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## Appeal Decision

Hearing held on 11 January 2023

Site visits made on 9 August 2022 and 12 January 2023

**by Bhupinder Thandi BA (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 5 May 2023**

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**Appeal Ref: APP/L3245/W/21/3289216**

**Footbridge Farm, Tasley, Bridgnorth WV16 5LZ**

- 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 Matthew Bower against the decision of Shropshire Council.
  - The application Ref 17/01033/EIA, dated 16 February 2017, was refused by notice dated 7 December 2021.
  - The development proposed is 4 No. poultry buildings and associated infrastructure.
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### Decision

1. The appeal is dismissed.

### Procedural Matter

2. The description of development in the heading above has been taken from the planning application form. However, in Part E of the appeal form it is stated that the description of development has not changed but, nevertheless, a different wording has been entered. Neither of the main parties has provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the one given on the original application.

### Background

3. In September 2017 planning permission was granted, by Shropshire Council, for a similar development comprising poultry buildings. The decision was subsequently quashed in the Court of Appeal following a Judicial Review. I have paid regard to this judgement<sup>1</sup> insofar as it is material to the appeal development before me.

### Main Issues

4. The main issues are:
  - The effect of the proposed development upon the living conditions of nearby occupiers and future development with regard to odour; and
  - The impact of the proposal upon the Thatchers Wood and Westwood Covert Site of Special Scientific Interest (SSSI) with regard to ammonia.

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<sup>1</sup> Court of Appeal judgement *R(Squire) v Shropshire Council* [2019] EWCA Civ 888

## Reasons

5. The appeal site comprises a rectangular parcel of land located to the rear of existing agricultural buildings at Footbridge Farm. The farm extends over some 720 acres and comprises arable land. The farm sits within a largely agrarian landscape on the western edge of Bridgnorth. Grade II listed dwelling - The Leasowes sits within extensive grounds and neighbours Footbridge Farm.

### *Living conditions of existing and future occupiers*

6. The development is for four poultry units which would operate on a 48-day growing cycle, in which approximately 210,000 chicks would be brought into the buildings, reared for 38 days and then removed, leaving 10 days for the buildings to be cleaned and prepared for the next flock. There would be between 7 and 8 growing cycles a year. In the course of a year approximately 1,575,000 broiler chickens would be reared.
7. In contrast to the previous planning application the buildings would be fitted with air scrubber units and the waste produced by the livestock would be taken off site to an aerobic digestion plant operated by a third party.
8. I have paid regard to the appellant's Odour Assessment. There has been considerable debate regarding the odour assessment and the modelling underpinning its conclusions. I acknowledge that odour dispersal modelling is not an exact science and is based on a number of variables. However, I am not satisfied that as submitted it properly considers the odour effects of the proposed development.
9. The assessment fails to consider peak odour concentrations at the end of the growing cycle and during the clearing out of the poultry buildings. Moreover, limited explanation is provided for the input data selected and the methodology adopted. These factors combined with the absence of empirical evidence to support the assessment and conclusions leads me to determine that the odour assessment does not adequately model the impact resulting from the proposed development. Therefore, in my judgement, the conclusions reached in the assessment cannot be relied upon.
10. Further oral submissions were made by the appellant at the hearing in relation to the assessment. However, these submissions, in my view, fell some way short of addressing the matters above and were not sufficiently compelling to lead me to reach a different conclusion.
11. Taking the odour assessment as submitted it concludes that the 98<sup>th</sup> percentile hourly mean odour concentration resulting from the proposed development, taken at receptors outside of Footbridge Farm, would accord with the Environment Agency's benchmark figure for moderately offensive odours.
12. The nearest dwelling to the site is The Leasowes and whilst odour concentrations at the dwelling would accord with the benchmark figure, it is evident that part of the garden would experience odour concentrations in excess of this figure resulting in the occupiers experiencing offensive odours when outside.
13. Based on the evidence before me including my observations during the site visit it is apparent that the occupiers use a significant proportion of the grounds for recreational purposes including areas close to the boundary with Footbridge

Farm. In my view, odour resulting from the proposed development would be more apparent to the occupiers of The Leasowes, irrespective of the use of air scrubbers, unduly affecting their living conditions. Whilst the Council's Regulatory Services Officers did not raise concerns to the application this does not alter my findings in respect of this issue.

14. I am not satisfied that the odour assessment as submitted is sufficiently robust given the merits of the development proposed. Even if I were to take the assessment at face value it still demonstrates that odour resulting from the poultry sheds would unduly affect the living conditions of nearby occupiers.
15. Turning now to the living conditions of future occupiers - Bridgnorth is a principal settlement and is identified as a location for new development. Two parcels of land to the east of the site are allocated in the Site Allocations and Management of Development Plan (SAMDev) (2015) for employment and residential use, known as Tasley Gateway. The Council advised that a hybrid planning application has been submitted for development of the land although, at the time of the hearing, it is yet to be determined.
16. My attention was also drawn to the emerging Shropshire Local Plan which proposes a sustainable urban extension to Bridgnorth. It would include residential, town centre and employment uses referred to as the Tasley Garden Village (TGV). The appeal site falls within the TGV site. One of the requirements of the site allocation is that any poultry unit operating within the site will cease before occupation of the first dwelling.
17. The National Planning Policy Framework (the Framework), at paragraph 48, states that local planning authorities may give weight to relevant policies in emerging plans according to the stage of preparation; the extent to which there are unresolved objections to relevant policies and the degree of consistency of the relevant policies in the emerging plan to the Framework.
18. The Council advises that the draft Local Plan has been submitted for examination, but that no hearing sessions have taken place, or any interim findings published in relation to the TGV.
19. The emerging Local Plan although not at a stage where it carries significant weight in my decision, still indicates an intention to deliver strategically significant development on the edge of Bridgnorth. The Council acknowledged it is yet to be determined how the cessation of any poultry operation would actually be secured.
20. Whilst it is not for me, as part of a Section 78 appeal, to come to a view on the local plan the approach towards the proposed development in the context of the TGV does not sit comfortably with me. I am mindful of paragraph 187 of the Framework, which states that existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established.
21. In this particular regard, if I was minded to allow the appeal, the poultry units would essentially gain "protection" under paragraph 187 of the Framework. It is not unreasonable to think that the appellant would be reluctant to give up his poultry operation given the time and capital that would be expended in establishing this element of his farm business. This would undermine the TGV which is clearly of strategic importance to the Council and the local community.

22. Therefore, there is a tension between the development proposed and the emerging local plan. The effect of allowing the appeal would, in my view, be two-fold. Firstly, it would undermine the local plan, TGV and the ambitions of the local community. Secondly, its operations would likely lead to the living conditions of future occupiers of the TGV being compromised. As such, I find that the proposed development would unduly affect future local development and its occupiers.
23. At the hearing interested parties expressed concerns regarding the Environmental Permit (EP), issued by the Environment Agency (EA) and how it related to the planning system. The EP would control the day-to-day management and operations at the poultry buildings and includes requirements for the recording of information and incidents. At the hearing it was established that the appellant's EP is limited in scope largely covering the operations taking place at the buildings and does not control activities outside of the permit area which includes the transfer of waste off site.
24. Waste is a by-product of intensive poultry farming but the transfer of it from the site to an aerobic digestion plant would be the responsibility of a third party whom themselves would be bound by the conditions of a separate EP.
25. I note the representations received, but in my view, given the nature of modern farming practices it is inconceivable that the appellant could plan comprehensively for every and all eventualities resulting from the proposed development, including Avian Flu. Nor is there any credible information before me to suggest that the appellant would not operate to Best Available Techniques or in accordance with the Code of Good Agricultural Policy.
26. The day-to-day operations taking place including the thinning out of the crop and transportation of waste from the site would be a matter for the EA. Incidents such as breakouts of Avian Flu would be a matter for the Department for the Environment, Food and Rural Affairs to effectively manage. I have not been provided with any credible evidence to indicate that the practices and regimes that these bodies have in place would not be appropriate to manage the direct and indirect effects of the proposed development.
27. The Framework, at paragraph 188, supports this by setting out 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). It also states that planning decisions should assume that these regimes will operate effectively.
28. Despite my observations regarding relationship between other regulatory regimes and the planning system I conclude that the proposed development, in land use terms, would adversely affect the living conditions of existing and future occupiers, with regard to odour. This would be contrary to Policies CS6 and CS17 of the Shropshire Core Strategy (2011) (CS) and Policy MD7b of the SAMDev which, amongst other things, require developments to safeguard residential and local amenity; the protection and enhancement of Shropshire's built environment and for agricultural development not to lead to unacceptable impacts on environmental quality and existing residential amenity.
29. It would also be contrary to paragraphs 130, 185 and 187 of the Framework which, amongst other things, require developments to function well and add to

the overall quality of the area; create places with a high standard of amenity for existing and future users; to be appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment and ensure that new development can be integrated effectively with existing businesses and community facilities.

*Impact on Thatchers Wood and Westwood Covert Site of Special Scientific Interest*

30. Thatchers Wood and Westwood Covert SSSI is located approximately 2.5km to the south-west of the site. The SSSI comprises a predominantly damp wood in the valley of Mor Brook with areas of dry rocky woodland on slopes in Westwood Covert. It is also designated as Ancient Woodland.
31. The release of ammonia is an inevitable consequence of intensive poultry farming and the proposed air scrubbers would reduce ammonia release into the atmosphere to levels deemed acceptable by the EA.
32. Despite the above it is evident that ammonia and nitrogen levels are already in excess of critical levels and loads at the SSSI thereby having an adverse impact upon it through eutrophication. In my view, the resultant pollutant levels would unacceptably result in the further degradation of the SSSI. Whilst benchmark ammonia levels have already been exceeded this is not justification to make an undesirable situation even worse.
33. I acknowledge that the Council's Ecologist and Natural England did not raise objections to the planning application, however, this does not alter my conclusion in relation to this matter.
34. As such, I conclude that the proposed development would adversely affect the Thatchers Wood and Westwood Covert SSSI by reason of ammonia concentration. It would be contrary to CS Policies CS6 and CS17 and SAMDev Policy MD12 which, amongst other things, require developments to protect, restore, conserve and enhance the natural environment, safeguarding natural resources and not to have a significant adverse impact on Shropshire's environmental assets.
35. It would also be contrary to Paragraphs 174 and 180 of the Framework, which amongst other things, requires planning policies and decisions to contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils in a manner commensurate with their statutory status or identified quality in the development plan.

**Other Matters**

36. I note the representations made by local residents raising additional concerns. However, given my findings on the main issues, it is not necessary for me to consider these matters in detail.

## **Conclusion**

37. For the reasons set out above the appeal does not succeed.

*B Thandi*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Matthew Bower	Appellant
Ian Pick	Ian Pick Associates Ltd
Steve Smith	AS Modelling & Data Ltd

### FOR THE LOCAL PLANNING AUTHORITY:

Kelvin Hall  
Daniel Corden

### INTERESTED PARTIES:

David Barker  
Andy Boddington  
Dr Michael Bull  
David Cooper  
Chris Edwards  
George Edwards  
Dr Sam Fowles  
Dr John Jenkins  
Nigel Lumby  
Amea Plimmer  
Nicola Squire