

Appeal Decision

Hearing held on 7 February 2017

Site visit made on 8 February 2017

by I Jenkins BSc CEng MICE MCIWEM

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 14 March 2017

Appeal Ref: APP/R5510/W/16/3160760

1-3 Uxbridge Road, Hayes, UB4 0JN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Knowaste Limited against the decision of the Council of the London Borough of Hillingdon.
 - The application Ref 1911/APP/2016/1472, dated 14 April 2016, was refused by notice dated 11 August 2016.
 - The development proposed is a change of use of unit 4 to Absorbent Hygiene Products (AHP) Recycling Facility.
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Decision

1. The appeal is dismissed.

Main Issue

2. I consider that the main issue in this case is the effect of the proposal on the living conditions of sensitive receptors, with particular reference to odour.
3. The Council's notice of refusal of planning permission cites a second reason for refusal related to a lack of adequate provision for sustainable transport as well as construction and employment training. At the Hearing, the Council confirmed that this matter has been satisfactorily addressed by a formal agreement between the Council and the appellant pursuant to section 106 of the *Town and Country Planning Act, 1990* (s106 agreement). I have taken this into account and will deal with it below under 'other matters'.

Reasons

4. Planning permission Ref. 1911/APP/2012/3185 was granted in May 2014 for the erection of 4 no. industrial, warehouse, office buildings (Use classes B1, B2 and B8) on a site to the south of Uxbridge Road. The appeal building, unit 4, is situated at the southern end of the row of 4 units and is still under construction. The site shares its eastern boundary with the Grand Union Canal. Opposite the site, on the other side of the canal, are the Blair Peach Primary School and an area of allotments, to the east and north of which are residential properties. To the west of the site, on the other side of Yeading Brook, is the Springfield Road Industrial and Business Area. To the south is an area of woodland.
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5. The proposal involves a change of use of unit 4 to a recycling facility for Absorbent Hygiene Products (AHP), which includes nappies, incontinence pads and feminine hygiene products. The appellant has indicated that outputs from the treatment process would include plastic pellets, which would be bagged and sent off site for re-use, as well as fibre material processed into pet litter and bagged for direct delivery to whole sale and retail outlets. The proposal seeks to build on experience gained by the appellant from running a pilot AHP recycling facility in West Bromwich, between 2011 and 2013.
6. I understand that, at present, AHPs are disposed of to landfill or incinerator. The proposed recycling facility would contribute towards meeting the aims of Policy 5.16 of *The London Plan, March 2015* (LP) and Policy WLWP 1 of the *West London Waste Plan, July 2015* (WP) as regards increased recycling levels and moving towards waste treatment self-sufficiency, as well as the *National Planning Policy for Waste* (NPPW) by driving waste management up the waste hierarchy. WP Policy WLWP 3 indicates that in addition to existing waste management sites and those sites identified by the WP as an opportunity for developing waste facilities, none of which include the appeal site, waste development will be supported in principle if the proposals comply with, amongst other things, other WP policies and the Borough's Development Plan.
7. LP Policy 5.17 identifies that proposals for waste management should be evaluated against a number of criteria, including the environmental impact on surrounding areas with reference to odour impact. WP Policy WLWP 4 confirms that waste development proposals will be permitted only where it can be shown that unacceptable impact to local amenity will not arise from the operation of the facility and adequate means of controlling odour emissions are incorporated into the scheme. Policy OE1 of the *London Borough of Hillingdon Unitary Development Plan, 1998* (UDP) indicates that planning permission will not normally be granted for uses which are likely to become detrimental to the amenities of surrounding properties or the area generally, because of pollutants such as smell, unless sufficient measures are taken to mitigate the environmental impact and ensure that it remains acceptable. I consider that these Policies are consistent with the aims of the *National Planning Policy Framework* (the Framework), which identifies a requirement to prevent both new and existing development from contributing to or being put at unacceptable risk from levels of air pollution. It confirms that pollution can arise from a range of emissions, including odour, and to prevent unacceptable risks from pollution, planning decisions should ensure that new development is appropriate for its location.
8. The NPPW indicates that when testing the suitability of sites, considerations will include the proximity of sensitive receptors and the extent to which adverse odours can be controlled through the use of well-maintained and managed equipment. However, the Framework provides that planning decision-makers should focus on whether the development itself is an acceptable use of the land, and the impact of the use, rather than the control of processes or emissions themselves where these are subject to approval under pollution control regimes. I understand that the proposed facility would require an Environmental Permit from the Environment Agency (EA) before it could operate and the Framework indicates that planning decision-makers should assume that these regimes will operate effectively.

9. I have also had regard to the view of my colleague, who dealt with appeal Ref. APP/X1355/A/12/2188741, to the effect that as odour control forms part of the EA's regulatory responsibility, it is not something that is a material planning consideration unless the extent of regulation the EA can impose would not deliver a level of odour commensurate with the other surrounding land uses. In relation to that matter, the EA's H4 guidance¹ indicates that where all appropriate measures are being used but are not completely preventing odour pollution, a level of residual odour will have to be accepted unless it amounts to serious pollution that justifies suspension or revocation of the Permit. The IAQM guidance² indicates that even with effective operational pollution regulation in place there can remain some residual odour and there may be some situations where such residual effects would make a development an unsuitable use of land at its proposed location.
10. There is no dispute that the AHP, which contains human waste, is a potential source of odour. The appellant has indicated that the scheme design incorporates appropriate measures to minimise unplanned (fugitive) and planned releases of odours from the site. The measures would include the erection of partitions to compartmentalise the building, with the AHP reception area at the southern end of the building, separated from the treatment area to the north. An air management system would extract air from odorous areas of the building and pass it through an abatement process to reduce odour levels before the air is discharged from a 15 metre high stack positioned at the northern end of the treatment area. The negative pressure within the building, created by the air management system, would limit the potential for fugitive emissions. However, the appellant acknowledges that the stack discharge would be likely to contain a residual level of odour.
11. Under these circumstances, I consider that, having regard to the extent of regulation the EA can impose, the likely residual effects of odour on nearby sensitive receptors is a material consideration in the determination of this appeal.
12. With reference to the IAQM guidance concerning receptor sensitivity to odours, there is no dispute between the parties that occupants of the Blair Peach School and its grounds are likely to fall within the category of high sensitivity receptors, as would occupants of nearby dwellings. I consider that users of the neighbouring allotments could also be expected to be there regularly for extended periods of time and would expect a reasonable level of amenity, although not as high a level as in their home and so should be regarded as medium sensitivity receptors, not 'low' as suggested by the appellant and the Council. In my view, notwithstanding that the Grand Union Canal is likely to be used for a range of leisure pursuits, it is most likely that people would be using it to pass through the area and they would be in the vicinity of the appeal site for only short periods of time. I regard those people as low sensitivity receptors.
13. The IAQM guidance indicates that assessment of the likely impact of future odorous development may be through empirical observation, if a similar 'surrogate' site is currently operating, or through the use of predictive software models. At the Hearing the appellant confirmed that no odour emissions data

¹ Environment Agency - Additional Guidance for H4 Odour Management-How to comply with your environmental permit.

² Institute of Air Quality Management – Guidance on the assessment of odour for planning, 2014.

is available from the pilot plant it ran and there is no similar surrogate site in relation to which the proposal could be judged. Instead it has sought to predict the potential impacts of odours generated by the proposed development on local sensitive receptors using dispersion models generated by the AERMOD software package and comparing the output with benchmark criteria.

In support of the planning application, the appellant provided an *Odour Management Plan* (OMP), dated April 2016, which included an *Odour Impact Assessment* (OIA) based on modelling results. This was updated for the purposes of the appeal by a revised *Odour Management Plan*, dated October 2016 (OMP_a), which includes an *odour Impact Assessment-Addendum, October 2016* (OIA_a).

14. Although there are currently no statutory limit values for the assessment of odour concentrations in England, the EA's H4 guidance identifies a benchmark criterion, based on 98th percentile of hourly average concentrations over a calendar year, of $C_{98,1\text{-hour}} 1.5 \text{ ou}_E/\text{m}^3$ at the boundary of the installation for the most offensive odours. On the scale of less offensive/moderately offensive/most offensive identified by the EA's H4 guidance as a means of characterising odours, I agree with the view expressed by the Council and appellant, at the Hearing, that odour discharged from the building would be likely to fall within the 'most offensive' category, with particular reference to the human waste content of the AHP. IAQM guidance takes this further, identifying odour effect descriptors for impacts predicted by modelling. It indicates that an odour exposure level of $C_{98,1\text{-hour}} 0.5$ to $1.5 \text{ ou}_E/\text{m}^3$ would have a slight adverse effect on high sensitive receptors, whereas a level of $C_{98,1\text{-hour}} 1.5$ to $3.0 \text{ ou}_E/\text{m}^3$ would have a moderate adverse effect on high sensitive receptors and a slight effect on medium sensitivity receptors. It also indicates that where the overall effect is greater than slight adverse, the effect is likely to be considered significant.
15. The EA's H4 guidance indicates that local factors may influence these benchmarks, for example, if the local population has become sensitised, it may be prudent to reduce the benchmark by say 0.5. The appellant has not undertaken a baseline assessment of odour in the vicinity of the site to establish whether the local population is likely to be sensitised. However, nor is there any compelling evidence from the Council to indicate that there are likely to be existing sources of odour in the area which may have sensitised the local population. Under these circumstances, I consider that it would not be appropriate to apply the benchmark reduction factor of 0.5 advocated by the Council.
16. Following the Council's refusal of planning permission, the appellant has indicated that it has reviewed the technical aspects of the proposed odour abatement processes with its technical advisors and that this has resulted in a number of changes reflected in the OMP_a/OIA_a. These include: the provision of additional internal walls to contain odours in more defined areas; the installation of Dax Airscience ultra-violet units (UV units) throughout the building to assist in reducing odours in the process areas; increasing the rate of air changes within the building from 1.9 per hour to 2.1 per hour; and, the designer of the odour abatement system (Simdean Envirotec) has indicated that it would guarantee a maximum odour emission limit from the discharge stack of $500 \text{ ou}_E/\text{m}^3$, which is lower than the $750 \text{ ou}_E/\text{m}^3$ upon which the OIA was based. On this basis, the OIA_a indicates that within the playground of the Blair Peach School there would be an odour exposure level of $C_{98,1\text{-hour}} 1.4$

$\text{ou}_\text{E}/\text{m}^3$, marginally below the $\text{C}_{98,1\text{-hour}} 1.5 \text{ ou}_\text{E}/\text{m}^3$ benchmark. The same level is expected within the neighbouring allotments.

17. There is no dispute that the AERMOD software is suitable for modelling dispersion from the proposed stack. However, the IAQM acknowledges that odour modelling inherently includes uncertainties, which arise from simplifications in the modelling process, data uncertainty and errors, and user error. It indicates that, where an odour assessment is being made to determine acceptability of land use, it is very important to consider these uncertainties before reaching a conclusion and so an assessment should include a section on uncertainty, with reference to: model uncertainty; odour emission rates; meteorological data; and, user error. Contrary to that IAQM recommendation, neither the OIA nor the OIAa includes a section on uncertainty assessment.
18. At the Hearing, the appellant indicated that during its discussions with the EA concerning the Environmental Permit required for the proposed scheme, the EA has suggested that it is content with the AERMOD modelling undertaken by the appellant. However, I give that assertion little weight in the absence of any supporting evidence to confirm that this is the EA's position and, if it is, whether account has been taken of the concerns identified below.
19. With respect to model uncertainty, the appellant has not provided any published validation studies or used more than one model to demonstrate the level of uncertainty likely to be associated with the AERMOD model in this case. At the Hearing, the appellant stated that it could not say what level of model uncertainty is likely to be associated with the reported results. The Council indicated that it would normally expect modelling uncertainty to be around plus/minus $0.2 \text{ ou}_\text{E}/\text{m}^3$. If this is the case, it could not be concluded with confidence that the benchmark of $\text{C}_{98,1\text{-hour}} 1.5 \text{ ou}_\text{E}/\text{m}^3$ would not be exceeded within the playground of the Blair Peach School and neighbouring allotments.
20. Also contrary to the recommendation of the IAQM guidance, the modelling input files have not been included in the reporting, to inform consideration of the likely level of model user error. At the Hearing, the appellant confirmed that the modelling was based on the assumption that there would be no emissions from the odour control system at weekends. On those days, which equates to around a third of the days in the year, the odour level had been assumed to be zero for modelling purposes. However, the OMP/OMPa confirms that the odour control system would be run continuously, in order to maintain negative pressure within the building and thereby reduce the risk of fugitive emissions. Furthermore, whilst AHP treatment is not expected to take place at weekends, at the Hearing, the appellant acknowledged that some odour would be likely to arise from AHP stored in the reception area, notwithstanding that it would remain bagged as far as possible. It was unable to put a figure on the likely levels of odour and confirmed that no data was available from the AHP recycling plant it had run in the past. In addition, whilst processing may not be taking place, to my mind, maintenance activity during the weekends may also result in the release of odours in other parts of the building. Under these circumstances, I consider that the assumption of zero emissions during the weekends is unlikely to be reliable and this casts doubt over the reliability of the modelling results, as the addition of some allowance for odour discharges over the weekends would be likely to raise 98th percentile of hourly average concentrations over a calendar year.

21. As regards odour emission rates, whilst I understand that the UV units have been used at other sites as a means of odour abatement, the appellant was not able to give any indication with respect to the degree to which they would be likely to limit odours. Furthermore, the appellant acknowledged that Simdean Envirotec had used an incorrect figure for the internal height of the building when calculating air changes, the actual height being greater than that which had been assumed. Use of the correct figure would be likely to result in a lower value for air changes per hour, which would increase the odour levels within the building to a degree. Simdean Envirotec has indicated that, based on its experience elsewhere, it is prepared to provide a process guarantee to the effect that odour emissions from the stack would not exceed the $500 \text{ ou}_E/\text{m}^3$ maximum level assumed in the OIAa modelling. However, contrary to the recommendation of the IAQM guidance, no data has been provided from those other sites, which casts doubt over its ability to comply with that maximum level identified.
22. I acknowledge it may be possible to ensure that the proposed maximum odour emission limit from the discharge stack of $500 \text{ ou}_E/\text{m}^3$ would be met if it is a condition of the Environmental Permit, as this would be enforced by the EA. Nonetheless, even if that were the case, based on the factors I have identified related to uncertainties associated with model uncertainty and user error, I conclude that there is a significant risk that the benchmark of $C_{98,1\text{-hour}} 1.5 \text{ ou}_E/\text{m}^3$ would be exceeded within the playground of the Blair Peach School and the neighbouring allotments. In my judgement, that would be likely to have an unacceptable impact on the living conditions of sensitive receptors, with particular reference to the occupants of the school, and would be contrary to the aims of UDP Policy OE1, WP Policy WLWP 4 and consequently, WP Policy WLWP 3 and LP Policy 5.17. It would also conflict with the aims of the Framework as regards securing a good standard of amenity for all existing and future occupants of land. Under the circumstances in this case, a precautionary approach would be justified and the uncertainty with respect to the overall detrimental impact of the proposal on living conditions of sensitive receptors in the local area, with particular reference to odour, weighs heavily against approval of the proposal.

Other matters

23. The OIAa indicates that, based on reported modelling results for stack heights of 17.5 metres and 20 metres, it would be possible to reduce the odour impact of the proposal by increasing the height of the proposed stack. However, no greater reliance can be placed on those results, as the same concerns regarding uncertainty apply. Furthermore, such a change would significantly increase the projection of the stack above the roof line of the building, greatly altering its appearance. I agree with the view expressed by the Council at the Hearing, that it would not be reasonable to seek to secure such a change through the imposition of a condition, as it would be likely to so change the proposal that those with an interest in it would be likely to wish to comment.
24. The appellant has indicated that under the terms of the extant planning permission Ref. 1911/APP/2012/3185, a class B2 business could operate from unit 4 without having to abate odour emissions, as no such measures are required by its conditions. Whilst that may be the case, there is no evidence before me to show, in the event of this appeal being dismissed, that a class B2 business with associated odour emissions would be likely to occupy the

building. I give this little weight as a fallback position. Although the appellant has suggested that the proposal may be regarded as being akin to a class B2 use, as it would involve the production of plastic pellets and pet litter, it confirmed at the Hearing, it is not suggesting that planning permission is not required in this case. The Council considers that the proposal comprises for the most part a waste treatment facility and it would fall outside of use class B2. The question of whether planning permission is required is not a matter for me to determine in the context of an appeal made under section 78 of the *Town and Country Planning Act 1990*. It would be open to the appellant to apply to have the matter determined under section 192 of the Act. Whilst the appellant has made reference to a Certificate of Lawful Use or Development which determined that the processing of *'post consumer plastic bags and films to manufacture a clean plastic granulate and new plastic bags falls within class B2 General Industrial'*, that is not what is proposed in the case before me and so I give it little weight.

25. With reference to the s106 agreement submitted in support of planning permission Ref. 1911/APP/2012/3185, the appellant has provided a supplemental s106 agreement, which carries forward the previously agreed requirements concerning training and travel planning. At the Hearing, the Council confirmed this agreement addresses its second reason for refusal, which it no longer wished to pursue. I consider that this planning obligation accords with the provisions of Regulation 122 of the *Community Infrastructure Regulations 2010 (as amended)* and the tests of obligations set out in the Framework. It satisfactorily addresses the Council's second reason for refusal.
26. The appellant has indicated that the proposal, which would require a significant level of investment, would generate around 20 new jobs and opportunities for apprenticeships. I give this benefit to the local economy moderate weight. The appellant has suggested that, by providing an alternative to the disposal of AHPs by incineration or landfilling, it may also lead to a reduction in the costs incurred by the producers of the waste stream. However, potential savings have not been quantified and so I give that suggestion little weight.
27. Although the appellant has indicated that it would like to assist with local education projects and would accommodate educational visits on the site, I have not been provided with any evidence to show that these facilities are likely to be of any particular value to the local community and I give them little weight.
28. I understand that in comparison with landfilling and incineration, the proposal would generate far fewer greenhouse gas emissions, in keeping with the aims of the Framework. I give this moderate weight.

Conclusions

29. I conclude on balance, having had regard to the economic, social and environmental impacts of the proposal, that the harm I have identified, with particular reference to the impact of odour on the living conditions of sensitive receptors, would not be outweighed by other considerations. Furthermore, in my judgement, it would be unlikely to be possible to reduce the harm identified to an acceptable level through the imposition of reasonable conditions. The scheme would not amount to sustainable development under the terms of the Framework. In addition, it would conflict with the Development Plan taken as a whole.

30. For the reasons given above, I conclude that the appeal should be dismissed.

I Jenkins

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

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| Miss A Crooks | Integrated Skills Ltd. |
| Dr N Davey | Entran Ltd. |
| Mr P Richardson | Knowaste Ltd. |
| Mr N Carter | Simdean Envirotec Ltd. |
| Mr P Anderson | Dax Airscience Ltd. |
| Mr D Jelly | Knowaste Ltd. |

FOR THE LOCAL PLANNING AUTHORITY:

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| Mr S Volley | Council of the London Borough of Hillingdon |
| Dr A Grossinho | Air Quality Experts Global Ltd. |

INTERESTED PERSONS:

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| Mr J Freeman | Council of the London Borough of Ealing |
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DOCUMENTS

- 1 Letters notifying interested parties of the appeal and the Hearing arrangements.
- 2 Consultation response from Ealing Council.
- 3 Letter from Gateley Plc to the Planning Inspectorate, dated 6 February 2017 (s106).
- 4 Letter from Ealing Council to Entran Ltd., dated 6 February 2017 (odour complaint record)
- 5 Email from Hillingdon Council to Entran Ltd., dated 25 January 2017 (odour complaint record)
- 6 Draft supplemental agreement under section 106 of the Town and Country Planning Act, 1990.
- 7 Letter from Integrated Skills Ltd. to Hillingdon Council, dated 22 June 2016 (air quality/environmental protection).
- 8 Odour map based on an emission level of 500 ou_E/m³.
- 9 Suggested conditions.
- 10 Proposal plans (typo corrections)
- 11 Formally completed supplemental agreement under section 106 of the Town and Country Planning Act, 1990.