or 3% for Sediment load. In this regard, I agree with the Council and NE that the results ought to be apportioned to the overall River Clun catchment.

56. The results, in terms of SS, SRP and TON, have been averaged across the year. I understand NE's point about this not being appropriate, especially in light of SS typically being washed into watercourses during high rainfall or flood events. Nevertheless, averaging the results allows comparisons to be drawn against the FCT targets. Generally, the results show a fall in SS, SRP and TON from monitoring points A to B. That said, the TON average is higher than the FCT target and even if pre-August 2018 data using monitoring point A new is used, this does not result in a change to the TON average against the FCT.

57. While there may not be a discernible change in TON as a result of the appeal proposal, for the various reasons explained above, there are still uncertainties about whether the proposal is in itself likely to have a significant effect on the SAC even if some of the issues experienced were outside of the appellant's control or not as a result of their efforts to provide the right information.

58. I note that the appellant is of the view that more sediment would be mobilised if cattle and sheep were kept on the site compared to the proposal. However, there is no substantive evidence to demonstrate this. Nor would it change my view around the uncertainties around the proposal for the reasons set out.

Effectiveness of mitigation measures pre-January 2018 and the use of planning conditions

59. NE explained at the Hearing that the implemented mitigation measures may help reduce the potential of nutrients being washed into Folly Brook. However, NE also said that there is no one mitigation measure which would eradicate the issue as there will always be an inherent loss into the water catchment. For instance, sediment can fill up traps such as ditches, ploughed furrows and buffer strips. This can result in the storage of a high source of nutrients, which have the potential, especially if there is a rainfall event, to either be washed into the watercourse or be leached through the soil.

60. While some of the measures are logical insofar as addressing a potential effect, we are now some time on since their implementation. Despite visual checks by the appellant, there are no construction details of the mitigation measures or substantive evidence setting out what these measures are capable of and whether they have been, are or are likely to remain effective in the future.

61. The main parties have discussed the use of prospective conditions. I have had regard to their respective comments. As part of the suggested planning condition for a Water Quality Monitoring and Mitigation Scheme, provision is made to obtain details of the management of the implemented mitigation measures. The suggested wording is not precise enough to measure compliance. In any event, for the reasons set out in the preceding paragraph, I am not satisfied that they have or will in the future achieve the intended result and clarify that the proposal would not be likely to have a significant effect on the SAC.

62. A planning condition is suggested to secure a detailed mitigation strategy in respect of land to be removed from Nitrogen fertilizer and farmyard manure application. The purpose behind this condition is to off-set the effects of the appeal scheme. The Cooperatie Mobilisation judgment[12] raises issues around whether European sites should be allowed to further deteriorate if they are failing in their conservation target. The SAC is in unfavourable declining condition and the TON results are above the FCT target. That aside, the main parties agreed that the suggested condition could be more precise, in terms of obtaining a specification, more detailed plans and management arrangements. The suggested condition would also pose enforceability issues as there is no requirement to keep records of any Nitrogen fertilizer and farmyard manure which, based on the Mitigation Plan dated 22 December 2017 could still take place on Fields C and D. As such, I am not certain that this suggested mitigation measure could overcome the likely significant effect.

63. I am not therefore of the view that these mitigation measures and the suggested planning conditions could successfully mitigate or overcome the likely significant effect on the SAC from the proposal.

Proposed mitigation measures

64. Further mitigation measures are proposed in the SoCG. Both parties accepted in questioning that the use of reed beds to filter water from furrows and ditches could be difficult to manage. Such details could be secured through a planning condition. Similarly, a planning condition could potentially secure wider and

[12] Coöperatie Mobilisation for the Environment UA and Vereniging Leefmilieu v College van gedeputeerde staten van Limburg and College van gedeputeerde staten van Gelderland; Cases C-293/17 and C-294/17

more vegetated buffers to Folly Brook. However, there are no precise details of where these measures would be located or their specification and future management arrangements. I am also unclear to what extent their contribution may or may not be to mitigating harm to the SAC. A planning condition has been suggested to secure details of these, but it lacks precision and there is no review mechanism to allow a potentially failing measure to be remedied. Hence, I cannot be certain that the further mitigation measures would succeed.

65. The appellant may be able to commit to using the ford across Folly Brook less or not at all, but there is no mechanism before me to secure this, and in any event, I understand that a neighbouring farmer has an emergency right of access across the ford. Thus, it would be difficult to reduce or remove silt generation by this pathway.

66. A temporary planning permission has been suggested for a period of three years. A planning condition to control this proposal is intrinsically linked to the condition around the Water Quality Monitoring and Mitigation Scheme and a condition requiring the use, structures, equipment and materials brought onto the land to be removed within a set period of time if certain requirements are not met. Given my earlier findings on the Water Quality Monitoring and Mitigation Scheme, a temporary planning permission would not be appropriate in this case.

67. In support of their case, the appellant has referred me to the appeal decision at Heath Farm[13]. The scheme here was to expand the poultry business. Even if I were to consider it to be directly comparable to the appeal scheme, I note that NE and the Council in this case considered this scheme to be acceptable subject to mitigation measures. This is not the case here as I have concerns about the proposal's effect and the mitigation measures. It is also appropriate, given the specific nature of the proposal to consider its effect on its own planning merits.

68. I am not of the view that the suggested planning conditions around the proposed mitigation measures could successfully mitigate or overcome the likely significant effect on the SAC from the proposal.

Alternative solutions

69. The purpose of the alternative solutions test is to determine whether there are any other feasible ways to deliver the overall objective of the plan or project which will be less damaging to the integrity of the SAC. The applicant is primarily responsible for identifying alternatives which must be considered objectively and broadly.

70. At the Hearing, the appellant explained to me that other fields within their control were not suitable to rear pheasants, and that a reduced scale of operation would not be viable. They also explained that over time changes have been made to which crops are sown, where livestock graze and general management of the land once the pheasants are removed from site.

71. Despite the changes to the operation and management of the site, the appellant accepts that the use could take place at another location, though there would still be a need to be nearby for welfare purposes. Hence, there is no substantive evidence before me that disproves the Council's view that there are likely to be alternative sites for producing pheasants for game shoots

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elsewhere in the county. There is also no evidence to suggest that another farm business outside of the River Clun catchment could not feasibility deliver the same objective as the proposal whilst avoiding any likely effect on the SAC.

Imperative reasons of overriding public interest

72. I note the benefits of the proposal advanced by the appellant in terms of supporting their endeavours to foster children, to build their work ethic and empathy for animals in a safe environment together with the employment provided for people in the village whilst diversifying their farming business. In this regard, the proposal would accord with CS Policies CS5 and CS13 as well as Framework paragraph 83. That said, even if I were to conclude in the appellant's favour insofar as the other aspects of the case, these would not, having regard to definition of the term[14], be imperative overriding reasons even if they are local public benefits.

Conclusion on the main issue

73. Even though the proposal would accord with CS policies CS5 and CS13 and Framework paragraph 83, for the reasons set out above, I conclude that that there is a likely significant effect on the SAC from the proposal alone. Having undertaken a project-level HRA, significant harm to biodiversity in the SAC and the AONB resulting from the development cannot be avoided, through locating on an alternative site with less harmful impacts, or adequately mitigated. In such circumstances, Framework paragraph 175 says that planning permission should be refused.

74. I therefore conclude that the proposal does not accord with CS policies Policy CS17 and CS18, SAMDev Policy MD12 and Framework paragraphs 170 and 175. Collectively, these policies seek all development to protect and enhance Shropshire's natural environment, including its water quality and to provide opportunities to enhance biodiversity. Permission will be refused where a HRA indicates an adverse effect on the integrity of a designated site which cannot be avoided or fully mitigated.

Other matters

75. Although the coops are visible from the lane to the west, the visual effect of these is similar to other agricultural activities taking place in the area. There is also a good interface distance between the site and the scattering of residential properties in the area. As such, I am of the view based on the evidence before me that the proposal does not cause harm to nearby residents living conditions in terms of odour, noise, vehicle movements, and vermin.

76. I understand the appellant's efforts and their frustration with the opportunity to discuss and resolve issues around evidence gathering with the Council and NE during and after the planning application was considered, and with NE's stance at the Hearing. Nevertheless, it is open to the appellant to produce the necessary information with a view to finding a solution.

Conclusion

77. For the reasons set out above, I conclude that the appeal should be dismissed.

Andrew McGlone

INSPECTOR

[14] Council Statement of Case, Appendix SC4

APPEARANCES

FOR THE APPELLANT:

Peter Yeoward	Appellant
Sarah Belton	Hafren Water
Lawrence Brown	Hafren Water
Sarah Faulkner	NFU

FOR THE LOCAL PLANNING AUTHORITY:

Tim Rogers	Shropshire Council
Sue Swales	Shropshire Council

INTERESTED PERSONS:

Vicki Howden	Natural England
Grady McLean	Natural England

DOCUMENTS

Documents submitted at the Hearing

1 Current and historical nitrogen inputs and outputs
2 Colour copy of Habitats Regulation Assessment, Shropshire Council, 18 May 2018