



Appeal Decisions

Hearing held on 8 & 9 November 2022

Site visit made on 10 November 2022

by D J Board BSc (Hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 July 2023

Appeal A (The Polytunnels) Ref: APP/W1850/W/21/3283683

Biddlestone Farm, Llangarron, ROSS-ON-WYE, HR9 6NT

- 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 F M, J M and M F Green (Ditton Farm) against the decision of Herefordshire Council.
- The application Ref 173774/F, dated 5 October 2017, was refused by notice dated 18 June 2021.
- The development proposed is to erect up to 28 hectares of fixed (non-rotating 'Spanish' polytunnels over arable (soft fruit) crops.

Appeal B (Drainage Ponds) Ref: APP/W1850/W/21/3283684

Biddlestone Farm, Llangarron, ROSS-ON-WYE, HR9 6NT

- 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 F M Green (Ditton Farm) against the decision of Herefordshire Council.
- The application Ref P173775/F, dated 5 October 2017, was refused by notice dated 26 March 2021.
- The development proposed is Excavation and ground profiling to form 3 no. surface water balancing ponds (engineering operation).

Appeal C (Seasonal Workers Accommodation)

Ref: APP/W1850/W/21/3283682

Biddlestone Farm, Llangarron, ROSS-ON-WYE, HR9 6NT

- 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 F M, J M and M F Green (Ditton Farm) against the decision of Herefordshire Council.
- The application Ref P173776/F, dated 5 October 2017, was refused by notice dated 8 April 2021.
- The development proposed is described as 'The retention of 6 existing caravans/replacement residential demountable 'pods' and the installation of 6 demountable modular welfare (non-residential) units (toilets, mess, etc.)'.

Appeal D (Pumphouse) Ref: APP/W1850/W/21/3283681

Biddlestone Farm, Llangarron, ROSS-ON-WYE, HR9 6NT

- 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 F M Green (Ditton Farm) against the decision of Herefordshire Council.
 - The application Ref P173777/F, dated 5 October 2017, was refused by notice dated 18 June 2021.
 - The development proposed is Erection of Profiled-steel-clad portal frame pumphouse building and 2 no. water tanks.
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**Appeal E (Agricultural Building) Ref: APP/W1850/W/21/3283680
Biddlestone Farm, Llangarron, ROSS-ON-WYE, HR9 6NT**

- 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 F M Green (Ditton Farm) against the decision of Herefordshire Council.
- The application Ref P173778/F, dated 5 October 2017, was refused by notice dated 18 June 2021.
- The development proposed is Erection of profiled-steel-clad portal frame General purpose Agricultural Building

**Appeal F (Lorry Dock) Ref: APP/W1850/W/21/3283679
Biddlestone Farm, Llangarron, ROSS-ON-WYE, HR9 6NT**

- 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 F M Green (Ditton Farm) against the decision of Herefordshire Council.
- The application Ref P173779/F, dated 5 October 2017, was refused by notice dated 13 July 2021.
- The development proposed is Creation (Engineering Operation) of a covered elevated lorry dock/loading platform

**Appeal G (Access) Ref: APP/W1850/W/21/3283678
Biddlestone Farm, Llangarron, ROSS-ON-WYE, HR9 6NT**

- 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 F M Green (Ditton Farm) against the decision of Herefordshire Council.
- The application Ref P173780/F, dated 5 October 2017, was refused by notice dated 26 March 2021.
- The development proposed is Upgrading Existing Vehicular Access/Egress to/from the A4137 Garrenhill Road and laying out of upgraded access track.

Decisions

1. Appeal A – The appeal is dismissed.
2. Appeal B – The appeal is dismissed.
3. Appeal C – The appeal is dismissed.
4. Appeal D – The appeal is dismissed.
5. Appeal E – The appeal is dismissed.
6. Appeal F – The appeal is dismissed.
7. Appeal G – The appeal is dismissed.

Applications for costs

8. The appellant confirmed at the hearing and in writing on 8 November 2022 that the application for costs was withdrawn.

Preliminary Matters

9. The decision addresses the seven linked cases. Seven applications were made but there was agreement by the main parties that whilst each scheme was

submitted and determined separately by the Council that the seven schemes are intended to give effect to component parts of a single enterprise which is a soft fruit growing operation¹. As such it was agreed that the evidence overlapped in many areas and should be heard together. I had no reason to disagree, and I heard the evidence for all of the seven linked cases. I held a case management conference² to discuss procedural matters for the appeal. I asked the parties for common language for referring to the schemes at the hearing and I have used these in the banner hearing in brackets for each case.

10. The planning application that is the subject of appeal A was originally made for up to 32 hectares of polytunnels. The appellants statement clarifies³ that this scheme was amended during the planning application process. This was agreed with the Council and is reflected in the description of development on the appeal form. I have adopted this in the heading of my decision. The appeal is considered on this basis.
11. The planning application that is subject of Appeal C was submitted for to the Council as a larger scheme⁴. The change was made to reduce the onsite scheme to that required to accommodate seasonal supervisory, security and maintenance staff together with welfare facilities for daytime seasonal picking staff⁵. This was agreed with the Council and is reflected in the description of development on the appeal form. I have included this in the heading of my decision. However, retention is not an act of development, so I have treated this scheme as an application for planning permission for the use of land for stationing of 6 caravans and the installation of 6 demountable modular welfare units⁶. The appeal is considered on this basis.
12. The appellant sets out in their statements that the six existing caravans on the site are lawful and that this use of land has not been abandoned. I appreciate that the Council have not explicitly disputed this. However, their statement is clear that the application subject of the appeals was seeking to use the land to site 6 new caravans, noting the poor condition of existing. For any fallback to be given weight I need to be satisfied that the area to be used for stationing of caravans could be lawfully used for human habitation across the area shown on the plans⁷. In this case the evidence before me is imprecise and ambiguous. I am not clear if the claims are at certain times of year, all year round or when the caravans were last occupied and in what capacity. As such I consider that the fall back has not been demonstrated and give it no weight.
13. The statement of common ground (SOCG) at paragraph 4.3 lists the additional information provided as part of the appeal submission. Paragraph 4.4 identifies two additional plans relating to the proposed access⁸ which were published on the Council's website. The plans were available at the hearing and members of the public were able to ask the main parties questions about them. Overall, I

¹ Statement of Common Ground table 5.2 areas of agreement

² 9 September 2022 & note issued 15 September 2022 and placed on Council's website

³ Paragraph 1.2 Overarching Written Statement of Appeal

⁴ Paragraph 1.2 Overarching Written Statement of Appeal

⁵ Paragraph 4.3 Overarching Written Statement of Appeal

⁶ Shown on plan 137.445.05.C55D

⁷ Site plan campsite

⁸ 3283678

am satisfied that there would not be any prejudice by my taking them into account, in particular for the access scheme⁹.

14. In relation to Appeal D a letter from the appellant's consultant¹⁰ outlining noise from the proposed pump was submitted and placed on the Council's website. This confirmed the max sound power level of the proposed pump, which would be housed within the proposed building. A condition to ensure that this would be controlled is suggested and the Council did not object to this approach which addressed the concerns raised in reason 4 of the decision notice¹¹. I have no evidence that would lead me to take a different approach.
15. A Great Crested Newt Mitigation Strategy¹² was submitted by the appellant's ecological consultant. This was available in advance of the hearing and the Council and interested parties were able to address its content. As such I consider there would be no prejudice by my taking it into account.

Background and Main Issues

16. The SOCG confirmed¹³ that discussions on noise impact had been ongoing. As such the Council confirmed¹⁴ it was no longer defending reason 4 on the decision notice for Appeal D. This was subject the imposition of appropriate conditions.
17. The appellant submitted additional information regarding the access in advance of the hearing. Having considered this information and made it available on its website the Council confirmed that it would no longer be pursuing defence of reason 1 of Appeal G¹⁵ which relates to highway safety. However, the Council clarified at the hearing that until the access is in place the remaining schemes (A, C, E, F) do not in their view have an approved access.
18. Accordingly, the main issues in the appeals are:
- The effect of the proposal on the character and appearance of the area (A, D, E, F);
 - Whether the scheme would be at risk from flooding, having particular regard to sustainable drainage (A, B, C, D, E, F, G);
 - The effect of the proposal on highway safety (A, C, E, F);
 - Whether the scheme would make appropriate provision for green infrastructure (A, B);
 - The effect on protected species (C);
 - The effect of the scheme on the River Wye SAC and SSSI, designated European conservation sites (A, B, C, D, E, F, G).

Reasons

Character and appearance (Appeals A, D, E, F)

⁹ 3283678

¹⁰ Formant Ltd dated 17 October 2022

¹¹ LPA Ref 173777

¹² Dated October 2022

¹³ Para 1.4

¹⁴ Email dated 18 October 2022

¹⁵ LPA ref 173780, Appeal ref 3283678, email dated 17 October 2022

19. There is no dispute that the Hereford Landscape Character Assessment (LCA) identifies that the majority of the site would be within the Sandstone Farmlands landscape character type. These areas are described as agricultural landscapes of free draining fertile soil which supports a range of agricultural activities. The key characteristics are identified as being settled agricultural areas and that fields are often divided by straight, single species hedgerows and that traditional hedges often border lanes and public rights of ways.
20. It was agreed through the SOCG that the Council's concerns over 'cumulative impact' referred to the cumulative effects of the seven appeal schemes and not any wider effects of the appeal scheme with other polytunnel schemes or developments. As such the evidence and discussion at the hearing focussed on the effects of the seven appeal schemes.
21. Herefordshire Council has a *Polytunnels Planning Guide* dated June 2018 (PTPG). The main parties agreed at the hearing that it has not been formally adopted¹⁶. It was also agreed that it is in the public domain and treated as good practice guidance. As such it can be considered as a material consideration when assessing the appeal scheme. Paragraph 2.6 of the PTPG refers specifically to development that is associated with polytunnels such as seasonal workers accommodation, toilet blocks, utility buildings and drainage works. The guide sets out that each of these applications should be considered separately but that the cumulative effect of the development as a whole should be taken into account.
22. The site is located in a rural context, surrounded by agricultural fields and small clusters of dispersed residential dwellings and clusters of woodland. The area has a scattering of dispersed farmsteads, individual dwellings and hamlets, all connected by narrow, winding and sometimes sunken lanes. The existing landscape is made up of agricultural fields and orchards where enclosure is provided by trees. The wider site is located on a plateau at 100m Above Ordnance Datum, with the land falling in a steep westerly direction away from the A4137. The small hamlet of Biddlestone is located immediately on the south east edge of Biddlestone Orchards.
23. The appellant suggests that this is not a new site for soft fruit production¹⁷ and that polytunnels have been used previously on parts of the site for the protection of cherry crops¹⁸. However, there is no evidence that polytunnels at the scale proposed were on site. As such I consider it is reasonable to consider the existing landscape of fields and the resultant change from the appeal scheme.

Polytunnels

24. The location plan¹⁹ shows the holding divided into a number of areas and the appeal scheme would lead to the development of polytunnels across 11 of these areas. These are identified on the Location Plan and on the Landscape and Ecology Strategy Plan (LESP) within the appellant's landscape statement to the Hearing. The areas would vary in size and shape. They would be divided

¹⁶ Para 1.3 page 1 of the polytunnel guide

¹⁷ Site Plan Orchards Spring 2009-2011

¹⁸ see aerial photograph 2006 page 4 of officer report for 173776

¹⁹ Site Plan Soft Fruit Development 137.445.C10R

by retained trees and hedgerows, which would be managed, and gaps addressed. The various areas where polytunnels would be provided are numbered with areas 1-4, 6-11 and 13 being identified as having polytunnel development. The existing seasonal workers caravans would be located in the centre of these fields (Area 5). As existing the site has boundaries which comprise a mix of mature trees and substantial hedgerow. The LESP shows areas where new native hedge and tree planting would be proposed. Across the wider site this would divide the various areas up. The margins of the site would also include butterfly and bee wildflower meadow mix and there are areas shown where new woodland would be provided.

25. The appellants submissions explained their approach to growing using a tabletop system. Rows of these structures would be within the polytunnels, about six rows are suggested for each tunnel. The areas underneath would be laid to grass. The appellant's agent made it clear at the hearing that the farm is a large business and as such the restriction of the use of the polytunnels to just one crop, such as strawberries, would not be reasonable. I have considered the scheme as described for growing of soft fruit.
26. The key area of disagreement relates to the change in character of the site resulting from the appeal scheme. The appellant proposes to erect the polytunnels in a phased manner over a period of three years. The appellants statement referred to them being uncovered for winter months. However, at the hearing the appellants agent explained that it could be possible that they would be covered all year round. Taking all of this into account I have assessed the proposed polytunnels based on the worst-case scenario, namely covered for 12 months of the year and at year 3 with all areas in place.
27. The plans submitted with the polytunnel scheme show the hooped tubular support frames which would be made from metal with a height of about 4.75m. These frames would be covered in a clear plastic membrane. The plans also show that these would be laid out in a linked and thereby continuous manner. As a result, there would be a significant unbroken structures across the fields where they are proposed. This would represent a marked change in character from the existing open arable appearance of the area. I appreciate that there are existing landscape features on the edge of areas that would be retained and reinforced. In addition, the various plans submitted show that additional mitigation has also been carefully considered. However, the LESP shows these essentially following the existing margins of the site and field boundaries. There is nothing proposed to provide relief to the significant expanse of the polytunnel development. In addition to this the size of the belts of trees and hedges appears limited²⁰ and would not be proportionate to the scheme. There would be some larger areas, specifically around the SUDS lagoons. Nonetheless overall I do not consider that the scheme would integrate this significant amount of polytunnel development into the landscape.
28. There was agreement that the updated Landscape and Visual Impact Assessment (LVIA)²¹ uses the appropriate methodology and that the viewpoints identified across it and the original submission were appropriate. It was also

²⁰ Point 2 of the LESP indicates up to 4m for hedges

²¹ Landscape and Visual Hearing Statement 2021 submitted in addition to DLA Landscape and Visual Impact Assessment 2016 and Supplemental Statement 2019

acknowledged that the various LVIA submissions assessed the development in summer months.

29. The PTPG acknowledges that long distance views and the prominence of polytunnels in the landscape are important factors to consider. The main adverse visual impact of the polytunnels would result from the large expanses of shiny, plastic membranes used to cover them. These have the potential to be an eye catching and clearly unnatural element in the landscape.
30. There are a number of viewpoint locations considered across both of the landscape documents. From the medium and long views, I agree that the views would mainly be filtered by intervening vegetation and land form or seen against a backdrop of trees and hedgerows.
31. In addition to the long views, I accept that views from the road to the south of the site would be limited due it being below the site and benefitting from significant mature hedgerow. However, to the north and east the site would abut the A4137 with a relatively open boundary. The LESP shows butterfly and bee wildflower meadow mix to be planted on this boundary, a mixed native hedge and some provision of trees. The mitigation in this area would have to take into account the requirements of the proposed access point which would include appropriate visibility free from obstruction (appeal G). Overall, I consider that the polytunnels would be highly visible along the A4137 and unduly prominent due to their coverage and lack of set back and buffering from the field edge.
32. This overall position is acknowledged in the LVIA²². This characterises the impacts for VP07/09 as being major/moderate and at VP06 moderate. The visual receptors include users of the roads and public rights of way in the area and residents of nearby properties. This assessment goes on to rely on the mitigation being in place to determine that there would be no change or a negligible difference. However, there is nothing within the evidence that demonstrates this would be the case including consideration of winter months. Having been to the site and travelled the road I do not consider that the mitigation would reduce the impacts of the polytunnel development across areas 1-4 such that they would not harm the character of the area. This could well be heightened in the winter months. Therefore, this element of the scheme due its overall size and scale, in particular areas 1-4, would have a harmful effect on character and appearance.
33. The appellants submissions make a number of points in favour of the scheme. Specifically, that polytunnels as temporary in nature and that at some point will be removed and land returned to agriculture, that they are agricultural development in an agricultural landscape and that the characteristics of the LCA would not be harmed. It may be that at some point in the future the polytunnels would be removed but in this case full planning permission is sought and the SOCG confirms that the key to success for the enterprise would be fixed non rotational polytunnels over soft fruit²³²⁴. I do not disagree with the contention that a development such as polytunnels can be acceptable in principle in the countryside and within an agricultural landscape. However, this

²² Para 1.18

²³ Areas of agreement section 5.2 SOCG

²⁴ Sections 5.0, 9.8, 9.1 of Overarching Written Statement

does not negate the need to consider the detailed matters that arise. In this case the scale, extent and detail required careful consideration. For the reasons given I consider that this scheme would overwhelm the landscape into which it would be introduced. In terms of the LCA it would not sit comfortably within the existing uses of pasture, arable and orchard.

34. The appellant outlines the benefits of the polytunnel development in terms of facilitating the production of increased quantities of soft fruit, reducing food miles and the contribution to the rural economy²⁵. This is acknowledged by the Council. Indeed, the PTPG specifically notes that these are all material considerations that can be afforded weight in decision making. This is not a point that was disputed by the parties.
35. I have found that there would be harm to the character and appearance of the area and therefore the proposal would be in conflict with the development plan. It would be in conflict with Herefordshire Local Plan Core Strategy (CS) policies SS6 and LD1 which amongst other things seek to ensure that new development integrates into its surroundings and that the character of the landscape has influenced the design of new schemes. There are other material considerations that weigh in favour of polytunnel development, but these do not outweigh the conflict with the development plan.
36. The PTPG recognises that the development of polytunnels on a large scale will invariably involve the provision of other works and buildings. In this case the concerns about the effect on the landscape also include the Pumphouse, Agricultural Building and Lorry Dock schemes. I address these below.

Other Structures

37. In general, the Council consider that no case has been put forward to justify the ancillary elements, pumphouse, lorry dock and agricultural building, in the absence of the wider polytunnel scheme. The appellant argues that the other buildings would also be appropriate for supporting the arable agricultural operations on the appeal site²⁶. The PTPG is a material consideration, and it is clear²⁷ that there is a need to understand the full extent of proposed development associated with polytunnels. Therefore, whilst I have considered the merits of the structures individually this cannot be completely divorced from the wider considerations of their relationship to the polytunnel scheme.

Pumphouse

38. The pumphouse building would be located between areas 6 and 9 shown on the location plan. The pumphouse is identified as the Council as being ancillary in its function to the wider polytunnel soft fruit enterprise.
39. The pumphouse building is shown on the plans to have a footprint of about 18m x 24m and a height in excess of about 6.1m. the water storage tanks would be located close to it and have a height over the 2.23m shown on the plans. The appearance of the building would be simple and utilitarian. The

²⁵ Page 14 SOCG, Economic Impact Assessment April 2020, section 9.8 of the Appellant's statement

²⁶ Page 18 of the SOCG

²⁷ Paragraph 2.5

layout plans show that it would not be excessive for the equipment and storage it would house.

40. The pumphouse and water tanks would be located within the various areas of polytunnels. If the polytunnels were to be developed, then the pumphouse and water tanks would be tucked within the centre of the wider development. Within this context any views of them would be limited and it would be commensurate with its location and setting within the wider polytunnel scheme. The submitted Design and Access Statement (DAS) is explicit in stating that the pumphouse and other operational buildings and structures are *'...intended exclusively for operational agricultural use and are wholly ancillary to and parasitic upon the proposed soft fruit growing enterprise utilising the Spanish polytunnels...'*. As such, whilst the SOCG implies they could have other uses on the farm, I consider it is fair and reasonable to consider them as applied for.
41. Overall, if the pumphouse was not built as part of the whole operation, I consider that a building orphaned within the landscape would appear out of place and intrusive. Moreover, as submitted the LESP is a site wide strategy. I have no information regarding mitigation that would be specific to the pumphouse were it to be built in isolation. Conditions could be applied for a landscape scheme and also to control colour finish. However, I am not satisfied that it would integrate into the surrounding landscape and do not consider that leaving landscape mitigation to condition would be reasonable given the clear policy requirement to ensure that the development integrates into its surroundings. Therefore, the pumphouse scheme would be in conflict with CS policy LD1 and would be harmful to the character and appearance of the area.

Agricultural Building

42. Like the pumphouse the other building, named as an agricultural building in the documents and plans, would be of a simple functional design. It would be located on the edge of Area 2 close to the proposed access and lorry dock. This would be toward the middle of the overall holding with the lorry dock and close to the seasonal workers accommodation area. As such within the wider scheme for the holding if the polytunnels went ahead it would nestle within them.
43. The DAS is explicit in stating that the agricultural building and other operational buildings and structures are *'...intended exclusively for operational agricultural use and are wholly ancillary to and parasitic upon the proposed soft fruit growing enterprise utilising the Spanish polytunnels...'*.
44. Therefore, I consider that if the agricultural building were not erected as part of the whole operation this building toward the more prominent part of the site and appearing alone within the landscape would appear out of place and intrusive. Moreover, as submitted the LESP is a site wide strategy. I have no information regarding mitigation that would be specific to this were it to be built in isolation. Conditions could be applied for a landscaping scheme and also to control colour finish. However, I am not satisfied that it would integrate into the surrounding landscape and do not consider that leaving landscape mitigation to condition would be reasonable given the clear policy requirement

set out in CS policy LD1 to ensure that new development integrates into its surroundings. Therefore, the agricultural building scheme would be in conflict with CS policy LD1 and would be harmful to the character and appearance of the area.

Lorry dock

45. The lorry docking facility would be functional in its design and appearance. It would be located on the edge of Area 2 close to the proposed access and agricultural building. It would be located toward the middle of the overall holding close to the seasonal workers accommodation area. The section drawing²⁸ submitted shows the lorry docking facility, agricultural building and polytunnel developments together. The plans also show that the building would be about 25.95m wide about 6.25m deep and capable of docking four lorries. This would also include areas of hardstanding between it and the agricultural building and within the lorry dock to facilitate access.
46. The DAS is explicit in stating that the agricultural building and other operational buildings and structures are '*...intended exclusively for operational agricultural use and are wholly ancillary to and parasitic upon the proposed soft fruit growing enterprise utilising the Spanish polytunnels...*'. It also makes clear that its size would represent the appropriate amount and scale of buildings for effective operation in connection with a soft fruit enterprise. The evidence with the appeals demonstrates the requirement for a lorry dock of this size for a soft fruit enterprise.
47. Nevertheless, if built out in isolation the lorry dock would appear as an alien feature and would appear intrusive. There is no clear evidence to justify its scale within the wider holding for other uses. Moreover, as submitted the LESP is a site wide strategy and shows this area as 'proposed access road and parking area'. I have no information regarding mitigation that would be specific to the lorry dock were it to be built in isolation. Conditions could be applied for a landscaping scheme and also to control colour finish. However, I am not satisfied that it would integrate into the surrounding landscape and do not consider that leaving landscape mitigation to condition would be reasonable given the clear policy requirement to ensure that new development integrates into its surroundings. Therefore, the lorry dock scheme would be in conflict with CS policy LD1 and would be harmful to the character and appearance of the area.

Conclusions on Character and Appearance

48. The appeal schemes (A, D, E, F) would harm the character and appearance of the area. They would be in conflict with CS policies LD1 and SS6. They would also be in conflict with the PTPG and EMP1 of the Llangarron Neighbourhood Plan which amongst other things seek well designed new development that respects the character of the countryside. I have carefully considered the other material considerations set out in the appeal submissions and at the hearing. However, none of these would outweigh the conflict with the development plan on this issue.

²⁸ Section through central yard

Flooding and Sustainable Drainage (Appeals A, B, C, D, E, F, G)²⁹

49. The submitted drainage strategy relates directly to the appeal scheme for 'Drainage Ponds'. However, the Council point out the other schemes are dependent on the provision of the surface water drainage scheme, and it is a matter in dispute across all of the appeals as matters of flood risk and foul drainage also cut across the multiple schemes. Evidence for this matter was not disaggregated at the hearing and as such the drainage strategy has been considered across the holding for all of the appeal schemes. There was agreement that there are no flood risk issues from other sources but that the issue in dispute relates to appropriate surface water management to ensure that this is not a source of flooding.
50. The schemes for the site area in its entirety have been supported by a detailed Flood Risk Assessment³⁰ (FRA) and surface water management strategy. The principle of the scheme is described as seeking to attenuate water at the greenfield run off rate and accounting for climate change³¹. This is not disputed by the Council's drainage specialist.
51. The tabletop growing method would be about one metre in height. It would be trickle fed in a controlled manner with irrigation water and nutrients. This method would not disturb the ground beneath the polytunnel covers. This method would manage rainfall runoff in a sustainable manner with the ground surface remaining as grass all year round. The skins of the polytunnels would shed water which would fall to the ground to be attenuated.
52. The polytunnels would be sited, orientated and constructed to respond to the natural topography of the site. As such runoff flows and direction would be in the same direction as the meadow situation. Table 3 of the FRA provides estimated runoff rates and attenuation storage. The preferred option to attenuate runoff and discharge would be to the local drainage network and the receiving watercourses, The Gamber and Garren Brook.
53. The balancing ponds and discharge routes are detailed on figure 1 of the Envireau water technical note 2020. It identifies catchment areas for the three ponds and the proposed discharge rates from them. It was explained at the hearing that the intention would be for each of the ponds to receive run off, hold water and then slowly release it at a greenfield run off rate. The technical note calculates an appropriate catchment size for each pond, noting that pond 2 would receive water from pond 3. It was explained at the hearing that ponds 1 and 2 have been sized for a specific event, namely a 1 in 100 event plus climate change, on the basis that this is the level of event that would be required to fill the ponds.
54. The attenuation and storage requirement would be met with three balancing ponds. They would form a system where they would receive water, hold it and release it at greenfield run off rates. Water for irrigation would be pumped at a controlled rate from the balancing ponds as irrigation on site is required. Discharge from the balancing ponds would be controlled at a rate equal to or

²⁹ Appendix A of Envireau Water appeal statement outlines a chronology of submissions relating to flood risk and drainage

³⁰ June 2017 to support seven planning applications

³¹ Reports provided Envireau Water 2017a & 2017b; Envireau Water 2018, 2019, 2020 & 2021

less than greenfield runoff rate into the local watercourses. For discharge from pond 2 the technical note sets out the approach that would be taken to the culvert below the Collinsbill Road in principle. It also demonstrates that the capacity of the ditch along the western boundary would be sufficient to cope with the peak flow generated during the 1 in 100 event.

55. The Council remain concerned about the amount of information available for ponds 2 and 3 in particular. More specifically concerns regarding connection and outfall, the use of adjacent land and detail of whether there is agreement to that. It is clear from Figure 1 of the technical note that the outfall for the various ponds has been carefully considered in principle and would utilise existing culverts and ditch systems or make new provision as appropriate. There is no information about overflow or embankments over and above what is on the plans. Nonetheless, I consider that the appellant has done enough to demonstrate that the scheme could work in principle and conditions could reasonably be used to secure this information.
56. Long term effectiveness of a drainage scheme relies on proper management and maintenance. In particular the safe inspection and maintenance of the drainage system. The regular, occasional and remedial actions that may need to be carried out have been outlined and considered within tables 1 and 2 of the technical note. The Council's specialist consultee³² sets out a number of points to be addressed by condition. The appellant's agent outlined the approach that would be undertaken for silt control. Mr Dodds outlined that the industry standard would be utilised with a suction drainage approach. It is my view that the appellants information provides adequate information regarding the principles of drainage for the appeal schemes on the matter of surface water drainage.
57. At the hearing significant concerns were raised by local residents on this matter, in particular from those whose land would be adjacent to the appeal schemes. The specific concerns relate to the effects that may arise from the natural topography on their properties. These properties are located below the appeal site, and it was raised that there may be issues with run off onto them particularly when extreme events occur.
58. The appeal scheme information demonstrates that run off from the schemes being developed in their entirety (worst case) would be no greater than existing. The approach to surface water drainage seeks to replicate drainage from the existing/undeveloped site as far as possible. I understand that the Council's position is that the matter of surface water cannot be dealt with by conditions and that local residents are concerned. This was on the premise that there were too many gaps in the information for the use of conditions to be acceptable. However, I consider that the Council's evidence does not demonstrate that those gaps would be so significant that application of conditions would not be a reasonable approach. In addition, the Council's CS policy SD3 has a number of specific criteria, and the appeal scheme has demonstrated that surface water would be managed without increasing the risk of flooding and that it would seek to improve drainage and flows. Overall, the scheme would not, subject to conditions, conflict with this policy.

³² Appendix P to LPA Statement of Case

59. HD4 highlights that the Council's consultee on drainage was of the view that a foul water drainage strategy should be presented prior to planning permission being granted. There had not been clarity regarding the provision of new accommodation on the site versus what is already present. The foul water strategy has been outlined for the purposes of the Shadow Habitats Regulation Assessment (SHRA). This makes clear that there is an existing septic tank arrangement which the appellants submit remains available for use on site. It was suggested that it could be utilised by the caravans. The welfare facilities would discharge to a new package treatment plant which would discharge toward balance pond 1.
60. At the hearing it was outlined that the existing septic tank would be retained for use by six caravans and would in principle be comparable to the caravans currently on the site. This septic tank was described as discharging to a field and that subject to maintenance it could be used. However, there is no clarity regarding the condition of the system, maintenance needed or indeed a time frame. As such it cannot be categorically concluded that it would be suitable for the use of land that is applied for.
61. A new package treatment plant would be put in place for additional welfare accommodation and the plans show that it would discharge to a ditch. A percolation test has not been carried out and I note that the Council consider this should have been done. The submitted FRA³³ describes the soils across the site as 'relatively permeable' and the Council did not dispute this. This is an indication that the package treatment plant could be effective. However, this is not a percolation test that confirms that this foul drainage solution would satisfactorily discharge to the ground.
62. The surface water drainage scheme would meet the aims and purpose of CS policies SD3 and SS7 as it has been demonstrated that it would not lead to an increase in runoff and paragraph 166 of the National Planning Policy Framework (the Framework) which requires local planning authorities to ensure that proposals do not increase flood risk elsewhere. In terms of foul water drainage, the information provided would meet the requirements of SD3 in terms of what system the schemes would rely on. There are further requirements under CS policies SS6 and SD4 and I consider these further under the main issue that addresses the effects on European Conservation Sites.

Highway Safety (Appeals A, C, E, F)

63. There are four of the appeals where this remains an issue on the basis that the Council consider that until the access is permitted (Appeal G) that none of the other elements can be accessed in a safe and suitable manner.
64. There is no dispute that the access would be used by a variety of vehicle types and sizes. The initial concerns related to the ability of an HGV to safely enter and exit the site. The appellant provided additional plans relating to the access point including additional vehicle tracking information. These clearly demonstrate that a HGV could safely use the access without going into the

³³ Section 2.3

- opposite carriageway. The design detail also shows the access detail and the provision of appropriate visibility splays.
65. Local residents at the hearing raised concerns regarding the new access point. These were the amounts of seasonal workers, accidents on the main roads, pedestrian danger due to lack of refuge.
66. The Transport Statement (TS) identified four incidents along the A4137 that gave rise to five slight casualties. Based on this it makes a fair conclusion that the highway does not suffer from any inherent infrastructure weakness that would be dangerous.
67. At present the holding is an arable operation. There are already large vehicle movements, tractors and trailers, generated by the operation which use the existing access point. The strawberry production operations would replace some of these movements in part. The seasonal staff would be located off site and transported to the site by bus. These movements would be daily and in the peak season would be a maximum of 5 buses per day to transport workers to and from the site. There would also be HGV movements associated with the transport of strawberries. These are anticipated to be 1 or 2 per day. The forecast daily movements³⁴ suggest that overall, there would be a maximum of 5 large vehicles per day to and from the site.
68. The new access would be from the A4317 and there are no technical objections to it as amended. As such it can be considered safe and suitable for the type of vehicles that would use it. In addition to this its use would be within the environment of an A road where traffic flows freely and at volume. The proposed traffic movements must also be considered in the context of the existing arable enterprise which would reduce. Overall, for these reasons I do not consider that there would be harm to the highway network. I appreciate that there are concerns about pedestrian refuge associated with the access. However, it is clear that the intention is to bring workers to and from the site by bus and not have them walk in or out of the access. As such I do not think it would be reasonable to resist the scheme on this point. In addition, the rest of the A4317 is not served by pavements and pedestrian refuges where a link to the access might be considered reasonable.
69. The Council refer to the access on its own being over engineered. However, this was not one of the reasons for refusal for the access appeal scheme. The access is acceptable in highway safety terms and would not have a harmful effect on highway safety and would not conflict with CS policies SS4 and MT1 which amongst other things seeks to ensure that new development is laid out to ensure safe entrance and exit. However, the acceptability of the Appeal Scheme G is predicated on my overall findings on the matters of surface water drainage and flooding and the effects on designated European conservation sites which are set out further in the decision.

Green Infrastructure (Appeals A, B)

70. The evidence sets out that the current ecological functionality of the site is extremely limited. This is due to its intensive arable use and the management regime. It is also suggested that the hedgerows across the sites are species

³⁴ Table 2.3 Transport Addendum

poor and they also lack connectivity to the wider area. This baseline position was not disputed by the Council.

71. The schemes are supported by a LESP³⁵. This provides a representation of the elements that it is submitted the appeal schemes would provide across the various areas of the site. The aim would be to improve the diversity of hedgerows and improve ecological connectivity across the site and wider area. This would be through re wilding the field margins, creating refuge zones, nest boxes, beehives and new wetland habitat. Overall, this advances the ecological and biodiversity improvement that would come forward if the schemes went ahead. The provision and management of this could be secured by condition.
72. The CS policies are seeking development proposals that are shaped at the outset based on a network of green infrastructure. They also encourage integration and connection to surrounding networks and enhancement of existing features. The existing situation across the farm, demonstrated on plans and on site, is that there are hedgerows, field margins, single trees, groups of trees and tree belts that undoubtedly contribute to the green infrastructure of the site.
73. The applications were supported by an initial landscape strategy plan³⁶ which was subsequently built upon but superseded by the LESP which formed part of the appeal submission. I am aware that the Council's concerns relate to a lack of detail regrading planting schedules, landscape and ecology management and ongoing maintenance plans. The LESP³⁷ sets out in broad terms areas where trees and hedgerows would be retained and either gapped up or enhanced. It also outlines areas where new enhancements would be undertaken. Examples of these are use of butterfly and bee wildflower meadow mix, woodland and understorey planting, ponds and works around them, bug hotels and barn owl boxes. Neither party provided me with clear information regarding the existing network into which these initiatives would be placed. Nonetheless, I consider that the LESP provides enough information to allow the use of conditions to secure the strategy across the whole farm and schemes if I were minded to allow the appeals.
74. I therefore conclude that the provisions for CS Policies SS6, LD1, LD2, LD3 which seek to protect, manage and plan for preservation of existing and delivery of new green infrastructure would be met by the appeal schemes.

Ecology (C)

75. The matter of protected species being present on site is relevant to all elements of the proposed developments. However, the Council only refused planning permission on this ground for appeal scheme C. On the matter of ecology, the matter in dispute relates to the survey information that informed the mitigation strategy. There is no dispute that the site supports a population of Great Crested Newts (GCN) and that these exist both on and off the site.
76. The surveys were undertaken in 2011 and 2015 and the mitigation strategy is based on the 2015 survey data. The Council referred me to the CIEEM advice

³⁵ Appendix 1 Landscape Statement, Plan ref (08) 011

³⁶ Figure 10 of the original LVIA – strategy for field boundaries and balancing ponds

³⁷ Section 4 Landscape Statement pages 19 & 20

note³⁸ on the life span of ecological reports and surveys. This is clear that data more than three years old is unlikely to still be valid and is likely to need to be updated.

77. As set out in the preliminary matters a further mitigation strategy was submitted as part of the appeal dated October 2022. Whilst this is an updated strategy it acknowledges that there is no additional data and as such it remains a strategy based on data that is more than three years old. This would be contrary to the CIEEM advice. In addition, Natural England's advice on protected species is clear that planning permission can be refused if a survey is not up to date.
78. I understand that the appellant has carefully considered the issue of mitigation, including provision of a new pond and measures to enhance/improve the population, and that the most recent document submitted in their view is based on a 'worst case' scenario. That is making an assumption that as originally assessed in 2011 the population of GCN would be a 'high' meta population.
79. It may be that the mitigation strategy set out would be appropriate and effective. However, as it stands it is based upon uncertainty regarding what the actual site conditions and circumstances would be. Specifically, it is evident from the reports that the suitability of the ponds to support a GCN population was based on old data or indeed for offsite ponds there is not date. If I were to take this worst case scenario as set out by the appellants it would not be reasonable as the picture is incomplete or could have changed. There is a significant degree of uncertainty. As such I do not consider that it would be reasonable to accept the mitigation strategy and apply conditions. I am concerned that those conditions may consequently be unreasonable and as such fail the relevant tests or indeed propose measures that could not be complied with if seeking to secure the mitigation strategy. Further, if the data about the GCN population differs in some way from the assumptions in the report and mitigation needs to change I cannot be certain there would not be harm to the protected species.
80. This would be in conflict with CS policies SS1, SS6, LD2 and LD3 and the Framework which amongst other things seek to conserve and enhance biodiversity and geodiversity assets of Herefordshire.

European Sites (Appeals A, B, C, D, E, F, G)

81. The appeal schemes include erection of polytunnels, surface water balancing ponds, use of land for stationing of six caravans, provision of demountable pods for welfare, pumphouse buildings and water tanks, agricultural building, lorry docking/loading bay and an upgraded vehicular access point. In this context the consideration of effects on European sites is undertaken on the basis that all of the schemes would go ahead and comprise the worst case scenario.
82. The appeal schemes would be within the Wye-Garren Brook catchment of the River Wye Special Area of Conservation (SAC) and Sites of Special Scientific Interests (SSSI). The qualifying features of the SAC and SSSI include both habitat and species. The River Wye SAC is a national site that covers the

³⁸ <https://cieem.net/wp-content/uploads/2019/04/Advice-Note.pdf>

whole of the River Wye and a stretch of the River Lugg. The Council set out that the areas of the River Lugg within the SAC are in an unfavourable condition due to excess nutrients and that the Upper Wye is close to unfavourable due to excess nutrient loading (Phosphorus). The appeal site which would contain the schemes would be located within the impact risk zone associated with the River Wye.

83. The Council is seeking a long term solution to the issue however in the interim require new residential development to demonstrate that it would be nutrient neutral. It also sets out a similar approach to non-residential schemes, requiring phosphate loads generated from existing and proposed land uses to be assessed using a precautionary principle.
84. The appellant provided the SHRA as part of the appeal submission. This is provided to assist me as the competent authority. This considers all the schemes that were the subject of seven planning applications and consequently considered at the hearing. The Council's concern is that the conclusions of the SHRA have not been robustly evidenced and that it was developed without a detailed drainage strategy being in place. The schemes are supported by a detailed FRA and the appeal submission included further information on surface water drainage and a Surface Water Nutrient Assessment (SWNA). The SHRA considers all of the documents.
85. The SHRA identifies the potential effect pathways by which the appeal schemes could potentially impact upon the SAC. These are categorised as 'Direct Impact Pathways' (Land take, hydrological connectivity, air quality and recreational) and 'Indirect Impact Pathways' (functional land outside of the site, impacts on species outside of the site). The Council agree that land take, air quality and recreational impacts can be ruled out³⁹. Hydrological impacts are identified as being applicable to the appeal schemes⁴⁰. In addition to these effects from foul water flows. I have no reason to disagree with this position.
86. The River Wye catchment was considered for nutrient loading as well as the wider catchment. The SWNA⁴¹ has been undertaken using tools provided by Natural England and the Herefordshire Council approach to nutrient neutrality⁴². This was done to consider the effect of the schemes on water quality and the resultant nutrient levels. The parties are not disputing⁴³ the screening out of the nutrient pathway betterment of 76% for nitrogen and 37% for phosphorous. Indeed, the Council acknowledge that this is information that should have been in the initial documentation⁴⁴. This assessment is based on the impact from agricultural fertilisation and the change from arable land to polytunnels. This does not screen out foul water flows which I consider further below.
87. Section 3.3.1 viii of the SHRA addresses risks from sedimentation. It refers to the submitted Water Resources Evaluation⁴⁵. French drains are proposed to be utilised for trapping of silt and to minimise suspended soils off site. They are

³⁹ Appendix O para 4.4

⁴⁰ SHRA 3.1 ii

⁴¹ Surface Water Nutrient Assessment September 2021

⁴² Herefordshire Council Interim Phosphate Delivery Plan Stage 1

⁴³ Appendix O Council Statement para 4.13

⁴⁴ Appendix O para 4.15

⁴⁵ Envireau Water 2017a

shown in Figure 1 of the Envireau Water technical note and the SHRA outlines principles for their management. General measures are outlined regarding the general measures to be applied with maintenance schedules set out in tables 1 and 2. However, this information does not quantify the level of removal of silt that would be achieved by these measures, measures for monitoring the water quality in the surface water system, whether the system would eliminate sediment and pollutants or how/when interventions would be triggered. Therefore, I agree with the Council that the SHRA cannot be adopted with regard to the hydrological effect pathway.

88. There are two potential sources of foul water flow that would be generated by the proposed onsite welfare facilities for site workers and from the proposed seasonal workers accommodation. As submitted it is set out that the welfare facilities would not include overnight stays and the total discharge generated would be about 2m³/day⁴⁶. The appeal scheme shows a package treatment plant to be provided and connected to the kitchen, shower and toilet pods. As such there was agreement that the welfare accommodation could be screened out, I have no reason to disagree.
89. The position for seasonal workers accommodation is not clear. There are existing caravans on the site. These have been described as unsuitable for habitation and I have no evidence that they are lawful [12]. These caravans are connected to an existing septic tank, which was pointed out on the site inspection. Whilst it was pointed out on site, I have no details of this on the submitted plans, its capacity or out flow. If the use of this part of the site was to be granted planning permission for the use of the land for the stationing of caravans, then I agree with the Council that these overnight stays and associated foul flows should be considered as part of the SHRA and as it stands is an unknown, there is insufficient information. Therefore, I consider that, based on the information before me, there is a risk that there would be a likely significant effect on the designated sites. The Planning Practice Guidance is clear that a significant effect should be considered likely if it cannot be excluded on the basis of objective information and it might undermine a site's conservation objectives. A risk or a possibility of such an effect is enough to warrant the need for an appropriate assessment.
90. An Appropriate Assessment (AA) under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) is required. This accords with the comments from Natural England who advised that appropriate assessment would be required. The response goes on to suggest that there is a need for additional information to form a conclusion regarding effects on the integrity of the European Sites. The appellant's adopted position at the hearing was that AA would not be needed. As such there are no mitigation strategies presented in the evidence. For the same reasons no alternatives were present for consideration.
91. Having carefully considered all the submissions I cannot be certain that the appeal schemes would not open pathways from the proposed water management and foul drainage systems for the development of the site that would have an adverse impact on designated European Conservation Sites and therefore the integrity of those sites. In light of the above, I find that the

⁴⁶ Envireau Water 2021 page 21 SHRA

proposals would have likely significant adverse effects on the integrity of the European Conservation Sites. In this regard they would be in conflict with CS Policies SS1, SS6, SD4 and LD2 which amongst other things make it clear that for schemes within the impact risk zone there is a need to demonstrate that there would be no adverse effect.

Conclusion

92. There are policies within the adopted development plan that support the development of farming enterprises⁴⁷ and food manufacture as well as the diversification of existing agricultural businesses and provision of employment⁴⁸. The appeal schemes clearly fall within the scope of these policies and the positive attributes of the appeal schemes that meet these policy requirements weigh in favour of the schemes. However, the development plan also requires any such schemes to be of an appropriate scale, not harm landscape character or result in significant visual intrusion. The policies of the development plan also seek to conserve biodiversity and protect the integrity of European sites. Therefore, whilst there are material considerations that weigh in favour the schemes, there is no harm arising from surface water flooding, green infrastructure and highway safety, these do not outweigh the conflict with the development plan on character and appearance (A, D, E, F), protected species (C) and European Designated Sites (A, B, C, D, E, F, G).

93. For the above reasons and having regard to all other matters raised the appeals are dismissed.

D J Board

INSPECTOR

⁴⁷ CS policy SS5

⁴⁸ CS policies RA6 and E1

APPEARANCES

FOR THE APPELLANT:

Tony Aspbury
Sarah Boland
Nick Sanderson
James Dodds

FOR THE LOCAL PLANNING AUTHORITY:

Rebecca Jenman
Jill Tookey Williams
Jennifer Allen
Fran Lancaster
Elizabeth Duberley
Mandy Neil

INTERESTED PARTIES:

Paul Lodge (Parish Councillor)
Guy Gagen
Wendy Gagen
Ian Hannah
Andrew McRobb
Cllr Elissa Swinglehurst
Steve Crooks
Nick Hart

DOCUMENTS SUBMITTED AT THE HEARING (HD)

1. Appeal decision APP/L2630/W/21/3289198
2. Judgement dated 19 January 2011 - Morge (FC) (Appellant) v Hampshire County Council (Respondent)
3. Judgement dated 29 April 2013 – R (on the application of Christopher Prideaux) Buckinghamshire County Council v FCC Environment UK Limited
4. Council Drainage Comments dated 11 May 2022
5. Flows and Loads 4 – British Water Code of Practice
6. Planning Conditions for the appeal schemes
7. Email providing link to DEFRA licencing policies [European protected species policies for mitigation licences - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/policies/european-protected-species-policies-for-mitigation-licences)
8. Copy of Appellant's email dated 23 April 2020 regarding additional information/assessment that has now been agreed between Envireau Water (EW), Balfour Beatty and WSP
9. Email from Paul Lodge dated 9 November 2022 containing a written copy of his hearing statement
10. Copy of Appellant's email dated 31 July 2020 re highway matters
11. Copy of Appellant's email dated 12 January 2018 attaching sections through the ponds
12. Copy of Core Strategy policy RA3

DOCUMENTS POST HEARING

13. Email dated 11 November 2022 confirming Appellant's agreement to pre commencement planning conditions