

MINUTES of the meeting of Planning Committee held at The Shire Hall, Hereford HR1 2HX on Wednesday 24 September 2014 at 10.00 am

Present: Councillor PGH Cutter (Chairman)
Councillor PA Andrews (Vice Chairman)

Councillors: AJM Blackshaw, AN Bridges, EMK Chave, BA Durkin, PJ Edwards, KS Guthrie, J Hardwick, EPJ Harvey, JW Hope MBE, JG Lester, RL Mayo, PJ McCaull, NP Nenadich, FM Norman, J Norris, GA Vaughan-Powell and TL Widdows

In attendance: Councillors JM Bartlett and Brig P Jones CBE

69. APOLOGIES FOR ABSENCE

Apologies were received from Councillors MAF Hubbard, RI Matthews and DB Wilcox.

70. NAMED SUBSTITUTES

In accordance with paragraph 4.1.23 of the Council's Constitution, Councillor EPJ Harvey attended the meeting as a substitute member for Councillor MAF Hubbard, Councillor NP Nenadich for Councillor DB Wilcox and Councillor GA Vaughn-Powell for Councillor RI Matthews.

71. DECLARATIONS OF INTEREST

AGENDA ITEM 5: P140910/O LAND AT MILL STREET, LEOMINSTER

Councillor AN Bridges declared a non-pecuniary interest as an employee of Network Rail.

AGENDA ITEM 7: P141024/F LAND AT FLAG STATION, MANSELL LACY

Councillor AJM Blackshaw declared a non-pecuniary interest because he knew the applicant's father through his role as Ward Councillor.

Councillor PJ Edwards declared a non-pecuniary interest because he knew the applicants, and some of the objectors and supporters.

72. CHAIRMAN'S ANNOUNCEMENTS

The Chairman explained the procedure to be used for determining the applications that were the subject of agenda items 5 and 6: land at Mill Street, Leominster, and land at Southern Avenue Leominster.

He explained that, to ensure fair consideration, each application would be debated in turn but no motions would be moved until the conclusion of both debates. A vote would then be taken on the Mill Street application followed by a vote on the Southern Avenue application.

73. P140910/O LAND AT MILL STREET, LEOMINSTER, HEREFORDSHIRE, HR6 8EF

(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.)

The Principal Planning Officer gave a presentation on the application, and updates/additional representations received following the publication of the agenda were provided in the update sheet, as appended to these Minutes.

He commented that there were two applications before the Committee for convenience goods stores in Leominster. Similar proposals had been refused by the Committee on 8 January 2014. The Town Centres Study update demonstrated that Leominster had capacity for additional convenience goods floor space and this had been confirmed by Deloitte's independent advice on the retail impact assessment submitted by the applicant.

The Committee needed to consider the respective merits of each application. It was not bound to find in favour of one application or the other.

The Committee was advised to have regard to paragraphs 26 and 27 of the National Planning Policy Framework which provided that where an application failed to satisfy the sequential test or was likely to have significant adverse impacts it should be refused.

He highlighted proposed changes to the conditions in the recommendation as set out in the update that had been circulated to the Committee.

In accordance with the criteria for public speaking, Mr P Ellis spoke on behalf of Leominster Town Council in opposition to the Scheme. Mr J Verity, Chairman of the Leominster Civic Society, spoke in objection. Mr S Hoare, the applicant's agent, spoke in support.

In accordance with paragraph 4.8.2.2 of the Council's Constitution, Councillors FM Norman and Brig P Jones, the local ward members, spoke on the application.

Councillor Norman commented on a number of issues including:

- The Committee had had strong grounds for refusing the previous application. The new application was for a smaller development and no longer contained a petrol station. The grounds for refusal otherwise remained.
- Concerns about the risk of flooding remained high. The flood risk assessment accompanying the application was desk based. There had been no survey and local knowledge had not been sought. A photograph showing the site under water in Christmas 2012, a state in which it had remained for 2 weeks, had not been made available to the Committee. The Flood Risk Assessment report was therefore inaccurate in stating that there was no evidence of surface water on the site. She noted that it was proposed that the floor level of the store was to be elevated to prevent flooding of the store itself. The flood risk assessment also focused on the risk of fluvial flooding and did not take account of flash flooding and the resulting surface water. It also did not consider what might happen if the flood risk increased.
- The access to the site remained problematic. Network rail had initially responded that an access was not feasible unless a bridge was constructed. The rail crossing would be closed for approximately 17 minutes every hour (one quarter of the day). In the report to the Committee in January 2014 officers had stated that the proposal

would increase the frequency of queuing traffic along Mill Street. This remained an issue.

- There was concern that although the current application was for a smaller development than the previous application the outline plan suggested that a future application may be made to increase the size.
- The Town Centre needed to be safeguarded and the development's impact upon it also remained a concern. Pedestrian access from Mill Street to the Town was not easy. The development would divert trade not provide additional trade. The applicants themselves estimated that there would be a £2m trade loss for the Town. The retail reports for the Council identified the potential risk to the Town Centre.
- The concerns about the impact on the conservation area also remained relevant.
- She did not accept that there were no viable alternative sites. No consideration appeared, for example, to have been given to expanding the two existing supermarkets in the town centre.
- Having regard to the NPPF and the Unitary Development Plan the application should be refused.

Councillor Jones commented that he supported the development, which would provide competition to the benefit of the Town.

The debate opened and the following principal points were made:

- The rail upgrade referred to at paragraph 4.6 had been put back. The railway crossing would be closed for an increased time representing a significant period of time each hour. This would lead to frustration, traffic problems, and increase the risk of misuse of the crossing. High speed trains went through the crossing and there had to be considerable concerns about safety.
- There would be increased queuing of traffic compounding the existing congestion.
- Clarification was sought about a consultation exercise underway on making Mill Street a clearway. The Development Manager commented that the proposal was being made at the request of West Mercia Police in response to traffic generated by car boot sales at Brightwells and was not related to this application.
- A member referred to representations received from Brightwells expressing concerns about the risks of flooding both to the business and to Leominster as a whole and read their submission to the meeting.
- It was noted that the floor level of the supermarket was to be raised to avoid the risk of it flooding. However, there was no mention of the potential impact on neighbouring properties. It was stated that insurers were refusing to renew the insurance of a number of surrounding properties because of the flood risk. Consideration had to be given to the risk that flooding events would increase in frequency. The report stated that "the northerly part of the site is prone to ponding during periods of prolonged and extreme rainfall events."
- It was unrealistic to suggest that people would walk or cycle to the Town Centre having shopped at the supermarket. Most shoppers would wish to take perishable goods straight home. Linked trips were unlikely.
- If there was capacity for additional convenience goods floor space it was questioned why existing stores in the Town Centre could not compete for this market.
- Reference was made to the damage that had been caused to the Town Centre by a previous out of town supermarket development and the investment and time that it had taken to promote a recovery.

- It was suggested that regard needed to be had to the timeframe for development of additional retail capacity. The assessment of demand took account of housing development and employment opportunities that had not yet been secured in the anticipated timescale. This had a bearing on the potential impact on the Town Centre of a new retail development at this time.
- It was acknowledged that increased competition can be a benefit in terms of choice and pricing.
- The provision of only £20k in the S106 agreement for flood defence was questioned, noting that some £6m had been provided for the Asda store development in Hereford City. The Development Manager confirmed that £20k was the sum requested by the Environment Agency.
- Food stores operated to tight margins and there had to be concern that the new development would gain trade at the expense of other retailers.

The Development Manager commented that the application proposed to provide a storage tank to store water to accommodate rainfall. He also observed that the application refused in January had been for a much larger store. This had led to officers removing their objections. He reminded the Committee of the sequential testing conclusions and noted the observations that had been made on the vitality and viability of the Town Centre, whilst reiterating that officers had concluded that there was capacity for additional convenience goods floor space. He acknowledged the traffic issues that had been raised. However, he cautioned against citing flooding issues as a ground for refusal.

The debate concluded at this point.

(The meeting adjourned between 11.25 and 11.35. Following the adjournment the Committee debated the application relating to land at Southern Avenue Leominster. The Committee then returned to consideration of the Mill street application.)

The local ward members were given the opportunity to close the debate on the Mill Street application.

Councillor Jones commented that Leominster needed a new supermarket and the Mill Street proposal was the better option.

Councillor Norman reiterated that the flood risk and traffic issues were major concerns with the application. The impact on the Town Centre and small shops was also relevant.

It was moved that the application should be refused on the grounds that had formed the basis of the previous refusal as set out at paragraph 3.1 of the report paragraphs 1, 2, 3 and 5.

RESOLVED: That planning permission be refused for the following reasons:

- 1. The applicant has failed to demonstrate that the proposal would not have a significant adverse impact upon the viability and vitality of Leominster Town Centre contrary to paragraph 26 of the National Planning Policy Framework and Policies S5, TCR1, TCR2 and TCR9 of the Herefordshire Unitary Development Plan 2007.**
- 2. Given reason for refusal 1 above, the Local Planning Authority consider that the proposed development would be likely to adversely affect the character of the Leominster Conservation Area contrary to paragraphs 128 to 133 of the National Planning Policy Framework and policy S7 of the Herefordshire**

Unitary Development Plan 2007.

- 3. The proposal is considered to be in an unsustainable location that would increase reliance upon the private motor vehicle, contrary to paragraph 29 of the National Planning Policy Framework and policies S1, S5, S6, DR2 and DR3 of the Herefordshire Unitary Development Plan 2007.**
- 4. The proposal is likely to result in traffic movements that increase the frequency of queuing traffic along Mill Street to the detriment of highway safety, contrary to Policies S1, S2, S6, DR3 and T8 of the Herefordshire Unitary Development Plan.**

Informative

- 1 The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against planning policy and any other material considerations and by identifying matters of concern with the proposal and clearly setting these out in the reasons for refusal. Members of the planning committee which took the decision to refuse planning permission were asked to consider whether there are opportunities to amend the development to address this harm. However, the issues are so fundamental to the proposal that it will not be possible to negotiate a satisfactory way forward and, due to the harm that the reasons for refusal clearly identify, approval has not been possible.**

74. P141281/O LAND AT SOUTHERN AVENUE, LEOMINSTER, HEREFORDSHIRE, HR6 0QF

(Site for class a1 foodstore with petrol filling station.)

The Principal Planning Officer gave a presentation on the application.

In accordance with the criteria for public speaking, Mrs V Mifflin, representing Friends of Leominster/Leominster Town Centre Action Group spoke in objection. Mr K Nutter, the applicant, spoke in support.

In accordance with paragraph 4.8.2.2 of the Council's Constitution, Councillors JM Bartlett and PJ McCaull, the local ward members, spoke on the application.

Councillor Bartlett commented on a number of issues including:

- The site had no connectivity with the Town and was unsustainable, increasing reliance on car use.
- The proposal entailed the loss of employment land. It would set a precedent, changing the site from an industrial estate to a retail park. It would mean the loss of three small businesses providing 30 jobs paying higher wages than those which would be paid by the supermarket.
- The development would have an adverse effect on the town centre. The Deloitte report described the town centre as vulnerable. It estimated the development would take £5m from the centre, £3m of which would be from small shops which operated on small margins.
- The Aldi and Co-op supermarkets in the town centre were crucial in generating linked trips.

- Shop closures would lead to decline putting at risk the listed buildings in the centre. Policies designed to protect these buildings should be upheld. Policy S7 and the National Planning Policy Framework supported action to safeguard the Leominster conservation area.
- The Town had a significant tourist trade which would be adversely affected if the centre went into decline.
- The Town had suffered decline in the 1990s when the first out of town supermarket had been established. The impact of the proposed development on retail trade in the town centre was of the greatest concern.

Councillor McCaull commented on a number of issues including:

- The industrial estate was really a business park and already included several retail uses.
- The supermarket would provide 200 jobs. Leominster needed part time jobs.
- The site did have footpath access to the Town centre.
- Vehicle access to the site was good and it was easily reached by residents from Ludlow to Hereford via the A49.
- The applicant had offered to fund a bus service from the site to the Town for years.
- The site was not at risk of flooding.
- The Section 106 agreement would bring benefits. However, if the application were approved he requested that the Town Council be consulted on priorities for S106 funding.
- He requested that the Committee support the proposal.

The debate opened and the following principal points were made:

- The development would bring £9m to the Town through the S106 agreement with a further £1m in community benefits.
- The development would provide retail choice and the proposed bus service provided the opportunity for shoppers to visit the town centre making linked trips.
- Out of town stores accessible by cars were necessary.
- It was to be hoped that more diverse shops would emerge in the town centre in response to the development.
- The town centre already had a lot of interesting shops.
- The industrial estate was a business park with a variety of uses. It was unrealistic to expect heavy industry to flourish in the area. Small and medium sized businesses would develop.
- The Committee was not obliged to make a choice between the two supermarket applications before it. It had to consider each application on its merits.
- The report set out substantial grounds for refusing the application. In particular concern was expressed about the adverse impact on the vitality and viability of the town centre.
- The concerns raised by the Committee in refusing the application in January 2014 had not been addressed.

- There wasn't connectivity with the town centre. A hopper bus would not adequately address this issue. There would be an adverse impact on the small shops, risking a spiral of decline.
- It had taken Leominster a number of years to recover from a previous out of centre supermarket development. It was questioned whether there really was capacity to support another out of centre development.
- The development would adversely affect the existing town centre supermarkets which were a part of the shopping mix.
- It was questioned whether there really was an absence of alternative sites in the town centre. It was also suggested that with the closure of public houses there was an opportunity to develop some smaller convenience stores.
- The Unitary Development Plan and the NPPF focused on a town centre first approach.
- Sequential testing identified alternative sites as set out in paragraph 6.10 of the report.
- Paragraph 6.14 of the report stated in relation to the Mill Street and Southern Avenue that it was concluded there was little material difference between the two sites in terms of connectivity to the town centre.

The local ward members were given the opportunity to close the debate.

Councillor Bartlett reiterated concerns about the vulnerability of the town centre. She considered there were alternatives within the centre.

Councillor McCaull noted that alternative sites referred to in the report were on existing car parks which the town needed to retain.

RESOLVED: That planning permission be refused for the following reasons:

1. **The Local Planning Authority does not consider the submitted sequential assessment to be robust and as such is considered to be contrary to the National Planning Policy Framework and Policies S5, TCR1, TCR2 and TCR9 of the Herefordshire Unitary Development Plan 2007.**
2. **The application site is remote from the town centre and the proposed food retail store would become a destination in its own right with shoppers unlikely to visit the town centre to make linked trips. The proposal is therefore likely to have a detrimental qualitative impact upon the vitality and viability of Leominster town centre contrary to the National Planning Policy Framework and Policies S5, TCR1, TCR2 and TCR9 of the Herefordshire Unitary Development Plan 2007.**
3. **Given reason for refusal 2 above, the Local Planning Authority consider that the proposed development would be likely to adversely affect the character of the Leominster Conservation Area contrary to the National Planning Policy Framework and policy S7 of the Herefordshire Unitary Development Plan 2007.**
4. **The proposal would result in the loss of good quality employment land. The applicant has not demonstrated that there is a surplus of such land or that removal of the existing use from the site would give rise to substantial benefits to residential or other amenity issues. Furthermore, the proposal is not a minor or incidental activity**

associated with another use that is compliant with policy. The proposal is therefore contrary to the National Planning Policy Framework and Policies S4 and E5 of the Herefordshire Unitary Development Plan 2007.

5. The proposal is considered to be in an unsustainable location that would increase reliance upon the private motor vehicle, contrary to the guiding principles of the National Planning Policy Framework and Policies S1, S5, S6, DR2 and DR3 of the Herefordshire Unitary Development Plan 2007.

Informative:

- 1 The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against planning policy and any other material considerations and identifying matters of concern with the proposal and discussing those with the applicant. However, the issues are so fundamental to the proposal that it has not been possible to negotiate a satisfactory way forward and due to the harm which has been clearly identified within the reasons for the refusal, approval has not been possible.

75. P141024/F LAND AT FLAG STATION, MANSELL LACY, HEREFORDSHIRE, HR4 7HN

The Committee deferred consideration of this application to its next meeting because it was not practical to proceed in the unavoidable absence of the officer due to present the report on the application.

76. DATE OF NEXT MEETING

The Planning Committee noted the date of the next meeting.

Appendix 1 - Schedule of Committee Updates

The meeting ended at 12.55 pm

CHAIRMAN

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 never had 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 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 page 2/3 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.