



Appeal Decision

Site visit made on 10 June 2019

by Katie McDonald MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 November 2019

Appeal Ref: APP/N2535/W/18/3216860

**Brandy Wharf Piggery, Waddingham Road, South Kelsey, Market Rasen
LN7 6PN**

- 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 Mr Frank Tobin (Holmeville Farm Services) against the decision of West Lindsey District Council.
 - The application Ref 137678, dated 18 April 2018, was refused by notice dated 5 November 2018.
 - The development proposed is the erection of a livestock building.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposal falls under Schedule 2 to The Town and Country Planning (Environmental Impact Assessment (EIA)) Regulations 2017 (EIA Regulations) and as such is accompanied by an Environmental Impact Assessment in the form of an Environmental Statement (ES).
3. The appellant submitted a Screening Request to the Local Planning Authority (LPA) and then to the Secretary of State (SoS). The SoS Screening Direction, dated 28 March 2018, is presented in Appendix 1 of the ES. The Direction indicated that the SoS concurs with the opinion of the LPA, namely that the proposal constituted EIA development, and that an ES was required.
4. However, the Direction only identified potentially significant environmental effects as a result of odour and waste emissions. The Direction refers to properties affected by the spreading of slurry across Holme Hill Farm, both the small number of sensitive receptors near to the piggery site and residents of Moortown.
5. No formal Scoping exercise was then undertaken and the planning application subject to the appeal was submitted with the ES based upon the matters identified in the Screening Direction.
6. The LPA refused the planning application for 4 reasons. The ES was considered incomplete, failing to assess indirect or cumulative impacts of odour. The application failed to show compatibility with neighbouring residential land uses with no consideration of air quality. Insufficient information was provided to assess the potential impact to Kingerby Beck Meadows Site of Special Scientific

Interest (SSSI). Finally, there was no planning obligation to secure a means of disposal of slurry generated by the proposal.

7. The appeal subject to this decision was submitted, and as part of the process of assessing the appeal, the SoS notified the appellant (4 June 2019) that, following examination of the ES, pursuant to regulation 25 of the EIA Regulations, further information was required.
8. The further information was publicised by letter on 25 June 2019 and in the local press on 3 July 2019. A period of 30 days was given for the receipt of comments. Following this, I requested comments from the LPA and the appellant was provided with the final opportunity to comment.
9. I have had regard to all the Environmental Information submitted with the appeal including the original Environmental Statement, the Additional Information, the further responses and the main parties' comments in reaching my conclusions on this appeal.
10. Following the consultation on the Additional Information, Natural England withdrew their objections as to the effect of the proposal upon the SSSI. As a result, the LPA is satisfied the 3rd reason for refusal has been addressed.
11. Lastly, the appellant submitted a planning obligation with the appeal and the LPA has withdrawn its 4th reason for refusal. I have considered the obligation briefly below.

Main Issue

12. With that background, the main issue is the effect of the proposal upon the living conditions of nearby properties surrounding the site and in nearby villages, with specific reference to air quality and odour.

Reasons

13. The site is a working pig farm, located in the open countryside. The proposal is for a livestock building to house around 1000 finishing places for pigs, comprising around 960 square metres of floorspace. It would be around 63m long, 15.5m wide and 5.5m to the ridge with 8 roof mounted ventilation fans. The building would be located adjacent to 6 existing livestock buildings, being of similar dimensions and external materials finish.
14. Following review of the information submitted in the form of the Environmental Statement and the Additional Information, the details presented are sufficient to satisfy Schedule 4 of the EIA Regulations. However, I have concerns regarding how the assessment as to the effect of odour from the slurry spreading has been calculated. Furthermore, I also have significant concerns about air quality and odour, both from the cumulative effects and slurry spreading. The cumulative effect being the existing operation, the neighbouring farm, Holme Hill, and the proposed development.
15. The assessment of the effect of odour from slurry spreading is based solely on the increase in the area of land and the number of hours for which slurry spreading would be carried out per annum as a result of the proposed development (an increase from 84ha to 116ha and from 35 hours to 49 hours per annum). This is not an insignificant increase, even if it does only amount to a total of around 8-9 days per annum.

16. No methodology is provided to describe how the odour resulting from the increased slurry spreading has been calculated; and it appears to be based on the simple calculation above. This is a crude way to estimate the effects and I have concerns that this has not satisfactorily assessed the odour impact. I also have no baseline data for this matter.
17. I recognise the appellant's argument that he believes it is not possible to provide any quantifiable assessment of the slurry spreading effect on amenity. I also understand that slurry spreading is a lawful and common rural activity, subject to other legislative controls and good practice guidance. Yet, these legislative controls appear to leave it for the local authority Environmental Health Department to enforce legislation¹ on odour nuisance². This could lead to a risk that it may be too late to prevent the damage being done, even despite the National Planning Policy Framework setting out that the focus of planning decisions should be on whether proposed development is an acceptable use of land, rather than the control of processes or emissions. Moreover, the SoS specifically refers to this matter to be addressed in the Screening Direction.
18. No significant effects resulting from cumulative effects are predicted in the ES. However, while the ES considers the cumulative effects with existing activities at the site (in relation to waste and odour) and finds the effect acceptable and with a tolerance to increase; it does not address any potential cumulative effects from the cattle housed at the neighbouring Holme Hill Farm.
19. As such, the cumulative odour impacts from the proposal could result in unacceptable odour levels for nearby residents. When considering that the levels at Receptors 3 and 4 are over 2 ouE/m³ with an assessment of just the piggery itself, this is of concern. This issue is not controlled by the Environmental Permit and was also specifically raised in the SoS Screening Direction. Furthermore, I am not satisfied that the lack of co-operation between landowners amounts to a justifiable reason for not providing an assessment as to the cumulative effects, particularly given that Holme Hill Farm receives much of the slurry waste from the existing site.
20. Consequently, the effects upon the living conditions of nearby residents from the slurry spreading on fields at Holme Hill Farm, or the cumulative effects of odour as an in-combination assessment are unknown.
21. The level of separation from the nearby sensitive occupiers is not remote, and the cumulative effects of odour from slurry spreading may well affect them and residents more widely in South Kelsey. Additionally, the cumulative effects of both the piggery and cattle at Holme Hill Farm may also be unacceptable. Indeed, despite the countryside location, this is noted in the responses from interested parties who report odour issues.
22. Turning to the mitigation, whilst the cumulative effects are unknown, the appellant proposes mitigation measures. Although these are inherent in the design, and many are included to satisfy the Environmental Permit or achieve compliance with Defra's Code of Good Agricultural Practice; it is not known if these would reasonably mitigate the effects of the scheme.

¹ Environmental Protection Act 1990

² Paragraph 25 of DEFRA's Protecting our Water, Soil and Air: A Code of Good Agricultural Practice for farmers, growers and land managers (2009)

23. Consequently, it is entirely reasonable to apply the precautionary principle; and in the absence of suitable and substantiated evidence that the cumulative and indirect effects would not be harmful; I find that there would be an adverse effect upon the living conditions of nearby residential occupiers.
24. This would be contrary to Policy LP26 of the Central Lincolnshire Local Plan (April 2017), which seeks to ensure the amenities which all existing and future occupants of neighbouring land and buildings may reasonably expect to enjoy is not unduly harmed by or as a result of development.

Other Matters

Planning obligation

25. The planning obligation submitted with the appeal is dated 7 February 2011 and the supplemental agreement is dated 14 February 2013. Both the agreements relate to previous planning applications determined by the LPA. The supplemental agreement refers to an Agreement for Services between the appellant and Kenneth Lethbridge dated 1 May 2012. This agreement appears to govern the application of slurry to land identified in that agreement.
26. The fundamental flaw with the obligations submitted is that none relate to the planning appeal before me, and therefore would be unenforceable. Added to this, I have not been supplied with the Agreement for Services governing the application of slurry. However, given my findings above, it has not been necessary to consider this matter further.

Conclusion

27. For the reasons set out above, I conclude that the appeal should be dismissed.

Katie McDonald

INSPECTOR