



Adroddiad Adendwm

Ymchwiliad a gynhaliwyd ar 03 & 04/10/19

Ymweliad â safle a wnaed ar 04/10/19

gan A L McCooey BA MSc MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 04.02.2020

Addendum Report

Inquiry Held on 03 & 04/10/19

Site visit made on 04/10/19

by A L McCooey BA MSc MRTPI

an Inspector appointed by the Welsh Ministers

Date: 04.02.2020

TOWN AND COUNTRY PLANNING ACT 1990

SECTION 78

APPEAL BY PERSIMMON HOMES EAST WALES

LAND AT HEOL Y CEFN, CEFN FFOREST, BEDWELLY, CAERPHILLY

Glossary

AA	Appropriate Assessment
CEMP	Construction Environmental Management Plan
ECOIA	Ecological Impact Assessment
EIA	Environmental Impact Assessment
HRA	Habitats Regulations Assessment
IROPI	Imperative Reasons of Overriding Public Interest
LDP	Local Development Plan
NRW	Natural Resources Wales
SAC	Special Area of Conservation
The Regulations	Conservation of Habitats and Species Regulations 2017

File Ref: APP/K6920/A/19/3226294

Site address: Land at Heol y Cefn, Cefn Fforest, Bedwellty, Caerphilly

- The application was recovered for decision by the Welsh Ministers, made under section 78 of the Town and Country Planning Act 1990, on 31 May 2019.
- The application is made by Persimmon Homes East Wales to Caerphilly County Borough Council.
- The application Ref 17/0681/OUT is dated 4 August 2017 and was refused by notice dated 8 November 2018.
- The development proposed is to erect residential development (up to 300 dwellings) together with associated open space, landscaping and parking provision; and seek approval of access and scale.

Summary of Recommendation: that the Appropriate Assessment be accepted.

Preliminary Matters

1. This Addendum report has been prepared at the request of Welsh Government. Its purpose is to report on the impacts of the scheme on the Aberbargoed Grasslands Special Area of Conservation (SAC), which is a European protected site. The northwest corner of the site is within 50m of the boundary of the SAC.
2. The need for Habitats Regulations Assessment (HRA) is set out within Article 6 of the EC Habitats Directive 1992, which is transposed into British Law by the Conservation of Habitats and Species Regulations 2017 (the Regulations). The Welsh Ministers, as competent authority with respect to the Regulations, will need to decide whether 'likely significant effects' alone or in-combination with other plans or projects, can be ruled out based on the information provided by the parties. The competent authority may agree to the project only after ascertaining that it will not adversely affect the integrity of the European site.
3. Whilst the Regulations provide strict protection, they are not a prohibition on new development or activities. Instead they involve a case-by-case examination of the implications for each European protected site, its qualifying features and its conservation objectives. There is no statutory method for undertaking an HRA and the approach can vary on a case-by-case basis. Nonetheless, guidance issued from the European Commission¹ sets out a four-stage assessment process involving Screening; Appropriate Assessment (AA); Assessment of Alternatives and Imperative Reasons of Overriding Public Interest (IROPI). AA considers the implications of the proposal for the European site in view of its conservation objectives.
4. Conscious of the requirements of Regulation 63(3) and 63(4) regard has been had to the representations of Natural Resources Wales (NRW) and the general public in carrying out this assessment.
5. A screening direction was given by the Planning Inspectorate under the authority of the Welsh Ministers that the proposal is not Environmental Impact Assessment (EIA) development within the meaning of the relevant Regulations. The assessment noted that the appeal site is located close to the Aberbargoed Grasslands SSSI/SAC and there are also a number of other identified biodiversity issues on site. This direction accords with the EIA screening opinion given by the Council.

¹ Assessment of plans and projects significantly affecting Natura 2000 sites' (2001)

The Site and the Proposal

6. The site lies north of Cefn Fforest, which is a residential area to the north of Blackwood. An established residential area known as Grove Park lies to the south of the site. There is agricultural land on the other 3 sides. The site is bounded to the west by Heol y Cefn which leads to Markham to the North. The land is greenfield and comprises 5 fields separated by hedgerows, extending to around 9.7 hectares. There is an existing Public Right of Way running across the site. It is substantially enclosed by hedges following an established track, shown on the red line plan.
7. The proposal is described in the heading above. The application was submitted in outline with access and scale of the development to be considered at this stage. All other matters were reserved for subsequent approval. Details of the two proposed access points to Heol-Pit-Y-Ceiliogod and Beaumaris Way are provided. The matters of landscaping, layout and appearance are reserved for future approval. The maximum numbers of dwellings and the height and size parameters of the proposed dwellings are specified.

Screening

8. The Local Planning Authority did not formally screen the proposal under the Regulations. The Council did not consult NRW on the application; relying on the views of its own ecologist.
9. The special features of the Aberbargoed Grasslands Special Area of Conservation (SAC) are: Marsh Fritillary Butterfly (*Euphydryas aurinia*), which is the key species and Purple-moor grass meadows - *Molinia* meadows on calcareous, peaty or clayey-silt-laden soils (*Molinion caeruleae*),² which is the key habitat. The conservation vision for the SAC special features is for them to be in a favourable conservation status with sufficient optimum habitat to maintain a sustainable metapopulation in the area. A series of performance indicators are defined in the management plan. An important aspect of ensuring the survival of Marsh Fritillary populations and the favourable conservation status of the Aberbargoed SAC population is the presence within a 1-2km range of suitable alternative habitats with the potential to support metapopulations of the species.
10. NRW were consulted on the appeal and considered the information supplied by the appellant in terms of the submitted ecological surveys and reports. It was noted that the potential impacts on the SAC were assessed in the appellant's Ecological Impact Assessment (ECOIA). NRW stated that the proposals may affect the Aberbargoed Grasslands SAC. The potential impacts were identified as:
 - Air and water quality impacts during construction;
 - Water quality impacts from surface water disposal post construction;
 - Fragmentation of habitats; and
 - Increased recreational pressures having potential impacts on the features of the SAC.
11. These potential impacts were also identified by the Council's ecologist. The appellant's consultants acknowledged these potential impacts and addressed them in their submissions.

² Referred to as EU Molinion

12. The proposed development is not functionally linked to the European site. From the evidence before me, I conclude that there would be likely significant effects arising from this development and therefore an AA is necessary.

Appropriate Assessment

Background

13. The appeal was accompanied by extensive ecological survey information. Surveys were conducted over the period from 2015 to 2019. Of relevance to the SAC were the Invertebrate, Phase 1 Habitat and Vegetation surveys, that were considered in the ECOIA³.
14. Dwr Cymru confirms that there is sufficient capacity in the local sewerage system to accommodate foul drainage from the proposed dwellings but not surface water drainage. This can be addressed by a planning condition prohibiting the discharge of surface water to the main sewers. The water supply to the area may need to be upgraded to serve the proposal. A condition is suggested in order to address this issue.

The Appellant's Evidence

15. Potential effects on the SAC as a result of changes to water quality and quantity were the first issue. Water abstraction has the potential to affect the hydrology of the SAC and therefore the protected habitats and species. Current abstraction does not affect the SAC features. Any proposed abstraction would require a licence from NRW and the effect on the SAC must be considered as part of that consenting process. The proposed development would be served from the public water supply. Improvements to this supply are planned and a condition addresses implementation. Surface water drainage from the site into the SAC would have potential effects. The details of surface water drainage arrangements are required by conditions, where the effect on the SAC would be considered. The potential effects of surface water drainage during construction would be controlled by the Construction Environmental Management Plan (CEMP), which is required by condition of the planning permission. There are no plans within the proposed development to discharge surface water to water courses within the SAC. As a result, the drainage system within the proposed development will not have a direct or indirect impact on the features of the SAC.
16. Potential effects on the SAC as a result of air pollution are considered. Nitrous oxide is the most likely pollutant to increase as a result of new developments and associated infrastructure. The impacts of Nitrous Oxide normally occur close to discharge points. It is therefore unlikely that any minor increase in Nitrous Oxide levels as a result of the proposed development will have an impact on the Favourable Conservation Status of the SAC or its associated primary species and habitats. The very low potential for airborne pollutants to have a significant impact on the SAC have been previously recognised through Appropriate Assessments undertaken for the Caerphilly Local Development Plan (LDP).

³ Full details of the surveys are set out in the APP 58 Statement of Common Ground and APP 55 Ecological Statement of Evidence

17. The potential impacts on air quality during the construction phase have also been considered. Measures to control dust and other airborne pollution arising from construction are addressed under the CEMP, which is required by a condition of the planning permission. The ECOIA concludes that airborne pollution resulting from the development would not have any significant effect on the SAC features or conservation objectives.
18. The site has been surveyed over the period 2015-19. The results did not record any habitats considered suitable to support Marsh Fritillary butterfly, or any habitats that with the withdrawal of agricultural management would lead to the re-establishment or restoration of such habitats. The invertebrate survey of the potential development site did not record the presence of Marsh Fritillary butterfly within any area of the site. The ECOIA concluded that the development would not lead to a loss or fragmentation of habitat identified as having the potential to support the designated habitats or species of the SAC.
19. The ECOIA also considered the potential for impacts on the SAC as a result of increased human activity within the site. In the past, there have been adverse impacts associated with motorbike scrambling, fly tipping and vandalism. The Council has taken over control of the SAC (since 2005). The management regime has included the fencing of the most sensitive areas, installation of gates to control public access, and the use of grazing as a management tool under the control of a stock manager. An educational programme and visitor centre has been set up informing local residents of the importance and sensitive nature of the site. Appropriate Assessments undertaken for the Caerphilly LDP state that the measures introduced to manage the site have had the benefit of substantially reducing the incidents of fly tipping, arson and off-road use of motor vehicles. The SAC was surveyed by the appellants for signs of adverse effects from human activity. The evidence is that users remain on designated footpaths and impacts on the SAC have been adequately controlled.

Assessment of the Evidence including the Views of NRW

20. NRW commented that the identified potential impacts may not result in a likely significant effects if appropriate measures are adhered to and implemented in full. A recommended mechanism for this is the use of a condition requiring a CEMP. NRW noted the appellant's response to the points raised in its initial letter and confirmed that there were no concerns with their suggested proposals. The Council's Ecologist has not raised any objection to the proposal in terms of the effect on the SAC. It is agreed that the potential impacts can be adequately controlled by conditions. The general public made comments on the potential effects of the proposal on the SAC. No convincing evidence of the nature and extent of these effects was supplied.
21. I have carefully considered the evidence that has been submitted. It demonstrates that the potential adverse impacts in terms of water and airborne pollution are limited and can be avoided by conventional tried and tested measures. These measures would be implemented and controlled by conditions attached to the planning permission. No evidence to the contrary has been provided by NRW and the Council agrees with the appellant's ECOIA.
22. I am satisfied that the evidence from the various ecological surveys demonstrates that there is no suitable habitat or Marsh Fritillary butterfly present on the appeal site. This evidence is up-to-date at the time of writing this report. The concerns of NRW have been investigated and the results show that this is not an issue of concern.

23. NRW raised one other issue: *Continuation of existing management of the SAC to mitigate potential adverse effects from increased footfall in SAC. This may include additional resourcing for the education centre, site ranger, stock management and other measures currently in place to avoid adverse impact on the integrity of the SAC.*
24. I have considered all the evidence and visited the SAC. My conclusion is that the existing arrangements to control the adverse impacts of human activity are adequate and the proposal would not therefore warrant the need for any further resources. This conclusion is supported by the Council, who oversee management of the site. The Council stated that as there would be no adverse impact on the SAC no payment would be necessary
25. In such circumstances there would be no adverse effect on the integrity of the European site and features as a result of the proposed development, alone or in combination with other plans and projects.
26. Accordingly, planning permission may be granted subject to the necessary conditions being attached. In reaching this finding I do not need to consider steps 3 and 4 namely the 'Assessment of Alternative Solutions' and Imperative Reasons of Overriding Public Interest (IROPI).

Conclusion

27. A review of the conservation objectives and potential threats to site integrity for the Aberbargoed Grasslands SAC was undertaken to identify whether it would be impacted by the development. I have taken into account all the available evidence and have adopted the precautionary principle in carrying out this AA. I have carefully considered the potential impacts on the integrity of the site that have been identified by NRW and others.
28. I conclude that it is beyond reasonable scientific doubt that the scheme, either alone or in combination with other projects, would not have an adverse effect on the integrity of a European Site, namely the Aberbargoed Grasslands SAC. This conclusion is based on the particular circumstances of this case and is predicated on securing the identified mitigation measures through the imposition of and compliance with the recommended planning conditions.

Recommendation

29. For the reasons given above, and having had regard to all other matters raised, I recommend that this report be accepted as an 'Appropriate Assessment' which complies with the requirements of Regulation 63 of the Conservation of Habitats and Species Regulations 2017⁴.

A L McCooey

Inspector

⁴ Whilst not part of this AA, for the sake of completeness, I draw attention to my conclusions on the impact on European Protected Species in the main report at paragraphs 79 and 80.
