



Appeal Decision

Site Visit made on 6 July 2021

by Graham Wyatt BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th October 2021

Appeal Ref: APP/W3520/W/21/3266498

Castle Hill Farm, Castle Hill, Thorndon IP23 7JT

- 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 Owen against the decision of Mid Suffolk District Council.
 - The application Ref DC/20/02052, dated 20 May 2020, was refused by notice dated 6 January 2021.
 - The development proposed is described as a “poultry production unit with capacity to house some 141,000 birds comprised of 3no. poultry houses with associated admin block, feed bins and ancillary development”.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. Since the submission of the appeal a revised version of the National Planning Policy Framework (the Framework) has been published. In light of this I have sought the views of the main parties and I have taken any subsequent responses into account in reaching my decision. The implication for this appeal is that the relevant paragraph numbers have changed.

Main Issue

3. The main issue in this appeal is the effect of the proposed development on the living conditions of adjoining occupiers with particular regard to odour.

Reasons

4. The proposal seeks to erect three poultry houses on the site, with a capacity for some 141,000 birds, following the demolition of three existing poultry houses. The area is generally rural in character with the appeal site largely surrounded by open fields and agricultural land. Approximately 170m to the north is a business area known as Covance employment site (CES) which employs around 300 people.
5. The rearing of poultry is likely to produce odours in the form of ammonia and, as intensive livestock rearing, it is classified within Table 5 of the IAQM¹ as producing a moderately offensive odour. The Council’s decision notice refers to the effect of the development from odour on the CES only and from the evidence that has been provided, I see no reason to disagree with that assessment.
6. The appellant has provided an Environmental Statement² (ES) which states that odour exposure for the majority of the CES site would be at an acceptable level of some 3.0 ouE/m³³ with the southern extremity of the CES exposed to odour that

¹ Institute of Air Quality Management – Guidance on the assessment of odour for planning, Version 1.1- July 2018

² Environmental Statement, Parker Planning Services, May 2020 and Addendum November 2020

³ European odour units per cubic metre of air

would exceed 5.0 ouE/m³ and could give rise to significant complaints. The appellant states that the development should have been considered against IAQM guidance which classifies the CES as an industrial site and having a low sensitivity to the proposal. Moreover, the appellant argues that whether the CES is a low or medium receptor is a moot point as the receptor impacts, as detailed at Table 7 of the IAQM, are either “negligible” or at most “slight”.

7. However, the Environment Agency (the EA) disagrees with this conclusion, stating that its Odour Management Guidance⁴ (OMG) classifies industrial and commercial workplaces as having a medium sensitivity. As a result, the appellant has underestimated the effect of the development on the CES. In this instance, I share the appellant’s view that the IAQM guidance should be preferred as it relates specifically to planning rather than the EA’s OMG which relates to environmental permits.
8. I understand that, to achieve sterile working conditions, high level air filtration is used at the animal testing facilities within the CES. However, the appellant’s argument that the CES is a low sensitivity receptor is based upon the assumption that the site is only occupied during working hours and that it operates as industrial premises. However, I have not been provided with any evidence of the industrial processes that take place at the CES, and from that which has been provided by the Council, those employed there are within a research facility that is more akin to commercial premises. Thus, Table 2 of the IAQM clearly distinguishes industrial uses as having a low sensitivity while places of work, commercial/retail premises as having a medium sensitivity to odour.
9. Furthermore, the IAQM confirms that a receptor with medium sensitivity can include such places where people would not reasonably be expected to be present continuously or regularly for extended periods as part of the normal pattern of use of the land. This includes places of work where one could expect a reasonable level of amenity. Therefore, having regard to Table 2 of the IAQM and based upon the evidence submitted, there is nothing substantive before me to confirm that the use of the CES amounts to an industrial use, I am not persuaded that the CES should be classified as having a low sensitivity to odour.
10. Consequently, it has not been robustly demonstrated that the CES operates as an industrial site with a low sensitivity to odour. Therefore, as there are instances when moderately offensive odour levels exceed 5.0 ouE/m³, the development could give rise to significant complaints from the CES, resulting in harm to its occupiers. It would be in conflict with Policy CS 4 of the Mid Suffolk District Council Core Strategy 2008 (CS) and paragraphs 174 and 185 of the Framework, which seek, amongst other things, to protect people and the environment from development that harms the quality of air and/or causes odour.

Other Matters

11. Paragraph 188 of the Framework provides 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 (where these are subject to separate pollution control regimes), and adds that it should be assumed that these regimes will operate effectively. However, development may have effects which, although not of such severity to amount to pollution for the purposes of applying a pollution regime, are nevertheless material in planning terms. That is the case before me and I am not persuaded that the use of the land as proposed should only be the subject of pollution control regimes such as that espoused by the EA.

⁴ The Environment Agency – H4 Odour Management – How to comply with your environmental permit, 2011

12. The appellant argues that neither paragraph 174 nor 185 is relevant to the development. With regard to paragraph 174, although it refers to unacceptable risk, it also seeks to prevent new and existing development from contributing to or being adversely affected by unacceptable levels of air pollution. Furthermore, there is nothing substantive before me to demonstrate that paragraph 185 a) – c) of the Framework is a closed list, as the paragraph as a whole seeks to ensure that new development is appropriate for its location, taking into account, amongst other things, pollution on health “*as well as the potential sensitivity of the site or the wider area to the impacts that could arise from the development*”. I am not persuaded that paragraphs 174 and 185 of the Framework are not relevant to the development before me.
13. However, even if one was to accept that paragraph 185 is a closed list, the Framework makes it clear that it should be read as a whole and I have found that the development would be in conflict with paragraph 174 for the reasons already set out. Moreover, although Policy CS 4 of the CS refers to “*unsafe or unhealthy pollutants*” and the matter before me relates to amenity issues, it also seeks to protect people and the environment from development that harms the quality of air and/or causes odour. Thus, I find that Policy CS 4 of the CS relevant to the development before me.
14. The appellant states that planning permission⁵ has recently been granted on the site for four poultry breeder sheds. Although I have been provided with a copy of the Council’s decision notice, I have not been made aware of the matters that were taken into account in reaching this decision to enable me to make a direct comparison between the two developments. In any event, I have considered this appeal on its own merits which is a fundamental principle that underpins the planning system.
15. I note that representations were made by local residents, some of whom raise additional concerns. However, given my findings on the main issue, it is not necessary to consider these matters in detail.

Conclusion

16. Thus, I conclude that there are no material considerations of such weight as to indicate that a decision be taken other than in accordance with the development plan. Therefore, the appeal is dismissed.

Graham Wyatt

INSPECTOR

⁵ DC/21/00997 dated 19 May 2021