

PLANNING COMMITTEE

Date: 24 September 2014

Schedule of Committee Updates/Additional Representations

Note: The following schedule represents a summary of the additional representations received following the publication of the agenda and received up to midday on the day before the Committee meeting where they raise new and relevant material planning considerations.

SCHEDULE OF COMMITTEE UPDATES

P140910/O - OUTLINE APPLICATION FOR THE PART DEMOLITION OF EXISTING BUILDINGS AND STRUCTURES AND DEVELOPMENT OF THE SITE TO PROVIDE A RETAIL STORE (USE CLASS A1) AND ASSOCIATED WORKS AND IMPROVEMENTS INCLUDING ACCESS. AMENDED PLANS AT LAND AT MILL STREET, LEOMINSTER, HEREFORDSHIRE, HR6 8EF

For: Frank H Dale Ltd per Barton Willmore LLP, 7 Soho Square, London, W1D 3QB

ADDITIONAL REPRESENTATIONS

The applicant's agent has submitted further correspondence regarding the conditions proposed as part of the officer recommendation. Their comments refer specifically to condition 5 which seeks to restrict the ancillary uses within the food store. They consider that the condition should specify the amount of floor space to be used for comparison goods, and that this should be 20% in accordance with their retail assessment. They also confirm that their client is willing to accept that the condition should restrict the establishment of a post office, dry cleaners and a dispensing pharmacy, but that the sale of pharmaceutical products should be allowed.

They also point out a typographical error in condition 8, which refers to the A40. This should be the A44.

The correspondence also highlights the need to form a clear conclusion that the impacts of the proposed development would not be classed as 'significantly adverse'; which is the test within the NPPF, and that the scheme is therefore compliant with paragraph 27 of the NPPF.

A further letter of representation has been received. It raises four points as follows:

1. Is the whole site Zone 3a or should it have been zoned 3b (no development except essential infrastructure permitted)?

2. Historic evidence of surface flooding of A44 is acknowledged by JBA, yet it is still deemed a safe route for emergency egress via a roundabout and railway level crossing.

3a There is a risk of Surface Flooding in this area– central and northern areas of the larger site are at risk. Acknowledged in Para. 4.2.2 (confirmed by photos)

3b. the scenario of 2007 has not been modelled for this report i.e. when flooding from both the river and rainfall occurred together. The River Lugg, a relatively short river, rises quickly in response to heavy rainfall in the region and so it is likely that surface water flooding is going to occur at the same time as the river levels rise, when the non-return valves will close and cannot accept any more outflow water.

4. Methodology and full results of the modelling undertaken by JBA is not clear in the reports to assess the *change* of flood risk in Leominster brought about by the development.

Correspondence has also been received from local residents who are concerned about the increased risk of flooding on Porters Mill Close.

The Council's Archaeologist raises no objection to the application but recommends the imposition of a condition requiring site investigation prior to the commencement of development.

OFFICER COMMENTS

The agent's comments about the precision of condition 5 are accepted. The inclusion of a 20% limit of the total retail floor space to be used for the sale of comparison goods would give greater clarity to the condition. The comments regarding the sale of pharmaceutical products are also accepted. On reflection this part of the condition is unduly restrictive as it would potential prevent the sale of items such as paracetamol, vitamins and cough medicines; products that are widely available in most food retail outlets. The intention of the condition is to limit the establishment of ancillary uses within the main store that might reduce the potential for linked trips to take place and thus affect the viability and vitality of the town centre. The inclusion of a dispensing pharmacy within those uses to be restricted would help to achieve this.

Paragraph 27 is clear that planning permission should be refused if an application fails to satisfy the sequential test, if it is likely to have a significant adverse impact on planned public and private investment in a centre or catchment area of a proposal, or if it detrimentally impacts upon the vitality and viability of a town centre. It has been demonstrated through the completion of a retail assessment by the applicant, and its independent assessment by Deloitte, that the proposal satisfies the sequential test, and that it will not have an adverse impact on investment or on the vitality and viability of the town centre. The scheme is therefore considered to be compliant with paragraph 27 of the NPPF.

The consultation responses from the Environment Agency and the Council's Land Drainage Engineer both confirm that the site falls within a flood zone 3a where developments that are less vulnerable to flooding are considered to be acceptable. This includes retail uses as is proposed .

The proposal is accompanied by a detailed Flood Risk Assessment and Drainage Strategy which has been assessed by EA and the Land Drainage Engineer. EA did object to the earlier scheme that was refused by committee on 8th January 2014, but they have confirmed that they are now satisfied with the proposal. They have not questioned the methodology and have recommended that the local planning authority seek to secure improvements to existing flood defences by requesting a financial contribution through a Section 106 Agreement.

The proposal includes the removal of an existing building with an approximate gross floor area of 3,200 square metres. It is surrounded by concreted service areas. The proposal is for a similar sized building and the car park covers an area that is already hard surfaced. The introduction of a sustainable surface water drainage scheme is considered to represent betterment. Officers are content with the level of detail provided and that the proposal is compliant with the NPPF and policy DR7 of the UDP.

CHANGE TO RECOMMENDATION

Condition 5 to be amended to read as follows:

The development hereby approved shall be limited to a net retail sales floor area of 2,323 square metres of which no more than 20% shall be given over for the sale of comparison goods. Notwithstanding this, the following activities shall not be permitted:

- i) A dispensing pharmacy
- ii) The reception of goods for dry cleaning
- iii) A post office

Reason: To define the terms of the permission and to protect the vitality and viability of Leominster town centre in accordance with Policy TCR2 of the Herefordshire Unitary Development Plan and the National Planning Policy Framework.

Condition 8 to be amended to refer to the A44 and not the A40.

Additional condition to reflect the advice of the Council's Archaeologist to read as follows:

No development shall take place until the developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority. This programme shall be in accordance with a brief prepared by the County Archaeology Service.

Reason: To ensure the archaeological interest of the site is recorded and to comply with the requirements of Policy ARCH6 of Herefordshire Unitary Development Plan and the National Planning Policy Framework.

P141024/F - PROPOSED ERECTION OF 4 NOS. POULTRY BUILDINGS, ASSOCIATED FEED BINS, HARD-STANDINGS AND ACCESS ROAD AT LAND AT FLAG STATION, MANSELL LACY, HEREFORD, HR4 7HN

For: Mr Davenport per Mr Ian Pick, Llewellyn House, Middle Street, Kilham, Driffield, YO25 4RL

ADDITIONAL REPRESENTATIONS

A further objection from Marches Planning and Property Consultancy(MPPC) on behalf of Mr Palmer

This objection is made on behalf of Mr and Mrs Palmer of Cirrus Holiday Lettings, owners of Shetton Barns, Mansel Lacy.

The proposed development should be refused on the grounds that neither the application nor the application site show all of the development proposed in breach of the EIA Regulations 2011, that the proposed development would have an unacceptable impact on a nearby tourist business and on residential amenity and that it would be sited on Grade A agricultural land.

1) Scope of Development

This application is for four poultry buildings, associated feed bins, hard standing and access road. It is a requirement of poultry units that they are heated and thus the

biomass boilers and the building that contains the boilers and stores the fuel forms an integral part of the development. Despite this, neither the application nor the drawings show the boiler shed.

However, the building that will house the boilers is shown on plans accompanying the Environmental Permit for this development (appendix 1)

The applicant has confirmed in an email to one objector that the units will be heated by biomass boiler (appendix 2).

The boiler building is shown in field outside the application site and thus has not been subjected to any assessment for its impact on the landscape, heritage assets or residential amenity.

Schedule 4 of the Environmental Impact Assessment Regulations 2011 requires:

1. Description of the development, including in particular—

(a) a description of the physical characteristics of the *whole* development and the land-use requirements during the construction and *operational* phases;
(our italics)

Thus the boilers which heat the unit, and the infrastructure to support it, must be considered as part of the whole EIA application.

The boiler building cannot be constructed as General Permitted Development following amendments under The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2012 no 748:

Amendment in relation to agricultural land

2. (1) Part 6 of Schedule 2 (agricultural buildings and operations) is amended as follows.

(2) In Class A, after paragraph (i) of paragraph A.1 (development not permitted) insert—

(j) any building for storing fuel for or waste from a biomass boiler or an anaerobic digestion system—

(i) would be used for storing waste not produced by that boiler or system or for storing fuel not produced on land within the unit; or

(ii) is or would be within 400 metres of the curtilage of a protected building.”

(3) In Class A, in paragraph (1)(a) of paragraph A.2 (conditions) after “for the storage of slurry or sewerage sludge” insert “, for housing a biomass boiler or an anaerobic digestion system, for storage of fuel or waste from that boiler or system, or for housing a hydro-turbine.”

(4) In Class B, after paragraph (e) of paragraph B.1 (development not permitted) insert—

(f) any building for storing fuel for or waste from a biomass boiler or an anaerobic digestion system would be used for storing waste not produced by that boiler or system or for storing fuel not produced on land within the unit.”

2) Land Use

The proposed development would be sited on Grade A agricultural land in contravention of NPPF guidance:

112. Local planning authorities should take into account the economic and other benefits of the best and most versatile agricultural land. Where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality

The site also falls under land currently in a Higher Level Stewardship scheme. Thus the development would waste public funds, which have been spent on improving biodiversity on this land.

3) Tourist Assets and Residential Amenity

The proposed development would be 300m away from Shetton Barns, a complex of high quality holiday lets, which also host weddings and conferences. There are also 11 homes within 400m of the site.

Shetton Barns has a five-star rating on Trip Advisor, the UK's main online source of information for tourists. Reviews describe the “peaceful” and “beautiful” location.

While the applicant asserts that the impact on Shetton Barns and nearby residences would be minimal, the evidence used to back up these claims contains major flaws.

The odour and noise assessments for the proposed development were based on a maximum crop of 180,000 birds, but the applicant simultaneously applied for an environmental permit for 257,000 birds. This permit was granted on 31st July 2014, after the Environment Agency was advised that the development had received planning consent.

The Environment Agency department which grants the environmental permit does not examine the odour and noise reports submitted with the planning application and will not, therefore, have been aware of the discrepancy in crop numbers. (See email at Appendix 3, which sets out EA procedures.)

The EA in its response to this application, advised the planning authority to assess the impact of the proposed development on amenity, reminding the council of its duty under Paragraph 122 of the NPPF to:

“...focus on whether the development itself is an acceptable use of land, and the impact of the use, rather than the control of the processes or emissions themselves where these are subject to approval under pollution control regimes.”

The EA response continued: **“you should seek adequate “assessment of material planning issues (odour, noise, etc.) when considering the impact of the use at the proposed location.”**

So although the Environment Agency granted the Environmental Permit, it did so under the apprehension that the planning authority had approved the application having taken into account the likely impacts on amenity.

In addition to failing to consider maximum crop numbers, the odour and noise reports also under-assess the number of crop cycles per year. On a 42-day cycle there would be 8.7 crops per year. There is no indication given - nor is it likely - that the units would be vacant for any period longer than that required for clean-out.

Thus the odour and noise assessments for this proposed development have understated the potential nuisance caused by at least one third.

Noise

- The consultant who carried out the noise assessment placed noise monitor positions at two points close to the existing farm at Flag Station, rather than at the properties that will be affected and thus did not get an accurate indication of background levels. The noise will be in addition to, not a replacement of, existing levels.
- The noise assessment assumes that transport movements will occur between the hours of 0700 and 1900 and has assessed traffic noise against daytime background noise levels, whereas the grown birds are unloaded from the sheds and transported overnight whilst roosting.
- The noise assessment has not considered the noise created when the feed is blown into the hoppers every 36 hours during the growing cycle.

In its response to the Noise Assessment, the Environment Agency advised that:

“if actual emissions from the broiler unit are greater than those modelled, your council should recognise the potential limitations of further noise reduction using commercially available techniques.”

Thus given that the noise assessment has not allowed for the potential number of birds and has failed to assess the impact of overnight traffic or of that created by feed deliveries, there is an unacceptable likelihood that the development would disturb the peace and quiet so valued by visitors to Shetton Barns. Once this nuisance has been created, the EA does not have the means to address this problem.

Odour

- The odour report makes no assessment of the smell caused when the units are cleared of litter at the end of each cycle, even though it states the odour “is likely to be greater than any emission that might occur when the birds are in the house.”

- The assessment contains a table (Table 1) of the odour emission rates per bird anticipated, but does not explain how these values have been arrived at. This data differs significantly from the odour per bird data submitted by the same applicant and consultant for other broiler unit planning applications, where the nearest receptors have been more distant.

For example, the odour report for this application gives a summer average odour unit per bird (OU_E/s) of 0.203 during the summer and 0.181 in the spring. The odour report submitted with the application to Wychavon District Council for two broiler units at Upton Snodsbury (application no. W/13/01511/OU) was based on summertime average odour units per bird of 0.3578 and springtime ones of 0.3003.

- The odour assessment has been calculated on the basis of an empty period of 10 days after each crop, whereas the Environmental Statement gives the empty period as seven days.

The EA said in its response to the application that “If the odour was significantly above this indicative threshold we may have serious concerns regarding short term more intense odour events typically associated with the late stages of the crop cycle and clean out.”

Given that the odour assessment has underestimated the number of birds, the frequency of the crop cycles and the periods of vacancy, the odour is certain to exceed the “indicative threshold”.

The EA also pointed out that the Odour Management Plan that will form part to an Environmental Permit:

“...may not necessarily prevent all odours at levels likely to cause annoyance.”

The EA continues **“the OMP requirement is often a reactive measure where substantiated complaints are encountered. The OMP can reduce the likelihood of odour pollution but is unlikely to prevent odour pollution when residents are in proximity to the units and there is a reliance on air dispersion to dilute odour to an acceptable level.”**

While periods of bad odour may be unpleasant for nearby residents, they would be disastrous for the tourist business 300m away. The smell and disturbance from clean out would seriously undermine the enjoyment of visitors and would destroy the experience of a wedding hosted at the venue.

Visual Impact

- The proposed development would be visible from the both the holiday lets, which are some 300m away and several other residential units within 400m.
- Although there are some trees screening the site, these are insufficiently dense or tall to screen the proposed buildings - as demonstrated by a visualisation previously provided by my client. The trees to the immediate

west - and so between the proposed development and Shetton Barns - are deciduous and would provide minimal screening in winter.

- Planting of coniferous trees would not be in keeping with the local landscape and would further damage the landscape, while native deciduous trees would take many years to grow and only provide visual protection for half of the year, while the tourism business operates throughout the seasons.

Given the uncertainties expressed by the Environment Agency about the impact of odour and noise on sensitive receptors, the proposed development poses a serious and unacceptable threat to the tourism business at Shetton Barns.

A single negative comment about noise or smell on a site such as TripAdvisor could destroy the business, which employs five people as well as local service people. Not only that, but it would have wider implications, damaging the county's image as a peaceful and unspoilt place to visit.

Tourism spending supported over 8,500 jobs in Herefordshire in 2009 and since GVA from tourism has risen since then, it now probably accounts for many more. Tourism contributed £468m to Herefordshire's GVA in 2011, compared with just £188m from agriculture, according to the Office for National Statistics.

That is why Herefordshire Council is seeking to promote tourism through its Tourism Strategy, which lists among the council's strengths its, "scenic landscape." The strategy says tourism is "crucial for the economic and environmental sustainability of the entire county." It stresses the need for "characterful accommodation that is designed and operated to meet the particular needs of the market" - accommodation such as Shetton Barns.

An additional letter from MPPC sets out concern about the procedural element of the Environmental Impact Statement as follows;

1) The Environmental Statement submitted does not assess the whole of the development proposed, in breach of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011

2) The biomass boilers and the building that contains the boilers and stores the fuel form an integral part of the development (or, to use the language of the EIA Directive and the European case law, the project). Despite this, the Environmental Statement contains no assessment of the boilers/the boiler building.

As the application redline has been drawn so as to exclude the boiler building, it has not been subjected to any assessment for its impact on the landscape, heritage assets, residential amenity, or other environmental effects.

As a result, the Environmental Statement that the applicant has provided is unlawful for failure to comply with Schedule 4 to the EIA Regulations 2011, in particular paragraphs 1 and 4 of that Schedule:

3) The boilers which heat the unit, and the infrastructure to support them, including the boiler building proposed close to Flag Station, must be considered as part of the whole of this Schedule 1 application.

There is a great deal of high authority on this point, beginning with a decision of Mr Justice Sullivan (as he then was) in the *Milne* case (involving a retail park) and continuing through to the decision of the Court of Appeal in *R (Brown) v Carlisle City Council* case (about Carlisle Airport). There is also the more recent decision of the Court of Appeal in *R (Burrige) v Breckland DC*.

The essential point from the case law is that an Environmental Statement must assess the development or project as a whole, even if the application for planning permission is only in respect of part of the development. If the other omitted part of the development or project is an integral part of the development or project, then it cannot be excluded from the Environmental Statement.

This is tied up with the case law that warned against the “salami slicing” of projects.

I attach for your information, the three cases mentioned. If the Council were to grant permission on the basis of what it has we believe it would be committing an error of law.

An e-mail from the Env Agency to Helen Hamilton (MPPC) regarding the Environmental Permit stating

‘I can confirm that as the permit application was for 257,000 bird places we did not consider the odour or noise modelling reports in detail as these were for 180,000 bird places.

A permit applicant is required to produce an odour management plan and a noise management plan if there are sensitive receptors within 400 metres of the proposed site boundary. Sensitive receptors include residential properties, schools and businesses etc but not properties owned or occupied by the farm itself. The applicant is not required to submit odour or noise modelling information but may do so.

I believe that the Planning Authority should itself consider the Environmental Impact Assessment and in particular the noise and odour assessments when deciding whether the proposed development is suitable for the locality. This is stated in the third paragraph of the letter which the Agency has sent to the Planning Authority (please see attached).’

An e-mail from Env Agency to Mark Tansley

‘I can confirm that the permit was issued without prejudice or regard to the planning status of the site. We however consulted Herefordshire Council Planning Services and Environmental Health about this application prior to determination and no issues were received.

I can also confirm that the operator will have to comply with all the conditions in their Environmental Permit and other permissions it holds. Failure to comply could ultimately lead to a revocation of the permit.

A question was raised regarding location of the alternative sites the agent confirmed

We had a site meeting with Mr Mullineux to look at alternative sites. The sites were adjacent to the existing farmstead at Yazor Court. These were dismissed because they are very visible from the A480 and close to the listed Yazor Church.

A letter of support from Joanna Hilditch Whittern farms Ltd Lyonshall which in addition to the importance of Cargill Meats to Herefordshire advises that there are 22 poultry sheds inside a 700 acre farm near Lyonshall in the middle of which she has a 5 Star gold holiday let and 4 other lets on the same holding,.In total sleeping 54 people.' During the entire time we have been running the luxury holiday lets we have neverhad a single complaint about the chicken sites or smells, this is for over 10 years.'

OFFICER COMMENTS

The proposed development does not include a biomass boiler. Any such proposal will need to be subject to a further planning application. The proposal is to house 180,000 birds, not 257,000. So that there is no doubt on this matter a condition can be added to that effect. It is understood that the applicant sought the additional elements in the Environmental Permit to cover potential expansion in the future.

The fact that the Env Agency were prepared to issue a permit for more than a third more birds than currently proposed and a biomass boiler, does not mean that a planning application for them would not be required.

The applicant's agent advises that the agricultural land classification is 3B.

In response to the recent letter reported above the Environmental Health Officer advises,

Having had opportunity to consider the letter of objection dated September 2014 from the Marches Planning & Property Consultancy I would make the following observations:-

Noise

- The background levels reported in the noise assessment are typical of the levels experienced in a rural locality and as such are consistent with what would be expected at receptor/neighbouring properties. I have no reason to suspect that they are not an accurate indication of the existing background levels.
- The reference to additional noise, not replacement of, existing levels is puzzling in that BS4142, the standard used to assess the acceptability of the noise produced by the development considers the specific noise (noise produced by the development) against existing background levels. It takes into account the difference and advises as to the likelihood of complaint. It does not consider the acceptability of combined noise levels. Advice is provided on noise levels affecting living areas by the World Health Organisation and reflected by BS 8233:2014; however the introduction of the noise from these poultry houses would be insignificant in raising the combined noise to an unacceptable level.
- The noise assessment addresses noise from transport movements only between 0700 and 1900; The use of BS 4142 is restricted where noise levels are very low as might be found in this situation. The Environmental Permit issued by the Environment Agency considers the acceptability of noise levels and the control methods. Should problems occur the Agency can vary this permit to require that improved controls are in put in place however these would not necessarily include traffic movements

outside the permitted site. If this is considered to be an issue consideration could be given to imposing a condition with any planning permission prohibiting deliveries between 1900 and 0700.

- Noise from the blowing of feed into hoppers is a relatively short operation and due to the distance from neighbours I would not expect it to be a problem however if this should not be so the Environment Agency could put controls in place e.g. restricting night time deliveries etc.

ODOUR

- The odour assessment does appear to consider smell caused when the units are cleaned of litter. I would refer you to last 2 paragraphs of section 5, page 16 of the report and to the last paragraph on page 2 of Environment Agency's letter dated 9/5/14. Also due the relatively short duration of the cleaning process it would be unlikely to be the cause statutory nuisance.
- I am unable to comment on the anticipated odour rates per bird.
- I would expect that the discrepancy between the numbers of empty days is insignificant.
- The extract from the Environment Agency's letter 'if odour was significantly above this indicative threshold we may have serious concerns regarding short term more intense odour events typically associated with the late staged of the crop cycle and clean out' taken from the above mentioned paragraph on page2/3 appears to have been taken out of context. The paragraph read in its entirety it advises that a higher indicative threshold is used for these short term events and that they do not perceive odour to be a problematic issue.

CONCLUSION

The Environment Agency permits this type of operation and has to be satisfied that it can operate without causing undue environmental harm and I understand that such a permit can be issued without a planning permission having been granted. The Agency requires that applicants for such permits provide suitable supporting information on which they can base their decision. It would appear that they are satisfied that a larger poultry rearing operation than the one subject to this planning application can comply with their requirements.

Experience of other similar poultry rearing operations suggests that due to the separation distance from sensitive receptors that nuisance is unlikely
I trust this is of assistance to you.

CHANGE TO RECOMMENDATION

Additional condition limiting number of chickens to 180,000.

Note to applicant; The permission does not extend to a biomass boiler, a separate application for which would be required.