

204230 - PROPOSED ALTERATIONS AND DEVELOPMENT OF EXISTING EQUINE FACILITIES TO FORM A NEW INDOOR ARENA, STABLING AND AN ESSENTIAL WORKER'S DWELLING AT PRIORY FARM, STOKE PRIOR, LEOMINSTER, HR6 0ND

For: Mr & Mrs Pearson per Mr Garry Thomas, Ring House Farm, Fownhope, Hereford, Herefordshire HR1 4PJ

UPDATE TO OFFICER REPORT

Additional to the updated Officer Report dated and scheduled for the Planning and Regulatory Committee on 18 January 2023 (withdrawn from the agenda), the following supplementary comments can be made.

In January 2023, the applicant submitted a Manure Management Plan and draft Section 106 agreement with respect to addressing the impact of the increased manure generated from the intensification of the equine enterprise (increased stabling provision proposed). This was considered by officers and for the reasons as set out comprehensively in the comments received from the Planning Ecology Team, it remains the case that the application, 'the project' in its entirety, is not able to demonstrate nutrient neutrality. As such, in accordance with the The Conservation of Habitats and Species Regulations 2017, as amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019' (the 'Habitats Regulations'), Part 6, section 63(5) – it would not be lawful to grant planning permission when an adverse effect on the integrity of a protected site has been identified.

Planning Ecology Comments (16 January 2023)

Background from previous comments

The application site lies within the catchment of the River Lugg SAC (Lugg- Lower Lugg), which comprises part of the River Wye Special Area of Conservation (SAC); a habitat recognised under The Conservation of Habitats and Species Regulations 2017, as amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019' (the 'Habitats Regulations') as being of international importance for its aquatic flora and fauna.

At present the levels of phosphates in the River Lugg exceed the water quality objectives and it is therefore in unfavourable condition. Where a European designated site is considered to be 'failing' its conservation objectives there is limited scope for the approval of development which may have additional damaging effects. The competent authority (in this case the Local Planning Authority) is required to consider all potential effects (either alone or in combination with other development) of the proposal upon the European site through the Habitat Regulations Assessment process. Permission can only be granted if there is scientific certainty that no unmitigated phosphate pathways – nutrient neutrality exist and that the HRA process can confirm 'no adverse effect on the integrity of the River Lugg (Wye) SAC'. Natural England; the statutory nature conservation body, advise that recent case law requires effective mitigation to be demonstrated on a case by case basis whilst the River Lugg Nutrient Management Plan is reviewed to ensure greater certainty that this can provide large scale mitigation development in the area.

The proposed development would support the potential for a maximum of 12 additional horses to be stabled at the site – with associated additional manure created which is an additional source (pathway) for phosphates in to the River Lugg SAC.

Additional comments in respect of supplied Manure Management Plan and draft s.106 agreement

The supplied Manure Management Plan (MMP) appears to be based on 19 horses – this number does not relate to existing potential occupancy (baseline) or the maximum potential additional number of horses the development would facilitate, or the potential total maximum number of horses on the site based on existing and proposed provision of stabling.

The supplied additional information appears to be based on Nitrogen rather than Phosphate which is the relevant constraint requiring Nutrient Neutrality to be demonstrated on a precautionary basis and with scientific and legal certainty for the operational lifetime of the proposed development.

The MMP is based on Nitrate Vulnerable Zone considerations and standard farming manure management practices and regulation that have not been demonstrated as HRA compliant; in particular as demonstration of Phosphate Nutrient Neutrality within the River Lugg SAC catchment is the required outcome.

The movement of manure offsite has been proposed but no nutrient neutrality for the P moved offsite has been demonstrated. The AD plant systems as proposed for offsite management of manure do not destroy P – so the input and output levels of P from an AD remain the same. The proposed receptor site for the exported manure is located within the River Lugg SAC catchment. As currently proposed, the additional P created by the intensification supported by the proposed development and exported from site remains within the Lugg catchment and has pathways to the River Lugg SAC.

No details to demonstrate that there are no P pathways in to the River Lugg SAC during the storage of additional/total manure on the site prior to export/spreading have been supplied.

No 'legacy' P calculations for fields proposed for spreading have been supplied to demonstrate that agricultural cropping for the proposed area of spreading will achieve nutrient neutrality for the additional application of manure proposed. This balanced application of nutrients must demonstrate how it will deliver required nutrient neutrality for the operational lifetime of the proposed development.

The supplied draft s.106 agreement does not appear to provide certainty of how any nutrient neutrality systems proposed can be secured, monitored and enforced for the operational lifetime of the proposed development. This includes securing what actions will be undertaken to ensure equine operations remain nutrient neutral should the proposed receptor AD plant fail, no longer operate or cannot be used to manage manure created by intensification supported by this development. This s.106 presumes nutrient neutrality in respect of additional digestate created by the AD has been scientifically and legally demonstrated as nutrient neutral for the lifetime of the development – this is not the case.

From supplied information significant uncertainty remains that the required nutrient neutrality can be demonstrated, secured, monitored or enforced for the proposed development and the equine intensification it supports.

ADDITIONAL REPRESENTATIONS

A further representation from applicant's agent has been received following the publishing of the Officer Report / Agenda pack, provided below:

Rebuttal Statement April 2023

Location: Priory Farm, Stoke Prior, Herefordshire

Proposal: Proposed alterations and development of existing equine facilities to form a new indoor arena, stabling and an essential worker's dwelling.

Prepared on behalf of the Applicant: Mr and Mrs Pearson

Planning Application Reference: 204230

1 SUMMARY

1.1 The principle of the development has already been unanimously approved by the planning committee in February 2022.

1.2 The Parish Council supports the proposed development.

1.3 There are several public interest letters supporting the proposed development.

1.4 The power to impose conditions when granting planning permission is very wide. It is imperative the Planning Committee uses its wide scope of powers to impose suitable conditions in the planning permission as set out in... *Circular 11/95: Use of Conditions in Planning Permissions. 5th May 2006*;

1.5 A condition can be written requiring a Section 106 Agreement. The draft agreement and Frontier Report appended to that agreement would ensure a high level of animal husbandry and site management of equine manure. Such a condition would remain within the control of Herefordshire Council in perpetuity and within the scope of The Conservation of Habitats Species Regulations 2017.

1.6 Regulation 63 (6) states: *"In considering whether a plan or project will adversely affect the integrity of the site, the competent authority must have regard to the manner in which it is proposed to be carried out or to **any conditions** or restrictions subject to which they propose that the consent, permission or other authorisation should be given."*

1.7 As the site does not *"host"* a priority natural habitat type, or a priority species... *imperative reasons of overriding public interest* required under Regulation 64, does not apply.

1.8 The residential foul drainage element of the proposal is satisfied and, with regard to permitted equine practice – in the spirit of the moratorium – the applicant can demonstrate phosphate neutrality certainty via the extinguishment of permitted historic equine intensity and, the provision of betterment in the management of the potential for phosphate to enter a SAC. It is noted the relevant SAC is located at some considerable distance from the site area and, it is noted equine manure has a low phosphate content where by hand picking of equine manure from the fields on a daily basis is good standard practice.

2. PART VI TOWN AND COUNTRY PLANNING ACT 1990

2.1 The Applicant is mindful should the Planning Department refuse the application or, retroactively impose unreasonable conditions, they are at liberty to serve a purchase notice on the Council in accordance with the above Act.

3 CONCLUSION

i) The proposed condition requiring a Section 106 would comply with the regulations and the spirit of the *"phosphate moratorium"* in perpetuity;

ii) The planning approval would bring the site under effective planning control and extinguish historic equine use from 110 horses to just 28;

iii) The housing element of the proposal is satisfied such that it is confirmed there is acceptable neutrality of phosphate entering the SAC.

Web links to draft section 106 agreement – application 204230:

[Draft Section 106 Agreement](#)

[Draft Section 106 Agreement - Appendix 1 Plan of Land](#)

Draft Section 106 - Appendix 3 Manure Management Plan