

# **DELEGATED DECISION REPORT**

## **APPLICATION NUMBER**

### **161902**

**Claston Farm, Dormington, Hereford, HR1 4EA**

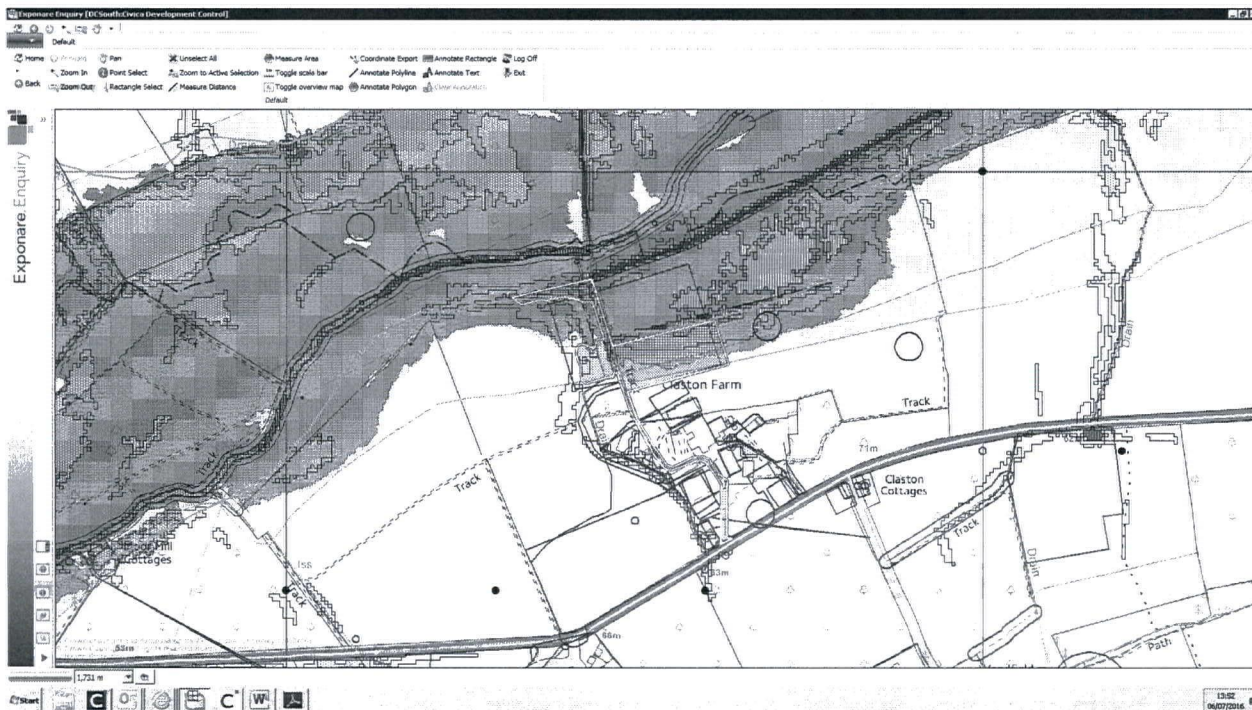
**CASE OFFICER: Mr Edward Thomas**  
**DATE OF SITE VISIT: 30<sup>th</sup> June 2016**

#### **CONSULTATIONS**

#### **PLANNING OFFICER'S APPRAISAL:**

##### **1. Site description and proposal:**

- 1.1 Planning permission is sought for the erection of 2 no. broiler units on land at Claston Farm, Dormington. The farm is a mixed-use enterprise on the A438 Ledbury Road. Under reference 133305, planning permission was granted for 2 no. broiler units comprising up to 110,000 birds on land immediately adjoining the current application site. This land is accessed via a track that was installed as part of the original planning permission and is located within Flood Zone 3 at the northern extent of the existing farm yard – which is quite extensive.
- 1.2 The original planning permission necessitated the raising of the building platform out of the 1 in 100 year flood event (plus an allowance for climate change) and the installation of a water attenuation pond and underground dirty water storage system. The approved broiler units were completed in May 2015 and thus fully operational. They operate under an EA IPPC - 'permit',
- 1.3 The current application is to locate 2 further units of the same size and broiler numbers (55,000 each) in alignment with the existing. This would bring the built form (and raised platform) nearer to the R. Frome, which wends its way to the confluence with the R. Lugg SSSI/SAC just to the north of Hampton Bishop. The site is currently in arable cultivation.
- 1.4 The development would, as above, necessitate further importation of material to increase ground levels and extension of the water attenuation pond and additional flood storage compensation. The site is wholly within Flood Zone 3 and potentially operates as functional floodplain (3b) – although a hydraulic modelling assessment would need to be undertaken to establish this.
- 1.5 The application is accompanied by an Environmental Statement and supporting information, which has been presented unilaterally i.e. without a request for a formal Scoping Opinion.



## 2. Planning Policies and material considerations

### 2.1 Herefordshire Local Plan – Core Strategy 2011 – 2031

Strategic policies SS1, SS4, SS5, SS6, RA6, SD1, SD3

### 2.2 National Planning Policy Framework 2012

### 2.3 NPPG

## 3. Planning History

3.1 133305 Erection of 2 no. broiler units for up to 110,000 birds: Approved subject to conditions

## 4. Consultation Summary

Statutory Consultations

### 4.1 Environment Agency: Objection

Thank you for referring the above which was received on the 24 June 2016. We **object** to the proposed development, as submitted, and request additional information as detailed below.

**Flood Risk:** The location of the proposed 8000m<sup>2</sup> raised platform for the 2 broiler units lies completely within Flood Zone 3 of the River Frome on our Flood Map for Planning. This is the High Probability zone where land has a 1 in 100 year or greater annual probability of river



flooding. The Flood Zone 3 at this location is produced from a national, generalised mapping technique rather than a detailed hydraulic model. Whilst this is relatively accurate this means that we cannot provide modelled river levels for this location. The Flood Zone 2 at this location also consists of the historic 1947 outline. It should also be noted that all, or parts of the site area may be classed as 'Zone 3b' (Functional floodplain', 1 in 20 year) where 'less vulnerable' uses, such as agricultural, should not be permitted (NPPG Table 3: Flood Risk Vulnerability refers). This is in the absence of detailed information to demonstrate otherwise i.e. a topographical survey and levels showing the 'functional floodplain' extent.

**Sequential Test:** The NPPF details the requirement for a risk-based ST in determining planning applications. See paragraphs 100–104 of the NPPF and the advice within the Flood Risk and Coastal Change Section of the government's NPPG. Paragraph 101 of the NPPF requires decision-makers to steer new development to areas at the lowest probability of flooding by applying a ST. It states that *'Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding'*. Cont/d.. 2

Further detail is provided in the NPPG; 'Only where there are no reasonably available sites in Flood Zones 1 or 2 should the suitability of sites in Flood Zone 3 be considered, taking into account the flood risk vulnerability of land uses and applying the Exception Test (ET) if required (see Paragraph 102 of the NPPF).

This application simply raises land in Flood Zone 3 by 1.7 metres to create a platform for the new units. However, other land on the farm is available falling in Flood Zones 1 and 2 so we would therefore fundamental question whether this new proposal passes the Sequential Test. We agree that the agricultural use is Less Vulnerable and that Table 2.2 of the FRA confirms that Less Vulnerable use is suitable for Flood Zone 3a as highlighted in Table 3 of the NPPF. However, Table 2.2 also highlights that national planning policy confirms that Less Vulnerable uses should not be permitted in Flood Zone 3b, the Functional Floodplain, which is land where water has to flow or be stored in times of flood. Hydro-Logic's FRA has not attempted to define the boundary between Flood Zones 3a and 3b within the floodplain at this location so cannot confirm that the proposed platform does not fall within the Functional Floodplain. Detailed hydraulic modelling would be needed to confirm that the Functional Floodplain is not being encroached upon.

Alternatively, modelling would not be required if the units were relocated to land outside of Flood Zone 3. Particularly given the historic flooding outlined in Section 3.7 of the FRA suggesting that the site floods most winters and the LiDAR shown in Figure D.1 confirming that the land is low lying, the FRA should confirm that the proposals are not located within Flood Zone 3b which would not be in accordance with national planning policy (Table 3 of the NPPF).

**Flood Risk Assessment:** A Flood Risk Assessment (FRA) has been undertaken by Hydro-Logic Services (Ref: K07398, dated May 2016). The FRA infers a level of 52.0m AOD for the 1 in 100 year plus climate change level estimated from the outline of the Flood Map for Planning compared to the topographic information gained from LiDAR. The FRA also outline historic flooding in Section 3.7. Pages 23 and 24 of the FRA refers to the new climate change for planning figures which were released in February 2016 but does not go on to suggest how these have been considered in the FRA with the inferred level for Flood Zone 3. The FRA should confirm how these new figures have been used as part of the assessment and how the figure of 52.0mAOD was ascertained.



We appreciate that planning permission was previously granted for 2 broiler units which were located on the edge of Flood Zones 3 and 2. However, the proposed units are located nearer to the River Frome on land located wholly within Flood Zone 3, potential functional floodplain, so will have greater implications on flood storage and potentially flood flow routes. Flood Storage compensation details are included in the FRA. There is a loss of 5819m<sup>3</sup> but this is being compensated for by 7063m<sup>3</sup> on a level for level basis as highlighted in Table D.1. We therefore have no issue with the flood storage compensation proposed. However, the fact that such a large volume of compensation is required indicates that these proposals are located in an inappropriate area. If modelling is undertaken to confirm that the proposed platform and broiler units do not fall within Flood Zone 3b, this more detailed information should be used as a basis for the flood storage compensation calculations. Modelling should also confirm the impacts of the development on flood flow routes and the potential impacts on third party land resulting from the narrowing of the floodplain extent in addition to just providing compensation information. The proposals include culverting of the ordinary watercourse which currently runs through the area proposed for the platform. Our policy is to retain open watercourses and to oppose culverting. Our preference, should planning permission be granted, would be to undertake a watercourse diversion and redirect the ditch around the new units and platform. This would be a matter for Herefordshire Council, as the LLFA to comment on, as ordinary watercourses would fall under their remit including any consenting of such work. However, we would not agree with the comment in Section 4.1 of the FRA that culverting under a 100 metre or more long building is likely to reduce the risk of blockage and certainly removing blockages under the platform would prove problematic. If a trash screen was incorporated this would have to be maintained in order to allow good conveyance of flows through the culvert during flood events.

**Permits/Consents:** An EA Flood Risk Activities Permit under the Environmental Permitting (England and Wales) Regulation 2010 may be required for any works affecting the River Frome, designated as Main River, or its floodplain. Further information can be found on the gov.uk website at <https://www.gov.uk/guidance/flood-risk-activities-environmental-permits>. Also, consent under the Land Drainage Act would be required from Herefordshire Council for culverting an ordinary watercourse.

**Flood Risk Summary:** We have concerns regarding this application and seek confirmation that the LPA is satisfied that locating the broiler units wholly within Flood Zone 3 passes the Sequential Test considering there is available land at a lower level of flood risk. This is a greenfield site and the applicant is simply raising land within the floodplain to accommodate development. The fact that nearly 6000m<sup>3</sup> of flood storage needs to be compensated for would suggest that this is not an appropriate location for the units. We would therefore request, in line with the Sequential Approach, that the units are located on land at the lowest risk of flooding i.e. Flood Zone 1. Should this not be possible then detailed modelling should be undertaken to define the boundaries of Flood Zones 3a and 3b to confirm that the proposals are not contrary to the NPPF by locating a 'Less Vulnerable' use in the Functional Floodplain. Should modelling show that the site falls outside the functional floodplain then modelling should also inform both the flood storage compensation scheme (which uses an inferred figure) and any impacts on flood flow routes which could impact upon third party land. Once the above information has been clarified in an updated FRA or FRA Addendum we will be in a position to comment again on the flood risk issues relating to this site.



**Environmental Permitting Regulations:** The proposed development will take the total number of birds onsite to 220,000, which is above the threshold (40,000) for regulation of poultry farming under the Environmental Permitting (England and Wales) Regulations (EPR) 2010. The EP controls day to day general management, including operations, maintenance and pollution incidents. In addition, through the determination of the EP, issues such as relevant emissions and monitoring to water, air and land, as well as fugitive emissions, including odour, noise and operation will be addressed.

Claston Farm currently operates under an EP for its intensive poultry operations and the applicant has applied for a variation to this permit in consideration of the possible increase in bird numbers.

Based on our current position, we would not make detailed comments on these End 4

emissions as part of the current planning application process. It will be the responsibility of the applicant to undertake the relevant risk assessments and propose suitable mitigation to inform whether these emissions can be adequately managed. For example, management plans may contain details of appropriate ventilation, abatement equipment etc. Should the site operator fail to meet the conditions of a permit we will take action in-line with our published Enforcement and Sanctions guidance.

For the avoidance of doubt we would not control any issues arising from activities outside of the permit installation boundary. Your Public Protection team may advise you further on these matters.

**Manure Management (storage/spreading):** Under the EPR the applicant will be required to submit a Manure Management Plan, which consists of a risk assessment of the fields on which the manure will be stored and spread, so long as this is done so within the applicants land ownership.

#### **COMMENTS SUBMITTED IN RESPONSE TO AMENDED FRA**

I refer to additional information received in support of the above application which seeks to address concerns raised in our response of the 4 July 2016. A revised Flood Risk Assessment (FRA) has been produced by Hydro-Logic Services dated July 2016 (Version 1) upon which we would offer the following comments. We are unable to remove our objection at this time.

**Flood Risk:** As previously stated the location of the proposed raised platform for the 2 broiler units lies completely within Flood Zone 3 of the River Frome on our Flood Map for Planning. This is the High Probability zone where land has a 1 in 100 year or greater annual probability of river flooding.

It should also be noted that all, or parts of the site area may be classed as 'Zone 3b' (Functional floodplain', 1 in 20 year) where 'less vulnerable' uses, such as agricultural, should not be permitted (NPPG Table 3: Flood Risk Vulnerability refers). This is in the absence of detailed information to demonstrate otherwise i.e. a topographical survey and levels showing the 'functional floodplain' extent.

**Sequential Test:** The NPPF details the requirement for a risk-based ST in determining planning applications. See paragraphs 100–104 of the NPPF and the advice within the Flood Risk and Coastal Change Section of the government's NPPG. Paragraph 101 of the NPPF requires decision-makers to steer new development to areas at the lowest probability of



flooding by applying a ST. It states that 'Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding'.

Further detail is provided in the NPPG; 'Only where there are no reasonably available sites in Flood Zones 1 or 2 should the suitability of sites in Flood Zone 3 be considered, taking into account the flood risk vulnerability of land uses and applying the Exception Test (ET) if required (see Paragraph 102 of the NPPF).

As stated in our previous response, based on topographic data in the FRA, it is likely that the land proposed for this applications falls within Flood Zone 3b. Table 3 of the NPPF confirms that Less Vulnerable use is not suitable development for this Flood Zone.

The FRA has undertaken an assessment of potential alternative sites for the unit on the farm suggesting that there are no other appropriate sites on the farm located in Flood Zones 1 and 2 due to other constraints. However, we are suggesting that it could be located immediately adjacent to the existing unit on the edge of the Flood Zone 3. This land is unlikely to be located in the Functional Floodplain (3b), though this should be confirmed in the FRA and would therefore not be contrary to the NPPF. This is preferable to the proposed location lower down the site towards the watercourse even though it would still be partly located within Flood Zone 3a so again would still require flood storage compensation.

The FRA has undertaken some modelling for the application but has not sought to demonstrate that the land proposed for the units lies outside of Flood Zone 3b. However, page 25 of the FRA then goes on to state that "Under the proposed floodplain storage compensation exercise, with which the Environment Agency has no issue, flood risk at the site would be reduced to that associated with Flood Zone 1. The proposals are therefore not contrary to the NPPF, by locating a Less Vulnerable use in the functional floodplain. Rather they move areas of Flood Zone 3 to a more effective location, raising the site to be outside the floodplain." We are surprised that this approach is being pursued by the applicant/consultant. It is not appropriate to raise land in the functional floodplain to enable development such as this. This concept goes against the fundamental approach of the NPPF and the Sequential Test and would set an undesirable precedent.

Notwithstanding the above we would offer the following comments on the FRA.

In terms of the Exception Test, we have no objections to the proposals. The revised FRA confirms that there is no risk of the development flooding as it will be sat on the proposed 8000m2 platform and over 1 metre above the 1 in 1000 year modelled level for the watercourse. As stated in our previous response, the flood storage compensation appears satisfactory as it is level for level and offer gains in total volume post development. The latest version of the FRA (4.3.2) goes on to suggest it will improve flood flow routes and that it can be used to create wetland habitat.

We are pleased that the latest FRA confirms that proposals to culvert the existing ordinary watercourse under the new platform have been abandoned following comments from both ourselves and Herefordshire Council. It is now proposed that the ordinary watercourse be diverted around the new platform should permission be granted and we have no objections to this. As highlighted in our previous response, Herefordshire Council, as the Lead Local Flood



Authority (LLFA), would need to consent the watercourse diversion works under the Land Drainage Act.

Summary: We have no option but to maintain our objection on planning policy grounds as the proposed development is located within the functional floodplain and is being raised for Less Vulnerable use. We would still suggest that the land immediately adjacent to the previous broiler units be investigated as this land would likely fall in Flood Zone 3a and not 3b. Should the proposed location be revised in consideration of the above we would be happy to comment further. As stated above, in terms of safe development and not impacting upon third parties, we would raise no concerns.

### **THIRD AND FINAL RESPONSE FROM EA – SUBMITTED IN RESPONSE TO THE AGENT'S EMAIL TO THE PLANNING OFFICER**

#### **ADDITIONAL INFORMATION IN RELATION TO PROPOSED ERECTION OF 2 NO. ADDITIONAL BROILER UNITS ON EXISTING POULTRY SITE AT CLASTON FARM, DORMINGTON, HEREFORD, HR1 4EA**

I refer your you email on the 24 August 2016 in relation to the above development and, specifically, our outstanding policy objection. I would offer the following comments/clarification for your consideration at this time.

**Flood Risk:** As previously stated the location of the proposed raised platform for the 2 broiler units lies completely within Flood Zone 3 of the River Frome on our Flood Map for Planning. This is the High Probability Zone where land has a 1 in 100 year or greater annual probability of river flooding.

Also, based on topographic data in the FRA, it is likely that the land proposed for this applications falls within Flood Zone 3b (functional floodplain). Table 3 of the National Planning Policy Framework (Paragraph: 067 Reference ID: 7-067-20140306) confirms that Less Vulnerable use is not should not be permitted in Zone 3b. Therefore I would re-iterate, and concur with Mr. Whilding, that we are objecting to the proposed development on Policy grounds. The application fails the Sequential Test and should therefore not be supported in its current configuration, especially as there are areas of land within the applicants ownership at a lower level of flood risk, including land within Flood Zone 1 (low risk).

With reference to Mr. Whilding's email of the 24 August our letter therefore does cite a section of the NPPF guidance that states the development should not be permitted. However, we would re-iterate that raising land within the functional floodplain would also set a precedent and is wholly unsustainable, hence the need for the abovementioned section of the NPPF.

We do accept that there is scope to offset losses in flood storage were the proposed development not in the functional floodplain. However, in consideration of the abovementioned Sequential Test, the 'tick box' states that the development, as submitted, should not be permitted and therefore mitigation, such as compensation, is irrelevant unless it falls outside the functional floodplain.



Were the proposed development outside the functional floodplain, of which there is available land, then Table 3 confirms that development is appropriate subject to a robust FRA which demonstrates that the development is safe and will not increase flood risk to third parties. We would accept that, were the development outside of the functional floodplain, adequate mitigation (compensatory storage) could be offered, as confirmed in our previous response. In this regard we are offering a degree of pragmatism by accepting development in Flood Zone 3a when it is apparent that large areas of the applicants land fall within Flood Zones 1 and 2, the low and medium risk Zones respectively. I note that Mr. Whilding confirms that there is scope for an alternative site to be considered which would appear to be an acceptance that there is land available at a lower level of flood risk.

In conclusion we would re-iterate that it is not appropriate to raise land in the functional floodplain to enable development. Less vulnerable development in the functional floodplain is contrary to National Planning Policy and should not be supported. This view is supported by Herefordshire Councils recently adopted Core Strategy, specifically Policy SD3 (Sustainable water management and water resources) which states that 'development proposals are located in accordance with the Sequential Test and Exception Tests (where appropriate)'.

I trust the above confirms our position at this time. We would be happy to comment further should the applicant revised the current submission and locate the units on land at a lower level of flood risk in line with National Planning Policy and your Core Strategy.

#### **4.2 Natural England: No objection subject to conditions**

The Wildlife and Countryside Act 1981 (as amended) The Conservation of Habitats and Species Regulations 2010 (as amended) The National Park and Access to the Countryside Act 1949

Natural England has no objection to this proposal. However, we advise that the council confirms the details of manure storage with the applicant. Our detailed comments are as follows.

Internationally and nationally designated sites:

The application site is within or in close proximity to a European designated site (also commonly referred to as Natura 2000 sites), and therefore has the potential to affect its interest features. European sites are afforded protection under the Conservation of Habitats and Species Regulations 2010, as amended (the 'Habitats Regulations'). The application site is within 3km of the River Wye Special Area of Conservation (SAC) which is a European site. The site is notified at a national level as the River Wye Site of Special Scientific Interest (SSSI). Please see the subsequent sections of this letter for our advice relating to SSSI features.

In considering the European site interest, Natural England advises that you, as a competent authority under the provisions of the Habitats Regulations, should have regard for any potential impacts that a plan or project may have. The Conservation objectives for each European site explain how the site should be restored and/or maintained and may be helpful in assessing what, if any, potential impacts a plan or project may have.



Requirements are set out within Regulations 61 and 62 of the Habitats Regulations, where a series of steps and tests are followed for plans or projects that could potentially affect a European site. The steps and tests set out within Regulations 61 and 62 are commonly referred to as the 'Habitats Regulations Assessment' process. The Government has produced core guidance for competent authorities and developers to assist with the Habitats Regulations Assessment process. This can be found on the Defra website. <http://www.defra.gov.uk/habitats-review/implementation/process-guidance/guidance/sites/>

### **River Wye SAC – No objection**

The consultation documents provided by your authority do not include information to demonstrate that the requirements of Regulations 61 and 62 of the Habitats Regulations have been considered by your authority, ie the consultation does not include a Habitats Regulations Assessment.

In advising your authority on the requirements relating to Habitats Regulations Assessment, and to assist you in screening for the likelihood of significant effects, based on the information provided, Natural England offers the following advice:

- ☐ the proposal is not necessary for the management of the European site
- ☐ the proposal is unlikely to have a significant effect on any European site, and can therefore be screened out from any requirement for further assessment

When recording your HRA we recommend you refer to the following information to justify your conclusions regarding the likelihood of significant effects. ☐ The information provided in the Environmental Statement and appendices, most notably chapters 9 and 11 and appendices 6 and 7.

We welcome the production of a Manure Management Plan, but would also like to highlight that the Manure Management Risk Maps do not show "sites suitable for temporary field heaps if this method of storing manure is to be used", as required by the Nitrate Pollution Prevention Regulations 2015, paragraph 15. We advise the council to confirm with the applicant potential locations for manure heap storage.

### **River Wye SSSI – No objection – no conditions requested**

This application is in close proximity to the following SSSI's:

- Perton Roadside Section and Quarry
- Little Hill
- River Wye
- Lugg and Hampton Meadows
- Woodshuts Wood
- Haugh Wood
- Sharpnag Wood
- 

Natural England is satisfied that the proposed development being carried out in strict accordance with the details of the application, as submitted, will not damage or destroy the interest features for which the site has been notified. We therefore advise your authority that this SSSI does not represent a constraint in determining this application. Should the details of this application change, Natural England draws your attention to Section 28(1) of the Wildlife



and Countryside Act 1981 (as amended), requiring your authority to re-consult Natural England

**Wye Valley AONB – Landscape Advice** The proposed development is for a site within or close to a nationally designated landscape namely Wye Valley Area of Outstanding Natural Beauty (AONB). Natural England advises that the planning authority uses national and local policies, together with local landscape expertise and information to determine the proposal. The policy and statutory framework to guide your decision and the role of local advice are explained below.

Your decision should be guided by paragraph 115 of the National Planning Policy Framework which gives the highest status of protection for the ‘landscape and scenic beauty’ of AONBs and National Parks. For major development proposals paragraph 116 sets out criteria to determine whether the development should exceptionally be permitted within the designated landscape.

Alongside national policy you should also apply landscape policies set out in your development plan, or appropriate saved policies. We also advise that you consult the relevant AONB Partnership or Conservation Board. Their knowledge of the site and its wider landscape setting, together with the aims and objectives of the AONB’s statutory management plan, will be a valuable contribution to the planning decision. Where available, a local Landscape Character Assessment can also be a helpful guide to the landscape’s sensitivity to this type of development and its capacity to accommodate the proposed development.

The statutory purpose of the AONB is to conserve and enhance the area’s natural beauty. You should assess the application carefully as to whether the proposed development would have a significant impact on or harm that statutory purpose. Relevant to this is the duty on public bodies to ‘have regard’ for that statutory purpose in carrying out their functions (S85 of the Countryside and Rights of Way Act, 2000). The Planning Practice Guidance confirms that this duty also applies to proposals outside the designated area but impacting on its natural beauty.

**Other advice** We would expect the Local Planning Authority (LPA) to assess and consider the other possible impacts resulting from this proposal on the following when determining this application: ☐ local sites (biodiversity and geodiversity) ☐ local or national biodiversity priority habitats and species.

Natural England does not hold locally specific information relating to the above. These remain material considerations in the determination of this planning application and we recommend that you seek further information from the appropriate bodies (which may include the local records centre, your local wildlife trust, local geo-conservation group or other recording society and a local landscape characterisation document) in order to ensure the LPA has sufficient information to fully understand the impact of the proposal before it determines the application. A more comprehensive list of local groups can be found at [Wildlife and Countryside link](#).

**Protected Species** We have not assessed this application and associated documents for impacts on protected species. Natural England has published Standing Advice on protected



species. You should apply our Standing Advice to this application as it is a material consideration in the determination of applications in the same way as any individual response received from Natural England following consultation.

The Standing Advice should not be treated as giving any indication or providing any assurance in respect of European Protected Species (EPS) that the proposed development is unlikely to affect the EPS present on the site; nor should it be interpreted as meaning that Natural England has reached any views as to whether a licence is needed (which is the developer's responsibility) or may be granted.

**Biodiversity enhancements** This application may provide opportunities to incorporate features into the design which are beneficial to wildlife, such as the incorporation of roosting opportunities for bats or the installation of bird nest boxes. The authority should consider securing measures to enhance the biodiversity of the site from the applicant, if it is minded to grant permission for this application. This is in accordance with Paragraph 118 of the NPPF. Additionally, we would draw your attention to Section 40 of the Natural Environment and Rural Communities Act (2006) which states that 'Every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity'. Section 40(3) of the same Act also states that 'conserving biodiversity includes, in relation to a living organism or type of habitat, restoring or enhancing a population or habitat'.

### **4.3 Welsh Water: No objection**

#### **Internal Council Advice**

### **4.4 Land drainage consultants –**

#### **Introduction**

This response is in regard to flood risk and land drainage aspects, with information obtained from the following sources:

- Environment Agency (EA) indicative flood maps available through the EA website.
- EA groundwater maps available through the EA website.
- Ordnance Survey mapping.
- Cranfield University Soilscape mapping available online.
- Strategic Flood Risk Assessment for Herefordshire.
- Core Strategy 2011 - 2031.

Our knowledge of the development proposals has been obtained from the following sources:

- Application for outline planning;
- Proposed Plans & Elevations drawing (Ref: IP/DT/03 & IP/DT/04)
- Location Plan drawing (Ref: IP/DT/02);
- Design and Access Statement
- Flood Risk Assessment (Ref: Report K0739)

#### **Overview of the Proposal**

The Applicant proposes the construction of 2 additional broiler units on an existing poultry site. The site covers an area of 0.763ha and is currently used for agricultural purposes. The main River Frome runs to the North of the site. The topography of the site is relatively flat



from 51.19 to 51.57m AOD. A drainage ditch runs to the north of the existing broiler units on site.

### **Fluvial Flood Risk**

Review of the Environment Agency's Flood Map for Planning indicates that the site is located within Flood Zone 3. Flood Zone 3 comprises land where the annual probability of flooding from fluvial sources is greater than 1% (1 in 100). The source of this flood risk is from the River Frome.

The Planning Practice Guidance to NPPF states that agricultural development is to be considered as 'less vulnerable' development, 'less vulnerable' development would be considered appropriate in Flood Zones 3. In accordance with Environment Agency standing advice, the planning application should be supported by a Flood Risk Assessment (FRA) undertaken in accordance with National Planning Policy Framework (NPPF) and its supporting Planning Practice Guidance.

The applicant has undertaken a Flood Risk Assessment due to the site being within Flood zone 3, the applicant has also undertaken a sequential test in accordance with the NPPF. This sequential test was undertaken for the initial construction of the two existing poultry units on site in 2013. The test identified large areas of land within the applicants ownership located within Flood zone 1, however the applicant has highlighted that construction of these broiler units outside the floodplain, would require development on Greenfield land, isolating the new structures from the existing farm infrastructure.

Additional infrastructure/development would be required within existing Greenfield areas to allow construction within a low risk flood zone 1.

The applicant has identified that the proposed site has previously flooded from the River Frome and from surface water. The 1:100 year + climate change flood level is approx. 52m AOD, the existing broiler sheds have been constructed on a raised platform at 53m AOD approx. 1.9m above flood zone 3 levels. This would ensure that access and egress to the site should remain dry within a 1:100 year + CC event.

The applicant plans to mitigate the flood risk associated with constructing the two additional broiler units and the associated raised platform by creating level for level floodplain storage compensation. The applicant has shown that this mitigation measure is possible; this option would also provide additional floodplain storage.

Total loss = 5,818.8m<sup>3</sup> Total gain = 7,063m<sup>3</sup>. Equates to 1,598.6 m<sup>3</sup> of floodplain storage created.

The potential effects of climate change should be considered when assessing the Flood Zones and flood risk at the site. The assessment of climate change effects must consider an appropriate range of allowances for the development lifetime and its vulnerability. Refer to <https://www.gov.uk/guidance/flood-risk-assessments-climate-change-allowances> for guidance.



We also recommend that flood resilience measures are built into the design of the new building, with guidance obtained from the report 'Improving the Flood Performance of New Buildings: Flood Resilient Construction, Communities and Local Government, May 2007'.

This guidance is in accordance with requirements of the NPPF and Policy SD3 of the Core Strategy. Guidance on the required scope of the FRA is available on the GOV-UK website at <https://www.gov.uk/planning-applications-assessing-flood-risk>.

#### Other Considerations and Sources of Flood Risk

The applicant has identified that the risk from surface water flooding is 'medium' and no ground water or sewer flooding has been recorded within the vicinity. Historic flooding from surface water drainage ditches has been observed and recorded on site. It is believed this mechanism of flooding is the surcharge of water from the drainage ditches surrounding the site, that back up from the River Frome, preventing these ditches from discharging effectively. Review of the EA's Groundwater map indicates that the site is not located within a designated Source Protection Zone or Principal Aquifer.

#### Surface Water Drainage

The Applicant has provided a detailed Surface water management strategy, outlining the proposal to deal with surface water on the site. Surface water drainage through infiltration has been considered unlikely in favour of utilising an existing attenuation system.

Greenfield run off rates for the site has been calculated for the 100 year rainfall (+climate change) a 20% climate change factor was used, as the whole life operation of the facility is deemed to be only 60 years. Adequate storage has been shown to be provided to accommodate such flows through the existing attenuation system. 100 year runoff Greenfield rate of 10.26l/s has been calculated over the designed roof and attenuation pond area. The rate of discharge from the attenuation pond is to be controlled by a 50mm orifice; the calculated maximum discharge rate from the orifice is 4.47l/s.

Note that in February 2016 the EA updated their advice on the potential effects of climate change and that a range of allowances should be considered to understand the implications: <https://www.gov.uk/guidance/flood-risk-assessments-climate-change-allowances>.

The applicant has not identified that the size of the orifice could be prone to blockage. Anti-clogging mitigation measure / inspection regime to prevent and or reduce the risk of blockage to the 50mm outlet orifice must be identified.

The applicant has been able to demonstrate that there is no increased risk of flooding to the site or downstream of the site as a result of development between the 1 in 1 year event and up to the 1 in 100 year event and allowing for the potential effects of climate change. However, the applicant has suggested that the existing surface water drain / ditch that intersects the proposed development is to be culverted, no additional detail has been submitted regarding this option. This proposal is not in line with Herefordshire Local Plan Core Strategy 2011 – 2031 Policy SD3 – Sustainable water management and water resources.

"Development will not result in the loss of open watercourse and culverts should be opened up where possible to improve drainage and flood flows. Proposals involving the creation of new culverts (unless essential to the provision of access) will not be permitted".



## Foul Water Drainage

No foul water drainage information has been proposed for the site.

### Overall Comment

In principle we object to the proposed development on flood risk and drainage grounds. The culvert proposed within the application is not in line with Herefordshire Local Plan Core Strategy 2011 – 2031 Policy SD3 – Sustainable water management and water resources.

“Development will not result in the loss of open watercourse and culverts should be opened up where possible to improve drainage and flood flows. Proposals involving the creation of new culverts (unless essential to the provision of access) will not be permitted”. Any discharge of surface water or foul water to an ordinary watercourse will require Ordinary Watercourse Consent from Herefordshire Council prior to construction.”

### COMMENTS IN RELATION TO REVISED FRA:

This response is in regard to additional information submitted by the applicant in relation to flood risk and land drainage aspects of the application for the above development. The Applicant's submission includes the following information:

- ☐ Flood Risk Assessment Report K0739/1 (Rev.1)

### Overall comment

The applicant has acted upon previous comments made regarding this application. Within the revised Flood Risk Assessment, the proposed culvert has been removed and the existing watercourse will be retained. However, the Environment Agency still have an outstanding objection to the proposed development.

4.5 PROW: No objection provided there is no objection of the public footpath DR1.

4.6 Landscapes: The proposed application is for two further poultry units adjacent to the two already in existence (P133305/F). I visited the site on 6/7/16 and have read the submitted Landscape and Visual Impact Assessment in conjunction with the Landscape Proposals. I note from the elevations shown the proposal will necessitate the raising of the ground levels by approximately 2m to avoid the implications of the proposal lying within the Environment Agency Flood zone 3, this in turn will necessitate the removal of a section of hedgerow of approximately 150m in length.

Notwithstanding the above, I do not have an objection to the principle of development on site; however there are certain aspects of the mitigation proposed that need to be addressed. The landscape proposals (dated October 2014 drawing no IP/DT/05) submitted as part of the discharge of conditions for application number P133305/F do not appear to be implemented. The current proposals shown indicate a rectangular attenuation pond in lieu of the organic shaped pond shown in the earlier drawing.

The landscape proposals should serve to assimilate the proposals into their surroundings and should therefore incorporate the following measures:



- An organic shaped attenuation pond with aquatic and marginal planting to encourage biodiversity.
- The hedgerow immediately west of the proposal along which the PROW DR1 runs should be managed at a height of 2.5-3m and planted with intermittent native trees.
- A new hedgerow should extend the length of the existing and proposed units to their east, linking to a new hedgerow along the northern boundary to replace the wire fence, effectively enclosing the units. The newly proposed hedgerows should be maintained at 2.5 - 3m and planted with intermittent hedgerow trees
- The colouration of the units should be submitted as part of a condition the roof space darker than the walls.

To ensure the landscape proposals are implemented to satisfaction I will make myself available for a site meeting if required.

**4.7 Traffic Manager:** The farm is directly accessed from A438 and the increase in traffic is considered acceptable. The existing access is also considered capable of accommodating the additional traffic, and operates satisfactorily at present. I would add that the two accidents identified in Table 3 of the transport Statement are not on A438, but the C1292 Dormington to Mordiford Road and are not relevant to the access or vehicle route indicated.

A turning area for HGVs should be provided by the broiler units.

Proposal is considered acceptable subject to the above provision (no conditions or informatives required).

**4.8 EHO (Contamination):** No objection

I refer to the above application and would make the following comments in relation to contaminated land issues only. I have no adverse comments to make regarding this application.

**4.9 Minerals and Waste Officer:** Any waste produced during excavation or any other aspect of this development must be disposed of in accordance with all relevant waste management legislation and options for its reuse or recycling should be utilised where possible.

I would therefore recommend that if this application is approved, the following informative is attached to any decision:

Informative:

Any waste leaving the site shall be disposed of or recovered at a suitably permitted site in accordance with the Environmental Permitting Regulations (England and Wales) 2010. Where possible the production of waste from the development should be minimised and options for the reuse or recycling of any waste produced should be utilised.



If you are minded to impose a condition requiring a Construction Environmental Management Plan (CEMP), I recommend that a scheme for the management of all waste material arising from the site form a sub component of that Plan.

If planning permission is granted, any operational waste would be regulated by the Environmental Permit.

#### **4.10 Environmental Health Officer (Odour, Noise and other nuisance)**

Our comments are with reference to any noise or nuisance issues that might arise from this proposal for the enlargement of an existing intensive broiler establishment with regard to the impact on nearest sensitive receptors. .

I have studied the odour assessment supplied by the applicant using the appropriate prescribed methodology which specifies the Environment Agency's specified benchmark figure of  $3.0 \text{ouE/m}^3$  as an annual 98<sup>th</sup> percentile mean for moderately offensive odours.

The assessment supplied advises that the only premises to be in excess of the benchmark odour is Claston Farm itself and the assessment finds all other residential properties are below the benchmark level. Our department would therefore not object to this proposal on odour grounds.

The noise assessment accompanying the proposal considers noise from high ridge extract fans from the sheds and deliveries to and from site using the prescribed methodology in BS4142. I would concur with the report's findings that the noise from the extract fans and deliveries to and from site will be from low to negligible.

The existing and future intensive farmer activity is controlled and permitted by the Environment Agency which is the enforcing authority for emissions to air land and water from this site.

### **5. Representations**

5.1 Dormington and Mordiford Group Parish Council would like to give guarded support to these proposals subject to all Environment Health issues being addressed.

5.2 One letter of objection has been received from Mr & Mrs Reeder. This is based on past experience of malodour, which is said to have emanated from the existing poultry units and has been reported to the Council.

5.3 Below is an email exchange between the case officer and the agent, Mr Whilding. This exchange took place over 23<sup>rd</sup> / 24<sup>th</sup> August 2016 and culminated with the case officer forwarding Mr Whilding's email to the Environment Agency for final comment. This in turn led to the Environment Agency's final comment as reported above, in which they maintain and further clarify their objection. These emails are reproduced as relevant contextual background to the Environment Agency comments. The earliest email (from Mr Whilding to the case officer) is at the foot of the exchange i.e. most recent email is first, so should be read from the bottom up.



From: Thomas, Edward  
Sent: 24 August 2016 09:35  
To: 'James Whilding'  
Cc: Bishop, Kevin  
Subject: RE: P161902/F - Claston Farm, Dormington

Dear Mr Whilding

You haven't raised anything that your predecessor already had and whilst I understand the sentiment and would agree with the majority of what you say, NPPF flooding policies are restrictive policies that have the potential to disengage the limb 1 test at Paragraph 14 and CS SS1. I'd refer you to NPPF #101.

Perhaps the EA is "reluctant" as they don't enjoy objecting unless an objective interpretation of policy compels them to do so?

I understand the concerns at the cost of re-applying but with due respect, this could have been avoided with pre-application discussion with both the Council and EA.

I will, however, forward your email to the EA for one further comment.

Kind regards  
Ed Thomas

Ed Thomas  
Principal Planning Officer  
Major Developments Team  
Tel: 01432 260479  
ethomas@herefordshire.gov.uk

From: James Whilding [mailto:james.whilding@acorus.co.uk]  
Sent: 24 August 2016 09:27  
To: Thomas, Edward  
Cc: Bishop, Kevin  
Subject: Fwd: P161902/F - Claston Farm, Dormington

Mr Thomas

I note the EA view on Flood Zone 3b where this sort of replacement of one area of 3b with another "goes against the fundamental approach of the NPPF and the Sequential Test and would set an undesirable precedent". You will note that they cannot or at least do not cite any section of the NPPF or ancillary guidance that says that this must not happen and I have not found anything either. Their main point is the "undesirable precedent", if they were to allow this then everyone would want to do it – almost a test case. As you well know, there is no such thing as 'precedent' with each application judged on its own merits.



In their Summary, the EA states almost reluctantly, it seems, that:

"We have no option but to maintain our objection on planning policy grounds as the proposed development is located within the functional floodplain and is being raised for Less Vulnerable use."

The EA objection confirms that the proposal is not at risk from flooding, that the compensatory storage is adequate and that it will not cause any off site flooding issues. The EA objection is purely on a tick box basis in that they say they have to object because the site is potentially 3b. This is the only issue with any of the consultees and is a simple policy issue rather than a technical issue. The statutory consultees do not identify any harm arising from the development and the EA confirm that there is no flood risk.

As I understand it, applications should be determined in accordance with the development plan unless material consideration indicate otherwise. There are significant benefits to the development and this appears to be the most logical site on the farm. It is also noted that both Parish Councils have supported.

I welcome thoughts from your colleague on this matter. In considering all relevant planning issues it would appear that the overall gains outweigh EA policy objection and as such the proposal should be supported.

Whilst there may be scope to consider an alternative site, the cost of a new application would be considerable, therefore the client is keen at this stage to exhaust the planning potential for this site.

Kind regards

James Whilding

From: "Thomas, Edward" <ethomas@herefordshire.gov.uk>  
Date: 23 August 2016 at 08:43:04 BST  
To: 'James Whilding' <james.whilding@acorus.co.uk>  
Cc: "Bishop, Kevin" <kjbishop@herefordshire.gov.uk>  
Subject: RE: P161902/F - Claston Farm, Dormington  
Dear Mr Whilding,

The EA has maintained its objection in the face of the updated FRA and a refusal will likely ensue unless you consider withdrawal preferable? Please let me know directly.

Kind regards  
Ed Thomas

Ed Thomas  
Principal Planning Officer



Major Developments Team  
Tel: 01432 260479  
ethomas@herefordshire.gov.uk

From: James Whilding [mailto:james.whilding@acorus.co.uk]  
Sent: 23 August 2016 08:41  
To: Thomas, Edward  
Subject: P161902/F

Mr Thomas

As the recently appointed agent for the above application I would be grateful if you could update me as to the progress of this application.

Kind Regards  
James Whilding

Sent from my iPhone

5.4 **The Ward Member** was contacted most recently by 'phone on 26<sup>th</sup> August 2016. Following explanation of the EA position the Cllr confirmed he was content with a delegated refusal on flood-policy related grounds.

## 6. Officer's Appraisal

6.1 S38 (6) of the Planning and Compulsory Purchase Act 2004 states as follows:

*"If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."*

In this instance the Development Plan for the area is the Herefordshire Local Plan - Core Strategy (CS). A range of CS policies, referred to above are relevant. The strategic Policy SS1 sets out a presumption in favour of sustainable development, reflective of the positive presumption enshrined in the NPPF. SS1 confirms that proposals that accord with the policies of the CS (and, where relevant other Development Plan Documents and Neighbourhood Development Plans) will be approved, unless material considerations indicate otherwise. Where CS policies are silent or out of date SS1 defers at b) to specific elements of national policy which indicate that development should be restricted. These are the footnote 9 policies set out at NPPF paragraph 14.

6.2 The Core Strategy presently constitutes the development plan for the County. In time it will be supplemented by other DPDs. Under figure 3.1 the CS sets out 12 objectives to be delivered over the plan-period. These are arranged under the three headings of Social Progress, Economic Prosperity and Environmental Quality. Objective 8 (under Economic Prosperity) seeks to strengthen the economic viability of...rural areas by facilitating employment generation and diversification. Objective 8a gives explicit



recognition to the importance of the county's land-based activities, including agriculture and food production. Under Environmental Quality objection 11 seeks to address the causes and impacts of climate change by ensuring new development...does not increase flood risk to new or existing property.

6.3 SS5 sets out that the continuing development of the "more traditional employment sectors such as farming and food and drink manufacturing will be supported."

6.4 In terms of the more detailed policies, RA6 expresses support for proposals that "support and strengthen" local food and drink production. As yet there is no detailed guidance in the form of a DPD for poultry units; as there was under the UDP for polytunnels.

6.5 As detailed at length above, other relevant policies are those relating to flood risk. Detailed policy guidance is contained in SD3 sustainable water management and water resources. Having regard to the consultation responses received, it is my view that flood risk is the main issue in the determination of this application. There are no objections on landscape, transport or ecology grounds. Moreover, in relation to what are normally other areas of principal concerns i.e. odour and noise, the EHO has no objection. In this respect, therefore, the Council does not contest that the scheme is in fulfilment of SD1, RA6 and NPPF guidance in terms of its compatibility with adjoining uses and impacts on amenity. The absence of harm is, alongside the benefits of the scheme, recognised.

### **Flood risk**

6.6 CS Policy SD3 (Sustainable water management and water resources) states:

*"Measures for sustainable water management will be required to be an integral element of new development in order to reduce flood risk; to avoid an adverse impact on water quantity; to protect and enhance groundwater resources and to provide opportunities to enhance biodiversity, health and recreation. SD3 sets out 10 criteria that will assist in these objectives being achieved. First among these is that development should be located in accordance with the Sequential Test and Exception Tests (where appropriate) and have regard to the SFRA for Herefordshire."*

6.7 Paragraph 5.3.46 records that the Sequential Test (ST) is set out in paragraphs 100-104 of the NPPF. This is dealt with in detail in the Environment Agency comments and it is not intended to rehearse it further. Suffice to say the Environment Agency has maintained its objection to the proposal on the basis that the ST is not passed and that raising ground levels within 3b to make the development safe is not acceptable in terms of national or local policy.

6.8 As I understand it, the objection is on a point of principle with the scheme promoting, in effect, dispensation by raising existing ground levels within what is likely to function as flood plain without first demonstrating that sites in FZ 1 and 2 or even 3a have been examined and on the basis of unassailable evidence, discounted. There is, as a consequence, an 'in principle' objection to the scheme that has been maintained even upon receipt of the revised FRA.



6.9 In terms of decision making, it is my view that conflict with SD3 1 is sufficient for refusal of the application to ensue. This is consistent with the NPPF, where footnote 9 records policies relating to locations at risk of flooding as being an example of a restrictive policy. Certainly paragraph 101 is worded as such, stating that *"development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding."*

6.10 In conclusion on the main issue, the EA objection leads the Council to recommend refusal of the proposal on the basis of conflict with SD3 and failure to comply with the ST. SD3 is consistent with national policy, which is restrictive. On this basis it is not necessary to weigh the application in the planning balance as application of the 'limb 2' test of paragraph 14 and CS SS1 indicates that development should not proceed. Accordingly, although the benefits of the scheme are recognised as being in accordance with policy and the scheme is considered acceptable in other respects, application of the weighted limb 1 test is not necessary.

**RECOMMENDATION:**

PERMIT

☐

REFUSE

☒

**CONDITION(S) & REASON(S) / REASON(S) FOR REFUSAL:**

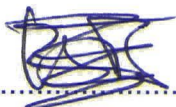
*(please note any variations to standard conditions)*

The application proposes the raising of ground levels within the functional flood plain to facilitate a less vulnerable use. It has not been satisfactorily demonstrated that the Sequential Test has been properly applied or that the scheme would not increase the risk of flooding elsewhere. The application is therefore contrary to the Herefordshire Local Plan – Core Strategy Policies SS1, SS7 and SD3, the NPPF at Chapter 10 and published Planning Practice Guidance, which demonstrates that less vulnerable uses will not be appropriate within zone 3b. These conflicts indicate that for the purpose of decision-making the development should be refused.

**Informatives**

Statement of positive and proactive working – no way forward

Signed: .....



Dated: .....

2/9



TEAM LEADER'S COMMENTS:

DECISION:

PERMIT

☐

REFUSE

☒

Signed: .....

*[Handwritten Signature]*

Dated: 2/9/16.....