



Appeal Decision

Site visit made on 8 May 2018

by Thomas Bristow BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 July 2018

Appeal Ref: APP/U1105/W/17/3180771

Tagon Harbour Farm, Road From the Old Devon Smithy to Straightway Head, Whimble EX5 2QS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant planning permission.
 - The appeal is made by Mr Jeremy Shepherd of Satin Silk Ltd. against the decision of East Devon District Council.
 - The application Ref 16/3045/MFUL, dated 22 December 2016, was refused by notice dated 11 April 2017.
 - The development proposed is described on the application form as 'the construction of a poultry broiler breeder enterprise; including 4no broiler breeding units, 10no feed bins, a service building, a surface water balancing pond and associated landscaping'.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. Whilst the appeal site is currently part of Tagon Harbour Farm ('THF'), it is intended that the development proposed would be operated as a separate concern named Tamarisk Farm. Both would nevertheless operate under a single Environmental Permit (Ref EPR/CP3639UC, the 'EP').¹
3. The proposal has been screened as EIA development.² Accordingly I have had regard to the associated Environmental Statement ('ES') alongside other evidence related to prospective environmental effects in reaching a decision.
4. The application to which this appeal relates follows an earlier unsuccessful proposal for similar development. However the current scheme is supported by fresh evidence, and each proposal must be determined on its merits in accordance with the development plan unless material considerations indicate otherwise.
5. Several nearby residents state that they have previously been adversely affected by the operation of THF, a poultry farm with capacity for 48,000 birds. Although the nature of the surroundings to the appeal site is relevant, my decision relates solely to the appropriateness of the development proposed.

Legal and planning context

6. Under the Environmental Permitting (England and Wales) Regulations 2016 as amended ('EPR'), the EP specifies how on-site activities are to be conducted

¹ A variation to a previous environmental permit related solely to THF.

² Pursuant to the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 as amended.

with the aim of avoiding generating pollution. However the definition of pollution under the EPR differs from that of statutory nuisance under the Environmental Protection Act 1990 as amended ('EPA'), as do the respective administrative bodies.

7. Therefore whilst the EPR and EPA share similar objectives, the EP is not expressly designed to prevent statutory nuisance. Moreover both the EPR and EPA are separate regimes to planning: development may have effects, which although not of such severity so as to amount to pollution or statutory nuisance, are nevertheless material in planning terms.
8. Accordingly, and as set out in paragraph 122 of the National Planning Policy Framework ('NPPF'), it is not for me to assess whether or not the EP would operate effectively, or statutory nuisance would be avoided. Instead I have focused on the impact and acceptability of the development proposed based on the evidence and representations before me, including the EP and ES and associated mitigation measures proposed.
9. In summary, and amongst other aims, policies D1 'Design and Local Distinctiveness', D7 'Agricultural Buildings and Development', and EN14 'Control of Pollution' of the East Devon Local Plan 2013-2031 (adopted January 2016, the 'LP') require that development safeguards appropriate living conditions for those prospectively affected by it. Similarly paragraphs 17 and 109 of the NPPF set out that planning should seek to secure a good standard of amenity for all, and that adverse effects from unacceptable levels of air or noise pollution should be avoided.

Main issues

10. Given the context above, the main issues are whether or not it has been demonstrated that the development proposed would ensure appropriate living conditions for those nearby in respect of (1) odour, (2) dust, and (3) noise.

Reasons

11. Expanded around 2005 to its present capacity, the first of several poultry units at THF was built in 1999. The farm produces hatching eggs as opposed to poultry meat or eggs for consumption. Closed climate-controlled units are occupied continuously by birds for 42 weeks, after which they are removed and the units cleaned and re-stocked over a further five week period. It is unclear whether those cycles for each unit align.
12. Tamarisk Farm is intended to operate in the same manner, distinguishing the particular nature of the proposal from other cases brought to my attention.³ The proposal is for two ranges of substantial poultry buildings, of modern efficient standards, and associated paraphernalia. They would accommodate 28,000 birds (albeit that a number of 32,182 is given in the EP).
13. The appeal site is within the open countryside accessed via an unnamed road. That road differentiates the undulating patchwork of fields around the appeal site punctuated by occasional properties from the more mixed character of the

³ Appeals Ref APP/U1105/A/11/2148793 and APP/U1105/A/11/2148788 related to free range broiler breeding and APP/R3705/W/16/3158147 to a proposal whereby poultry units would be cleaned every 37-38 days.

area on the other side of it adjacent to the A30. A small industrial estate and Willow View Park ('WVP'), a residential park home site, are directly opposite.

14. WVP originated as a caravan site during the 1980s, although has altered significantly since. Notably 13 additional park homes were granted permission by the Council in 2012 (Ref 11/1943/COU, the 'permitted homes'). Several of the permitted homes have now been established, including Nos 20 to 26 which are located next to the roadside verge opposite the appeal site. There is nothing to indicate that permission Ref 11/1943/COU would not be implemented in full, in time.
15. The permitted homes are, or would be, closer to the proposal than others previously in place at WVP.⁴ Figure 2 of the appellant's Noise Assessment shows the permitted homes as under construction,⁵ and paragraph 5.1.2 explains that WVP is located approximately 30 metres from the boundary of the appeal site (a figure given as approximately 40 metres by the Council). Either 30 or 40 metres is significantly closer than the separation distance that currently exists between THF and WVP, approximately 200 metres, and the nearest residential use to the development proposed in appeal Ref APP/R3705/W/16/3158147 (approximately 110 metres).

Odour

16. Concentration of odour is typically expressed as the number of Standard European Odour Units per cubic metre of air ($\text{ou}_\text{E}/\text{m}^3$).⁶ Effects of odour-generating sources are assessed, or forecast, relative to the hourly 98th percentile ($C_{98, 1\text{hour}}$). That quantifies the level of odour that would not be exceeded for more than 2% of the time, with such standardisation allowing for comparison against other scenarios.
17. Environment Agency Guidance H4, which although relating to environmental permitting contains useful advice of general relevance, explains that a figure exceeding $3 \text{ ou}_\text{E}/\text{m}^3 C_{98, 1\text{hour}}$ for moderately offensive odours, such as generated by intensive livestock rearing, indicates that unacceptable odour pollution is likely to arise.⁷ That is subject to a degree of tolerance given the nature of the odour, site specific influences, and other uncertainties.
18. The Institute of Air Quality Management Guidance, also brought to my attention by the appellant, describes a value of $5 \text{ ou}_\text{E}/\text{m}^3$ as a faint odour (the 'IAQM Odour Guidance').⁸ Nonetheless it cites research which found that at that level some individuals would either be 'annoyed or very annoyed', indicating potentially significant effects. Moreover Guidance H4 suggests taking a precautionary approach of reducing the figure of $3 \text{ ou}_\text{E}/\text{m}^3 C_{98, 1\text{hour}}$ by around 0.5 where individuals have become 'sensitised' to odour.
19. As set out in the appellant's Odour Assessment,⁹ based on local meteorological data between 2010 and 2014, the wind direction would only be expected to be directly from the appeal site to WVP for around 11% of an average year.

⁴ As shown on plan 231.09.11 supporting permission Ref 11/1943/COU.

⁵ Prepared by WSP Parsons Brinckerhoff, December 2016.

⁶ British Standard EN 13725:2003.

⁷ Odour Management, March 2011.

⁸ Guidance on the assessment of odour for planning, May 2014.

⁹ Prepared by WSP Parsons Brinckerhoff, November 2016.

Similarly, as set out above, owing to the nature of poultry rearing intended to be undertaken, individual units would be closed for around 89% of the time.

20. I understand there have been no formal complaints made to the Council or Environment Agency related to odour generated by the operation of THF during the last five years. The EP is also subject to an odour management plan which, amongst other measures, contains requirements related to the operation and maintenance of the facility so as to limit odour generation.
21. The above factors would qualify the effects of odour resulting from the proposal. However, notwithstanding paragraph 5.1.2 of the Odour Assessment, it is not disputed that the proposal would result in some degree of adverse impact. Moreover 11% of the year still amounts to around 40 days, which is a far from insignificant proportion.
22. Paragraph 4.2.3 of the Odour Assessment, albeit based on worst-case meteorological data, indicates that the level of odour experienced at WVP would increase by between approximately 0.2 and 0.4 $\text{ou}_\text{E}/\text{m}^3 \text{C}_{98, 1\text{hour}}$. However the maps in that assessment do not reflect the 13 permitted homes at WVP referred to previously. That is significant. Figure 5 of the Odour Assessment indicates that the level of change in odour concentration in that location is instead likely to be significantly greater (up to 0.8 $\text{ou}_\text{E}/\text{m}^3 \text{C}_{98, 1\text{hour}}$).
23. The establishment of WVP, and other properties in the wider area, pre-dates the poultry enterprise at THF. However the permitted homes at WVP which would be most affected by odour from the proposal are recent additions, and it is inevitable that all properties change hands from time to time. It is therefore reasonable to presuppose that certain occupants nearby elected to reside here based on an awareness, and some acceptance, of the existing nature of its environment. That is likely to have moderated a propensity to complain about any effects of THF (or other factors affecting amenity). More generally the IAQM Odour Guidance cautions that lack of complaint does not necessarily prove there is presently no annoyance or nuisance, or loss of amenity.
24. Furthermore the Odour Assessment is supported by a sampling report prepared by Odournet. That evaluated current odour emissions from THF with a view to establishing the baseline context and modelling parameters for assessing the effect of the development proposed. There is some variation within odour levels recorded, and I acknowledge that report represents a snapshot in time. Nevertheless the report recorded substantially higher concentration levels at THF than would typically be expected, 7.1 $\text{ou}_\text{E}/\text{s}/\text{bird}$ compared to an industry benchmark value of between 0.3 and 1.
25. The appellant has re-based the Odournet report with an assumed odour generation of 3 $\text{ou}_\text{E}/\text{m}^3 \text{C}_{98, 1\text{hour}}$, more closely aligned with benchmark evidence, and applied relevant modelling parameters via industry-standard software. Paragraph 3.3.15 of the Odour Assessment explains that approach was taken directly 'as a consequence' of the absence of formal complaints previously.
26. Given my earlier reasoning in relation to the propensity of those nearby to complain, that approach is not robust. It is also somewhat conflicted as 3 $\text{ou}_\text{E}/\text{m}^3 \text{C}_{98, 1\text{hour}}$ is already the level at which Guidance H4 explains odour pollution is likely (although I accept that has been undertaken as a

precautionary approach). There is moreover no other substantive evidence before me to indicate that the Odournet report recordings were simply anomalous, or that the assumed odour generation figure of $3 \text{ ou}_E/\text{m}^3 \text{ C}_{98, 1\text{hour}}$ used for modelling purposes is informed by other studies on the ground (for example undertaken at different times or alternative locations).

27. The proposal would increase odour levels experienced nearby, the extent of which for the permitted homes would be significant. Given the limited separation distances involved, the existing odour levels recorded, and my concerns regarding modelling, I conclude that it has not been demonstrated that the proposal would ensure appropriate living conditions for those nearby in respect of odour. That is in conflict with the relevant provisions of the development plan policies and elements of the NPPF cited in paragraph 9 of this decision.

Dust

28. The Council set out, via correspondence dated 23 August 2016, that their and nearby residents' concerns had been addressed by the appellant's Dust Appraisal.¹⁰ Whilst I appreciate that may have been taken by the appellant as indication that such matters were satisfactorily resolved, the Planning Practice Guidance nevertheless explains that pre-application advice cannot pre-empt a formal decision.¹¹
29. The Dust Appraisal explains that intensive poultry facilities inherently generate dust, typically with a particulate size of 1-75 micrometres (therefore including particulate matter of both under 10 and under 2.5 micrometres, PM_{10} , $\text{PM}_{2.5}$). At certain concentrations such dust has the potential to adversely affect people, including via deposition and staining, and in respect of health.
30. The Dust Management Plan supporting the EP requires, amongst other measures, the use of a sealed feed system, bedding with low dust generation, and carefully calibrated ventilation. Whilst a local resident has alluded to a complaint in 2012, and the Council to previous Environment Agency observations, the appellant explains that there have been no recent formal complaints related to dust from those living nearby.
31. As in respect of odour, historic meteorological data indicates that the prevailing wind direction would only for a minority of the time carry dust from the appeal site directly towards WVP or certain other nearby residential receptors. I also observed that there are other potential generators of particulate matter nearby, including the A30 and fields used for agricultural cultivation.
32. Those factors may qualify the effects of the proposal in respect of dust. However there is no quantitative data before me of dust levels currently experienced nearby, or likely to be experienced as a result of the proposal over the 47 week operational cycle. That prevents a robust understanding of the current situation or likely significance of the proposal.
33. As reasoned above, the absence of previous complaints is insufficient to establish definitively that those nearby are not adversely affected by dust to

¹⁰ WSP Parsons Brinckerhoff, August 2016.

¹¹ Reference ID: 20-011-20140306.

some extent. Various representations from nearby residents express concern with dust experienced presently in the vicinity of the appeal site, which may have a detrimental accumulative effect in conjunction with the development proposed.

34. Moreover the permitted homes at WVP nearest the appeal site are not represented on Figure 1 of the Dust Appraisal 'Location of dust sensitive receptors'. That is significant given that WVP falls some 30 to 40 metres away from the appeal site. The Institute of Air Quality Management Guidance related to dust advocates a significantly larger study area with a radius of 350 metres from source (albeit not specifically in relation to livestock enterprises).¹²
35. For the above reasons I conclude that it has not been demonstrated that the proposal would ensure appropriate living conditions for those nearby in respect of dust, in conflict with the relevant provisions of the development plan policies and elements of the NPPF cited in paragraph 9 of this decision.

Noise

36. The appellant's Noise Assessment explains that the proposal would generate noise in three principal respects: during construction, typical operation including feed deliveries, and clean-down phases.¹³ That assessment considers potential effects of the proposal on the five nearest residential locations ('noise sensitive receptors', 'NSRs') to the appeal site. That includes WVP, with figure 2 showing the permitted homes under construction.
37. Construction noise as experienced at WVP may reach 75.2 dB L_{Aeq} , whereas at all other assessed NSRs is predicted to be below 65 dB (the recommended threshold limit for such activities in British Standard 5228-1:2009+A1, 2014). That is significantly above the typical recorded daytime background level of noise here. Nevertheless adherence to the acoustic mitigation measures set out in section 6.1 of the Noise Assessment would significantly reduce such effects, and construction noise would be temporary.
38. The Noise Assessment forecasts, based on the proposed units and their ventilation systems operating continuously under typical closed conditions and during normal operations, that no assessed NSRs would experience additional noise compared to background levels. I note the Council's concern regarding the location of the ventilation units and the extent to which noise would be shielded by the form of the units proposed. However there is no robust counter-evidence to the appellant's assessment before me in that respect.
39. The appellant predicts that feed deliveries would result in a 6 dB increase compared to daytime background noise at WVP. That is at the cusp of where British Standard 4142:2014 indicates that an adverse effect may result. Moreover such deliveries would inevitably be occasional and for limited duration. Therefore whilst every once in a while those nearby may be aware of noise from feed deliveries, I am not of the view that this would be intrusive.
40. External pressure washing is predicted to result in significant adverse effects to the occupants of WVP and Straightway Head House with an increase of 28 dB

¹² Guidance on the Assessment of Dust from Demolition and Construction, June 2016.

¹³ Undertaken in accordance, in particular, with the approach in British Standard 4142:2014.

and 12 dB respectively relative to background levels. However that is partly based on the assumption that the units will be cleaned with open doors, which would be contrary to the requirements of the Noise Management Plan element of the EP.

41. Any necessary external cleaning would, moreover, be very short in duration. Paragraph 6.2.3 of the Noise Assessment advocates that this is limited to two days every 47 weeks. I observed that there are also other sources of noise nearby which mean that the acoustic environment here is more variable than average figures may suggest (including the A30 and Exeter Airport).
42. Given the limited magnitude or duration of noise that would be generated by the proposal, and on account of the particular acoustic background in this location, I conclude that the proposal would not result in unacceptable effects to the living conditions of those nearby in relation to noise (subject to suitably-worded conditions). Whilst in this respect the proposal would accord with the relevant provisions of the development plan policies and elements of the NPPF cited in paragraph 9 of this decision, that unacceptable effects would not arise in respect of noise does not serve to outweigh my earlier conclusions.

Other matters

43. The appellant contends that certain objections to the proposal are not founded on 'robust empirical evidence'. That may be so. However that does not inherently mean that lesser weight should be accorded to any valid material planning concerns. Moreover, as reasoned above, the appellant cites the absence of previous complaints to the Council and Environment Agency regarding the operation of THF in favour of allowing the appeal. In my experience such complaints would typically be made on the basis of subjective perception rather than empirical data.
44. The proposal would have significant economic benefits in supporting employment during construction, operation, and in the value of the hatching eggs intended to be produced. I also acknowledge that there would be synergies from the location of the proposal adjacent to an existing poultry farm, and that there is an increasing trend towards maximising economies of scale in this sector.
45. I do not treat those benefits lightly, particularly given the encouragement given to supporting economic growth and agriculture via the development plan and the NPPF in general terms.¹⁴ However that overarching support is not unqualified, and it is not at the expense of ensuring that all development integrates appropriately with its surroundings.
46. On account of my reasoning in respect of the first and second main issues, I do not concur with the appellant's position that 'the level of environmental nuisance will be acceptable to nearby residential occupiers'. That has not been suitably demonstrated. Given the shortcomings with the evidence before me, I am unable to consider imposing conditions to mitigate adverse effects that may result (particularly as such may be unreasonable). Accordingly neither the benefits of the proposal, nor any other matters, are sufficient to justify taking a

¹⁴ Including via LP policy E4 'Rural Diversification', and paragraphs 19 and 28 of the NPPF.

decision in this instance other than in accordance with relevant provisions of the development plan.

Conclusion

47. Having taken all relevant matters into account I conclude that the proposal conflicts with the development plan taken as a whole, with the approach in the NPPF, and that the appeal should be dismissed.

Thomas Bristow

INSPECTOR