



Appeal Decision

Inquiry opened on 2 March 2004

Site visit made on 3 March 2004

by **Chris Frost** BSc(Hons) DipLD FLI CBiol MIBiol MRTPI

an Inspector appointed by the First Secretary of State

The Planning Inspectorate
4/09 Kite Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN
☎ 0117 372 6372
e-mail: enquiries@planning-inspectorate.gsi.gov.uk

Date 13 APR 2004

Appeal Ref: APP/U1240/A/03/1122256

The Barn, Earles Road, Three Legged Cross, Wimborne BH21 6RY

- 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 M E Gardner against the decision of East Dorset District Council.
- The application (Ref. 3/01/0475), dated 26 April 2001, was refused by notice dated 23 January 2003.
- The development proposed is for private temporary accommodation on-site for an essential agricultural worker.

Summary of Decision: The appeal is dismissed.

Procedural Matters

1. The Inquiry sat on 2 & 3 March, with a site visit at the start of the second day.
2. The development proposed has already taken place as a dwelling has been created. Also, the accompanying agricultural enterprise has been inaugurated with the positioning of the first of 12 mobile hen houses. The extent of the application site is limited to the footprint of the stable that has been converted into a dwelling.

The Proposal

3. Extensive submissions were made on the subject of what constitutes a plan or project (for the purposes of interpreting Section 48 of The Conservation (Natural Habitats, &c.) Regulations 1994 (The Habitats Regs)). These relate to what this particular application should be seen as comprising.
4. The development for which authorisation is sought is described as '*private temporary accommodation on-site for an essential agricultural worker*'. The appellant argues that planning permission is sought for only one thing, namely a dwelling, as no consent is required to use the surrounding agricultural land for the purposes of agriculture.
5. I accept that planning permission is not required to set up an agricultural enterprise on the holding. However, the appellant claims that it is also necessary to house an agricultural worker in order to enable the particular enterprise (a poultry farm with up to 2500 free-range laying hens) to operate. The agricultural need for a dwelling is not challenged by the Council and nor is its supporting financial basis. Accordingly, while 2500 hens could be brought on to the site without the need for planning permission, in practical terms these could not be cared for and effectively managed for egg production without there being a permanent human presence on the site. This dependence on a human presence and the consequences this brings in terms of providing housing accommodation means that there is an inseparable association between the type of enterprise envisaged and the need to provide

a dwelling. It would therefore be unrealistic to view the dwelling as a separate matter from the enterprise itself.

6. Without a dwelling the poultry business could not operate on the scale envisaged and accordingly it follows that there are consequences related to the agricultural use of the site that could only materialise if there was a dwelling on the site. If planning permission were to be granted, a consequence of this application for an essential agricultural worker's dwelling would be to enable the establishment of a poultry farm of the size intended by the appellant (up to 2500 hens). Furthermore, the environmental impact of a poultry enterprise of that scale on the adjacent SSSI, cSAC and SPA is a material consideration that should be taken into account in determining this appeal.
7. I note that it is claimed that if the site could be supervised from an existing dwelling in the locality then the enterprise could be set up without any need for an application for planning permission. This may be so, but I do not find that there are any existing dwellings close enough or suitable to provide the degree of supervision that is claimed to be required here. The nearest is Horseshoe Cottage, which is about 100m from the site, but screened from it and far too large to be affordable by a person reliant on an agricultural wage. This argument is therefore largely theoretical and in view of this has little force in relation to this appeal.
8. I accept that in a wholly theoretical situation, if a dwelling were to exist on or close to a site suitable for free-range egg production and that site were adjacent to a sensitive European site, it may be possible to set up an enterprise similar to that envisaged in this application. In such a case it might also be that the enterprise could become operational without the need for either express or deemed planning permission. Accordingly, in such theoretical circumstances a European site might be vulnerable to the activities envisaged. However, if the system for the protection of European Sites was found to be vulnerable in this way, that would not be a sound argument to extend such vulnerability to sites where protection is provided through the planning system.

Main Issues

9. I consider that there are two main issues: firstly, whether the grant of planning permission would lead to consequences that would be likely to have a significant effect on parts of Lower Common, a Site of Special Scientific Interest (SSSI) that forms part of the Dorset Heaths candidate Special Area of Conservation (cSAC), the Dorset Heathlands Special Protection Area (SPA) and the Dorset Heathlands Ramsar Site; and secondly whether there is an agricultural need sufficient to justify the proposed dwelling, taking into account both functional and financial matters.

Planning Policy

10. The statutory development plan for the purposes of Section 54A of the Town and Country Planning Act 1990 (as Amended) is the Bournemouth, Dorset and Poole Structure Plan 2000 read together with the East Dorset Local Plan adopted in 2002. Structure Plan Environment Policies A-D are concerned with the protection of features of natural environmental importance. Local Plan policy CSIDE2 makes provision for the re-use of existing buildings to provide accommodation for agricultural workers and more detailed policies on the provision of agricultural dwellings are found at policies CSIDE 3, 4 and 5. Policies GB1 and GB2 set out the Green Belt policy framework for the area. Policies

NCON1 and NCON2 largely restate the nature conservation policies found in Structure Plan policies A-D.

Reasoning

11. As already explained, I consider that allowing a dwelling to be established on this site would enable an agricultural enterprise for the keeping of free-range hens to operate at a level that would enable 2500 hens to be kept on the site. It is on this basis that it is argued that the dwelling is necessary to house an essential agricultural worker, as supervision, for the sake of animal welfare and safety, of this commercial quantity of birds, would be required on a full-time basis.
12. The consequences of this are that there would be a constant human presence on the site and, as a by-product of the keeping of up to 2500 hens, there would be a continuous output of avian excreta. The Council and English Nature consider that both the human presence and the keeping of up to 2500 hens would lead to harmful consequences for Lower Common, which abuts the site to the south and north. They consider that this would lead to an adverse effect on its integrity as a European site.

Residential Impact

13. The conflict between dwellings and heathland sites arises from certain types of human activity and behaviour. By way of example, children playing on nearby heathland can cause disturbance and thereby damage nature conservation interests. Damage to habitat can be caused if fires are lit or mountain bikes or motor bikes are used. The keeping of pets can cause considerable damage, especially predatory animals such as cats that can deplete heathland animals including rare reptiles and birds. Dogs can cause disturbance and damage to nesting sites. Dog walking itself causes disturbance and cats and dogs cause soil enrichment through the leaving of faeces and urination. The irresponsible dumping of waste is also a damaging consequence of human activity.
14. Some areas of Lower Common already show clear signs of damage from the dumping of waste along with other activities such as vehicular access and motorcycle racing and I fully understand the reasons for wishing to limit housing development in nearby places where the Common is likely to be vulnerable. However, each case needs to be judged on its merits and the existence of an agricultural dwelling close to Lower Common could bring advantages as it would bring with it the possibility of constant supervision. Furthermore, a condition preventing the keeping predatory animals is suggested. Accordingly, while there are possible harmful consequences arising from a further human presence close to the Common, the impact could be limited and needs to be balanced against any possible advantages.
15. Part of the argument against residential development is that it would be part of a cumulative effect as each additional dwelling close to the European site has the potential to give rise to a further harmful impact. Although this may be slight in any particular instance, each new dwelling represents a further step in a damaging process. Accordingly, even though the potential for damage can be limited for any particular dwelling (e.g. a condition preventing the keeping of predatory animals), in this case there still remains an incremental and damaging effect from human activity that poses an increased threat to the integrity of the European Site.

16. I accept the logic of this argument and although limiting residential development for such reasons would place a severe restriction on residential development close to this European site, this seems to be necessary if obligations towards the protection of the European Site are to be met. However, notwithstanding this, the individual merits of this particular case need to be assessed and in my view it is relevant that the argument for this dwelling is based on an agricultural case, which is not likely to be repeated too often, unlike more general residential schemes. This fact speaks in favour of the scheme, but I cannot regard it as more than a further diminution of risk. As the ultimate test, given in Section 48 (5) of the Habitat Regs, is that a plan shall only be agreed to after having ascertained that it will not adversely affect the integrity of a European site, I cannot agree that this very demanding test would be met here.
17. I am aware that the presence of an agricultural dwelling close to this European site could bring benefits of supervision and deterrence which could be beneficial in respect of the protection of the site from damage (e.g. by deterring arson attacks or providing early reporting of uncontrolled heathland fires). Such benefits could be seen as being directly connected with the management of the site. However, this would need to be accepted by English Nature and formalised in some way before it could be accepted as a supporting argument. In this case there is no such acceptance and the possible informal benefits of supervision that may or may not materialise, while welcome, cannot be seen as persuasive because there would be no agreement or obligation to provide such a service. Accordingly, there is insufficient reason to find that there would not be an incremental adverse effect on the integrity of the European site, arising from the presence of this additional dwelling.

Ammonia Emissions

18. The deposition of ammonia on the European site forms another concern that is shared by English Nature and the Council. It is not disputed that chicken excreta is a source of ammonia and that this could find its way onto Lower Common by way of atmospheric dispersal. What is questioned is the significance of the effect that could arise from a well managed free-range egg farm keeping no more than 2500 birds over a period of no more than 3 years.
19. With regard to the latter point, although planning permission is sought only for a period of 3 years, this would in effect constitute a trial period. If the business were proved to be operating successfully after that time there should be no obstacle to the grant of permanent planning permission. This is confirmed in PPG 7, which at paragraph I15 indicates that planning permission for temporary accommodation should not be granted in locations where a permanent dwelling would not be permitted. Accordingly, while planning permission is sought for an initial period of 3 years, the implications of granting a temporary planning permission need to be assessed for a potentially permanent duration.
20. Regarding the management of the site, I accept that it is fair to assess the proposal on the basis that it would be soundly managed, although the possibility of poor management and any possible additional consequence should not be ignored. Sound management includes the regular export of manure from the site.
21. National models predict that around 20-23 kg N/ha/year is deposited on the Lower Common SSSI. This has not been verified by monitoring on the site itself and so remains as a best estimate based on available data and methods of calculation. Critical loads for dry heath

and *Calluna* dominated wet heath are in the range 10-20 kg N/ha/year and for *Erica tetralix* dominated wet heath 10-25 kg N/ha/year. This means that background levels already approach or exceed critical loads. Ammonia emissions from the proposed poultry farm would be expected to contribute a further 13.5kg N/ha/year at a distance of 50m downwind of the site, reducing to 7.7 kg N/ha/year 100m downwind (i.e. to the north-east). There would also be effects to the south of the site but these would be more limited as these areas are less often downwind and are protected by a belt of trees that is to be retained.

22. It is also claimed by English Nature that soil enrichment of the European site via groundwater movement from the appeal site cannot be ruled out. Here I accept the appellant's argument that the generally sandy nature of the sub-soil indicates that this would be unlikely. However, I must also accept that it cannot be ruled out, as the precise nature of groundwater movements is not known. Nevertheless, any soil enrichment from this source seems likely to be secondary to that arising from atmospheric dispersal, although it would be additional.
23. The general conclusion that I reach is that, even with sound management there would be a measurable increase in N deposition on parts of the Lower Common close to the appeal site and this would result in an exceedence or a further exceedence of critical loads. The predicted consequences were described as follows:
 - a) in the narrow woodland boundary to the north of the site changes in ground flora and epiphytic lichens;
 - b) in the heathland to the north of the woodland boundary, alteration to the heather canopy with an increase in grasses (especially following any fires) coupled with a reduction in lichen and moss cover (significant effects probable over a zone of 50m and possible over a zone of 300m);
 - c) in the woodland belt south of the site loss of ground flora species and epiphytic bryophytes and lichens; and
 - d) in the heathland south of the woodland belt, possible significant effects over a zone of 150m as for b) above.
24. No expert evidence was called to dispute this assessment, but in evidence presented on behalf of the appellant the risks were described as being perceived rather than real, particularly bearing in mind the small scale of the poultry farm envisaged. I was urged to consider that ammonia pollution has no relevance whatsoever with regard to the consideration of the appeal.
25. I find that the emission of further ammonia would inevitably arise from the proposed poultry enterprise (which in turn would become enabled only by the authorisation of a dwelling on the site). Even though increased ammonia deposition would be limited over the life of the permission that is now sought, the success of the enterprise would inevitably pave the way for accepting, subsequently, the permanent establishment of a dwelling on the site. While this could be refused, it would be irresponsible to encourage investment in the poultry enterprise in the expectation that, contrary to the advice given in PPG7; a future application for a permanent dwelling would be refused.
26. While the poultry enterprise that would be enabled by the dwelling would not be particularly large, it would be very close to a European site. Parts of this protected site

would receive sufficient additional ammonia to cause damage, additional to that caused by background levels, even though this damage may not become immediately apparent. On this basis I can only conclude that the integrity of the European site would be damaged and accordingly there is no basis to find that there would be no adverse effect on the integrity of the European site. As there are no imperative reasons of overriding public interest in support of this residential development (that is required to establish a poultry enterprise) the Habitat Regs (Section 48(5)) require that planning permission should not be granted. Withholding planning permission would also be in accord with Structure Plan Environment Policy A and Local Plan policy NCON 1.

Functional and Financial Matters

27. The Council has offered no substantial evidence to suggest that there is a lack of a functional relationship between the dwelling and the poultry enterprise or that the enterprise would be incapable of bringing in an appropriate financial return. I find that the retention of the temporary dwelling would be necessary to enable the poultry enterprise to operate and that there is a business plan that shows that it could operate with an appropriate degree of profitability. However, little investment has so far been made in the business (just one of the anticipated 12 mobile units was present and operating at the time of my visit). Furthermore, neighbours raised the question, among others, of the ability of the appellant to obtain the finance necessary to install the enterprise.
28. Notwithstanding these points, as a temporary permission only is sought and given that it would be necessary to show that the enterprise was a success in order for permanent planning permission to be granted thereafter, I do not find it necessary to delve further into these questions. I am satisfied that the tests set out in PPG7 and in relevant Local Plan policies are met to a sufficient extent to provide no justification for withholding a temporary planning permission for a temporary dwelling on the basis of agricultural considerations.
29. I appreciate that in many circumstances satisfying these tests would be sufficient to enable such development to proceed. Nevertheless, in this case there are also consequences arising from the intimate relationship between the appeal site and the adjacent European site. These consequences place a considerable additional burden on the owner of the site. Arising from this burden, my positive findings in relation to the agricultural considerations do not alter my conclusions relating to the adjacent European site.

Other Matters

30. There are other concerns relating to the effects that operating the proposed poultry business would have on nearby residents. This includes foul odours, additional traffic and damage to the unmade road that serves the site. I appreciate that these matters give rise to concern and apprehension but I do not consider that these would in themselves be so significant as to justify withholding planning permission, in the absence of the other more compelling evidence that was presented on nature conservation issues.

Human Rights

31. It is claimed on behalf of the appellant that a failure to allow this appeal would amount to an interference with human rights under Article 8 (the right to a home) and Article 1 of the First Protocol (peaceful enjoyment of possessions). This is because Mr Gardner has set up

(an unauthorised) home on the site, as his sole residence, and it is argued that he would be deprived of his abode and possessions if the appeal were to fail.

32. With respect to the submissions about Article 8 of the European Convention on Human Rights, I recognise that the dismissal of the appeal would be an interference with the appellant's home and family life. However, this must be balanced against the interests of the general population. For the reasons given above, I have found that the appeal proposal would be seriously harmful to the need to protect the environment and I am satisfied that this legitimate aim can only be safeguarded by upholding the refusal of planning permission. This would not place a disproportionate burden on the appellant and I therefore find no violation of human rights.
33. Similarly, with respect to the appellant's submission about article 1 of the First Protocol of the European Convention on Human Rights, I recognise that the dismissal of the appeal would be an interference with the peaceful enjoyment of possessions. However, this must be balanced against the interests of the general population. For the reasons given above, I have found that the proposal would be seriously harmful to the need to protect the environment and I am satisfied that this legitimate aim can only be secured by upholding the refusal of permission. This would not place a disproportionate burden on the appellant and I therefore find no violation of human rights.
34. In the light of these considerations, I do not find that the outcome of this appeal could be said to amount to an action that would violate any of those rights conferred by the Human Rights Act 1998.

Conclusions

35. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Formal Decision

36. In exercise of the powers transferred to me, I dismiss the appeal.



Inspector

APPEARANCES

FOR THE APPELLANT:

Mr Lionel C Fynn	Solicitor Horsey Lightly Fynn 3 Poole Road Bournemouth
------------------	---

He called

Mr Andrew C Robinson FRICS BSc	Rural Chartered Surveyor Symonds and Sampson 5 West Street Wimborne
-----------------------------------	--

Mr Cyril F Batten	Poultry Farmer Pond Head Poultry Farm Pond Head Holt
-------------------	---

FOR THE LOCAL PLANNING AUTHORITY AND ENGLISH NATURE:

Mr Graham Machin	Of Counsel Instructed by the Principal Solicitor of the Council
------------------	--

He called

Mrs Lynda J King BSc BTP DMS MRTPI	Development Control Team Leader EDDC
---------------------------------------	---

Dr Mark A Sutton BSc ARCS PhD	Leader of the Atmospheric Sciences Section The Centre for Ecology and Hydrology Edinburgh Research Station Bush Estate Penicuik
----------------------------------	---

Mr Nick Squirrel	Conservation Officer English Nature Dorset Team Slepe Farm Arne
------------------	--

APPERANCES (CONTINUED)

INTERESTED PERSONS:

Mr Stephen Smith	Resident Horseshoe Cottage Earles Road Three Legged Cross
Ms S Wilson	Resident 293 Charminster Road Bournemouth
Mr L Bryant	Resident Moorfields Furzels Road Three Legged Cross

DOCUMENTS

Document	1	List of persons present at the inquiry
Document	2	Letter of Notification and circulation list.
Document	3	Letters from Interested Persons.
Document	4	Proof and appendices Lynda King
Document	5	Proof and Appendices Mark Sutton
Document	6	Proof and Appendices Nick Squirrell
Document	7	Proof and Appendices Andrew Robinson
Document	8	Proof Cyril Batten
Document	9	Statement of Common Ground
Document	10	Revised list of suggested conditions.
Document	11	Legal Submissions for EDDC & EN
Document	12	Closing submissions for EDDC & EN
Document	13	Closing submissions on behalf of Mr Gardner

PLANS

Plan A Application Plan

PHOTOGRAPHS

Photo 1 Set put in by Mr Bryant at Document 3.