



Appeal Decision

Hearing Held on 9 January 2024

Site visit made on 10 January 2024

by Chris Preston BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 March 2024

Appeal Ref: APP/P3040/W/23/3315368

Land north of Cotgrave Road, Owthorpe, Nottingham, Notts NG12 3GE

- 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 Richard Barlow (Tom Barlow & Partners) against the decision of Rushcliffe Borough Council.
 - The application Ref 22/00243/FUL, dated 03 February 2022, was refused by notice dated 14 October 2022.
 - The development proposed is the erection of 4 poultry buildings, 8 feed bins, 2 feed blending rooms, gate house, generator, plant room, water tank, dirty water tank and gas tanks. Creation of new access road, car parking and concrete apron as well as new attenuation pond.
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Decision

1. The appeal is dismissed.

Application for costs

2. At the Hearing an application for costs was made by Mr & Mrs Tim & Lindsey Bowden against Mr Richard Barlow (Tom Barlow & Partners). This application is the subject of a separate Decision.

Preliminary Matters and Statement of Common Ground

3. Contrary to the recommendation of officers, members of the Council's planning committee resolved to refuse the application for four reasons. The first related to the effect on the openness of the Green Belt, the second to the effect on the character and appearance of the local landscape, the third referred to the effect on the living conditions of neighbouring residents and the fourth relates to the effect on the operation of the neighbouring observatory.
4. In respect of the third reason for refusal, the decision notice explicitly refers to the effects on the living conditions of neighbouring residential properties arising from lighting, odour, ammonia and noise. Subsequent to the refusal, the appellant submitted and obtained an Environmental Permit from the Environment Agency (EA). Whilst that regime is distinctly separate from the planning regime, consideration of lighting, odour, ammonia and noise do fall to be considered under the permitting regime and the EA are satisfied with the information provided, for the purposes of that regime.
5. Within its statement of case the Council noted "providing the Inspector is satisfied with the Environmental Permit submitted as part of this appeal, which

may suggest reason for refusal three falls away. This is a consideration for the Planning Inspector in this appeal process". Beyond that, the Council did not submit any further evidence in respect of the technical issues of noise, lighting, odour or ammonia.

6. Whilst the Council indicated that the issue may 'fall away' if I was satisfied with the Environmental Permit, I sought confirmation of its view at the Hearing. In other words, was it seeking to defend that reason for refusal or not? Officers representing the Council initially maintained a neutral stance, in line with the statement of case. However, later in proceedings Cllr Clarke, now Leader of the Council and previously a planning committee member, indicated that the Council was very much seeking to defend the reason for refusal.
7. That did lead to some confusion as to precisely what the Council's position was, especially given that no evidence was submitted as part of the statement of case. In any event, issues relating to the third reason for refusal form an integral part of the case of numerous interested parties, including the local residents' group (the Residents' Group) who were represented by Counsel at the event. Consequently, notwithstanding the ambiguity in the Council's position, matters pertaining to the third reason for refusal remain a main issue for consideration in the appeal.
8. Whilst the effect of ammonia resulting from the development is referred to within that third reason for refusal, the Residents' Group have made representations relating to the potential effect of ammonia deposits on designated wildlife sites, as opposed to being a matter related to the living conditions of neighbouring residents. The Council took a similar line at the event and I have considered the matter in that context, separately from the third reason for refusal.
9. In the lead up to the event a Statement of Common Ground (SoCG) was provided by the Council and appellant. The agreed matters relate to the factual description of development, the location of the site, relevant planning policies and a list of suggested conditions should the appeal be allowed. All of the conditions suggested by the Council are agreed by the appellant with the exception of the need for air scrubbers. The appellant maintains that scrubbers are not necessary to make the development acceptable in planning terms and also notes that a completely different design would be required in order to incorporate them.
10. In view of that, if I were to conclude that air scrubbers were necessary to control emissions it would not be possible to impose a condition on the present scheme because it would fundamentally alter the nature of the development proposed and would deprive interested parties the opportunity to comment on any revised plans. In that scenario it would be necessary to dismiss the appeal such that a revised scheme could be submitted to the Council for consideration¹.
11. Beyond that, the SoCG accepted that the proposal falls within the definition of agriculture² such that the principle of development in the Green Belt is not in dispute. Despite that, there remains a dispute as to whether it is appropriate

¹ As accepted by Mr Pick for the appellant at the Hearing.

² As set out in section 336 of the Town and Country Planning Act

to consider the effect on the openness of the Green Belt and I shall address that in the reasoning below.

Main Issues

12. Further to the above, the main issues in the determination of the appeal are:

- i) Whether the effect of the proposal on the openness of the Green Belt is a relevant factor in the consideration of the appeal, having regard to local and national planning policy and, if so, what effect the proposal would have in that regard;
- ii) The effect of the proposal on the character and appearance of the area and the surrounding landscape;
- iii) The effect on the operation of the Nottingham Astronomical Society (NAS) Observatory in respect of any emissions of light, heat haze and/or particle emissions that may arise from the development; and
- iv) The effect on the living conditions of neighbouring residents, with particular regard to odour, noise and lighting.

Reasons

The Openness of the Green Belt

13. Paragraph 154 of the National Planning Policy Framework (the Framework) identifies that the construction of new buildings within the Green Belt should be regarded as inappropriate, save for a number of specific exceptions, including buildings for agriculture. Policy 21 of the Rushcliffe Local Plan Part 2 (2019) (LP Pt 2) defers to the policy of the Framework in that regard. It is common ground amongst all parties that the proposed buildings fall within the definition of agriculture and, as such, would not amount to inappropriate development.
14. In those circumstances, caselaw is clear that it is not necessary to consider whether any harm would arise to the openness of the Green Belt³. To do so would effectively negate the objective of the Framework in recognising that certain types of buildings need not be excluded. Therefore, once a particular development is found to be "not inappropriate" in principle, the question of the impact of the building on the openness of the Green Belt no longer falls to be considered.
15. For clarity, I should stress that my conclusion in that regard relates purely to compliance with Green Belt policy. The visual impact of the proposed buildings and the effect on the character and appearance of the area and landscape remain to be considered in respect of the second main issue.

Character and Appearance and Landscape Impact

16. A Landscape and Visual Impact Assessment (LVIA) was submitted with the proposal, augmented by photographic images from six viewpoints within the vicinity of the site. This was supplemented at appeal by a map depicting the Zone of Theoretical Visibility (ZTV) which identifies locations from which the scheme would be visible within a 2km radius of the site and some additional

³ Lee Valley Regional Park Authority v Epping Forest District Council [2015] EWHC 1471 (Admin)

'verified views' depicting the proposal from vantage points not covered in the original LVIA.

17. Comments to the effect that the photographic viewpoints were deliberately selected to underplay the effect of the proposal are unfairly levelled at the authors of those documents in my view. The purpose of photographic representation is to give an impression from key view points but there is always a balance to be had in terms of the lengths it is reasonable to go to. It is not practical to submit an image from every conceivable vantage point, nor is that the intention.
18. On the day following the Hearing I undertook an extensive site visit, taking in the site itself and the neighbouring observatory, on an accompanied basis, followed by an unaccompanied visit to surrounding vantage points, as requested by those present at the Hearing. With the aid of the various viewpoint images, the plans themselves and the ZTV I was able to get a good impression of the proposal within the surrounding landscape and the purpose of the submitted documents was therefore fulfilled. Moreover, having walked in an arc to the east and south of the site, from Swab's Lane, Colston Road and then back along the towpath of the disused Grantham Canal I could corroborate the accuracy of the ZTV in identifying locations where the development would be visible at medium range.
19. The appeal site is located to the top of an escarpment which rises up sharply from the village of Owthorpe before reaching a plateau and levelling off to the north and west in the direction of Cropwell Wolds Farm and Cotgrave beyond. In terms of landscape character the top of the ridge falls within the Cotgrave Wooded Clay Wolds, as defined by the Greater Nottingham Landscape Character Assessment (2009) (the GNLCA), whilst Owthorpe at the bottom of the escarpment sits within the Vale of Belvoir.
20. As the name suggests, the Wooded Clay Wolds is a gently undulating plateau, predominantly rural in character with primarily arable farmland interspersed with pockets of woodland. The GNLCA notes that the woodland on the escarpment is prominent along the fringes of the character area. That is evident in the vicinity of the site, where three blocks of woodland surround the arable field upon which the poultry units would be erected, with a larger block of woodland at Border's Wood to the south.
21. The land within the Vale below is generally low-lying farmland situated between the escarpment to the west and the 'Belvoir ridgeline' to the east in Leicestershire, with Belvoir Castle prominent along the skyline in the far distance. The two escarpments at each side create a visual barrier which creates a sense of isolation from the world beyond, something that was particularly noticeable on my site visit. The result is a very tranquil and rural environment absent from major development, with small vernacular settlements amidst the surrounding farmland. The GNCLA describes the area as having strong landscape strength and I concur with that assessment.
22. The absence of any notable development along the ridgeline in either direction, with the prominent exception of Belvoir Castle in the far distance, undoubtedly adds to that sense of isolation and tranquillity. Pockets of woodland straddle the hilltop in the direction of the site but no discernible built form is present. Farmsteads such as Cropwell Wolds Farm are set back beyond the ridgeline on the plateau such that they are not visible from the Vale below.

23. The same would not be the case for the appeal proposal. Due to the steeply rising hillside, intervening woodland and local topography it would not be prominent when viewed from Owthorpe itself. However, as depicted in the ZTV the hilltop location would clearly be visible from numerous public vantage points to the west, including Swab's Lane, from the run of dwellings on Colston Road, from the public footpath heading from Swab's Lane to Owthorpe and along the line of the disused canal. Similarly, the location is clearly visible in views from the south, also from the towpath as well as Kinoulton Lane and public footpaths in the vicinity.
24. Notwithstanding that those views are from medium range, the industrial scale of the poultry units, the prominent hilltop location and the absence of any other notable development along the ridgeline is such that the proposal would have a strident and discordant impact. It would erode the strong integrity of the existing landscape and the sense of isolation within the Vale below.
25. At a more localised level, public right of way FP10 passes immediately to the south of the site. That appears to be a well-trodden route to and from Owthorpe judging by the footprints on the ground. The path rises up from the village, skirting blocks of woodland which surround the site. As noted above, that woodland is characteristic of the Wolds landscape in the area and adds to the sense of tranquillity and is visually attractive in its own right. The access road would cut directly across the PROW before turning and passing between the woodland blocks to serve the poultry units to the rear.
26. That, of itself, would result in an increased sense of urbanisation and the sheds themselves would be very apparent to those walking along the footpath through gaps in the trees, particularly in the winter months and through the entrance point between the blocks of woodland. Whilst the sheds serve an agricultural purpose their scale, which is not comparable to any other farmstead in the area, is industrial in nature and would substantially erode the rural and tranquil character of the area when viewed from the adjacent footpath, to the detriment of anyone enjoying the recreational route.
27. When describing how the site was selected, the agent for the appellant made clear that the presence of the woodland was a key factor on account of the screening provided. It would not screen the development fully. Moreover, that approach seems to overlook the contribution that the woodland makes to the character of the area. It is integral to the Wolds landscape, as described above, and has value of itself visually and in terms of providing cover for nature. That is very apparent when walking along the PROW. Siting such a large development in between the distinct blocks of woodland would diminish that positive impact and fragment the visual relationship between various pockets of woodland which are integral to the local landscape character.
28. Once it passes the site the PROW turns alongside the A46 before reaching the observatory on the far side of Cropwell Wolds Farm. Views of the development from that those vantage points would be prominent due to the local topography. The proposed landscape bund on the northern side of the development would help to provide a screen in time and buildings are not uncommon across the plateau, including those at Cropwell Wolds Farm. Consequently, in a visual and landscape sense the views from that angle are less sensitive than the views from the Vale where the ridgeline is free from notable development.

29. Notwithstanding that, the sensitivity of the landscape from the observatory does not only relate to what can be seen during daylight hours. The Guidelines for Landscape and Visual Impact Assessment identify a range of factors that can help in the identification of valued landscapes⁴. These include perceptual qualities, such as wildness or tranquillity or circumstances where a landscape is valued for its recreational value.
30. The site for the observatory was deliberately selected due to the absence of development when viewed across the southern skies, those being the most important in terms of astronomical observation. Thus, the tranquillity and darkness of the landscape and the skies above is a highly valued quality to those who use the observatory for recreational and scientific purposes. It is also highly sensitive to change, given the nature of the equipment used.
31. In that regard, the proposed development is directly in the line of sight of the key viewpoint from the observatory. For reasons that I shall set out below, I am not satisfied that the effects of light pollution, heat haze and particle emissions can be fully mitigated. In addition to the technical aspect of how that would impact on the ability of the observatory to function it also appears to me that there would be an associated landscape and visual impact. The proposal would alter the nighttime landscape and the darkness of the site at a very sensitive location.
32. The LVIA suggests that the landscape effect would be minor and the visual impact moderate, with mitigation measures in place. However, for the reasons set out the proposal would have a significant landscape effect due to its prominent and sensitive location and significant visual impacts on account of the uncharacteristic scale and industrial appearance of the proposed buildings. It would cause substantial harm to the character and appearance of the area. I recognise that the site does not benefit from any particular landscape designation. Nonetheless it is locally distinctive on the boundary between the Wolds and the Vale and sensitive to change, particularly views of the ridgeline and from the observatory. It is clearly a landscape that is valued by those in the village, those using recreational routes and those using the observatory.
33. I recognise that large scale agricultural developments of the kind proposed are not uncommon within the countryside as a whole and more are likely to be needed to meet consumer demand. However, in my view, the location of the site is inherently unsuited to a development of the scale proposed in landscape and visual terms for the reasons set out. The appellant clearly owns a significant land holding but as became clear during the Hearing, there is no evidence that any alternative sites were considered. Thus, it has not been demonstrated that any need that may exist could not be accommodated in a less sensitive location.
34. Accordingly, the proposal would fail to comply with policy 10 of the Rushcliffe Local Plan Part 1 (2014) (RLP Pt 1) which requires new development to conserve or enhance landscape character with reference to the GNLC and policy 1 of the RLP Pt 2 which requires that new development does not have significant adverse effect on landscape character. It would also contravene the aims of paragraph 180 of the Framework which requires development to recognise and contribute to the intrinsic value and beauty of the countryside.

⁴ Box 5.1 Third Edition, produced by the Landscape Institute & Institute of Environmental Management and Assessment

Effect on the Nottingham Astronomical Society Observatory

35. The NAS observatory has been present on its current site since the 1980s, the location having been chosen on account of its elevated position and uninterrupted views to the south, free from light pollution. It is used by members of NAS but also for outreach and educational purposes, including visits from Brownies, Scouts etc. Observations are taken for pleasure but also in relation to wider scientific projects. Thus, the facility appears to be a well-used and popular asset.
36. It is not disputed that any light pollution from the appeal site would have the potential to damage the ability of the observatory to function to its present capability. The appellant's have submitted a lighting strategy in support of the proposal recognises the potential impact and proposes luminaires that will distribute light downwards to reduce the potential for light spill beyond the boundaries of the site or upwards to the sky. Lighting would be required in the vicinity of the poultry houses themselves and to the gatehouse. The associated light spill diagram indicates that light would not spill horizontally beyond the parameters of the site.
37. NAS have raised a number of concerns with the Lighting Strategy including that it does not account for potential reflection of light from hard surfaces, including any concrete apron and from the building façade. Although the proposed bund would shield views of the buildings from the observatory NAS remains concerned that light would reflect and spill horizontally into Taylor's Wood and potentially upwards into the sky. Given that the Lighting Strategy does not explicitly comment on the likelihood of reflection it is not possible to discount that as a possibility. The Lighting Strategy also recognises that the proposed lighting levels do not meet industry recommendations due to the low level of output. That could lead to future pressure to increase light levels if there were any health and safety incidents in the workplace and it is not unreasonable to take that into account.
38. Moreover, the Strategy only deals with light from fixed sources and not from vehicles visiting the site. The access track from Owthorpe Road would result in vehicles heading towards the observatory with headlights facing in that direction. Although Taylor's Wood is situated between the track and the observatory it is not clear how light would reflect or scatter into the wood or beyond or whether it would reflect from the trees skywards.
39. Thus, even with a careful lighting strategy for fixed lighting I am not satisfied that the effects of lighting associated with the development could be fully mitigated. The observatory often takes images with long exposures⁵ and observes objects that sit quite low above the horizon to the south above the appeal site. Even infrequent light from car or lorry headlights has the potential to be disruptive to the efficient operation of the light sensitive telescopes.
40. Overall, given the extremely light sensitive nature of the observatory it is reasonable to apply a precautionary approach. The information presented does not demonstrate that light spill associated with the development could be adequately mitigated and the proposal would result in harm to the future operation of the facility on the balance of the evidence before me. That would conflict with paragraph 191 of the Framework which identifies that decisions

⁵ For example, the solargraph produced at Figure 34 of the NAS objection dated August 2023.

should ensure that development is appropriate to its location, taking account of the sensitivity of the site or wider area to impacts that may arise, including those relating to light pollution and the effect of artificial light on intrinsically dark landscapes.

41. I have similar concerns about the potential effect on 'seeing' conditions as a result of heat haze and particulate matter from the development. The NAS objection provides convincing evidence that heat haze can impact negatively upon seeing conditions, supported by published references. In response the appellant submitted the Bilborough Poultry Farm Seeing Test Report, prepared by three members of the York Astronomical Society.
42. Having read the report it does not provide convincing evidence for the absence of heat haze and seeing disturbance associated with poultry units. It was a snapshot in time, taken on a single summer's evening, in a different location with less sensitive equipment than that housed in the NAS observatory. Notably, the observation taken in respect of the report was made on a warm summer's evening when the difference in temperature between the sheds and the ambient air temperature was only a few degrees. The report highlights that the impact would be much greater on a cold winter's day when the difference between the heated shed and outdoor temperature would be far greater.
43. In addition, one of the authors of the report has requested that I disregard its findings on the basis that the appellant did not seek their permission to use it, that it was only an opinion and that it related to specific circumstances in Bilborough.
44. The temperatures within the proposed sheds would be heated to 33 degrees Celsius on day 1 of the growing cycle, reducing to 22 degrees over the growing cycle, controlled by a system of heating and ventilation⁶. That is notably higher than the temperature of the Bilborough shed which was said to be 19 degrees. No details of thermal insulation are provided but in the winter months it is clear that there would be a significant difference between the internal and external temperatures, particularly early in the cycle. There is clear potential for seeing degradation resulting from heat haze to occur and no convincing evidence to the contrary is before me.
45. Similarly, the ES does indicate that particulate matter would be emitted as a result of the proposal. The conclusions indicate that PM10 particulate levels would return to background levels within 100m of the site such as not to impact on residential properties but no analysis on the effect of seeing conditions is before me. However, the corollary of that conclusion is that there would be an increase in particulate matter in the vicinity of the sheds and up to 100m distance from them and that is directly south of the observatory.
46. Overall, I am of the view that the proposal would be harmful to the operation of the observatory as a result of light pollution, heat haze and an increase in particulates. The evidence presented by NAS was convincing and measured in its approach. It is hard to disagree with their conclusion that the appeal site is in the worst possible location in respect of the effect on seeing conditions from the observatory. As with the landscape and visual impact, there is no evidence

⁶ Paragraph 3.5 of the Environmental Statement, Revision A

that any alternative and less harmful sites were considered as part of the design process.

Effect on Neighbouring Living Conditions

47. The appeal site is situated close to the village of Owthorpe with the closest residential property, Keeper's Cottage, being approximately 320m from the site, or 260m if measured to the edge of the garden⁷. As noted above, whilst the Council appeared to maintain an objection on grounds of odour and noise at the Hearing, it has not submitted any technical evidence in response to the appellant's odour assessment.
48. That assessment has been considered by the Environment Agency who have no objection to the proposal. Separate to the planning application the EA have granted an environmental permit in relation to the Environmental Permitting (England & Wales) Regulations 2016. The introductory note to that permit identifies that the EA have assessed the installation against the best available techniques (BAT) conclusions, defined in the intensive rearing of poultry and pigs (IRPP) BAT conclusions document, dated 21 February 2017. As part of that process, the EA considered noise and odour assessments submitted by the appellant, amongst a number of other technical reports and management plans.
49. I recognise that the permitting regime is distinctly separate from the planning regime. The granting of a permit does not dictate that planning permission should be granted or that the effect on neighbouring living conditions would necessarily be acceptable from a planning perspective. The purpose of the planning regime is to ensure development is located in suitable locations. Even if operating within the confines of BAT it is possible that a development of the nature proposed could harm neighbouring living conditions if sited in the wrong location.
50. The Residents' Group did not produce alternative assessments of their own of likely noise and odour emissions but essentially sought to highlight what they saw as inadequacies within the assessments produced by the appellant⁸. In terms of odour concentrations within the poultry houses Michael Bull & Associates (MBAL) consider that the predicted figures used in the appellant's Odour Impact Assessment (OIA) are not robust. According to MBAL, and confirmed by the appellant at the Hearing, the concentrations used were taken from a report published by Robertson⁹. However, MBAL maintain that average figures from that report were utilised when, in their view, worst case scenario figures using the top end of the range should have been used to provide a robust approach.
51. MBAL also maintain that more than one source should have been used for robustness and that higher concentrations have been recorded in other studies, notably an Environment Agency study where notably higher concentrations were recorded, up to a 100% higher than the Robertson study in some cases¹⁰. According to MBAL, had the EA study values been used, the odour

⁷ As shown in paragraph 36 and Figure 2 of the letter from Richard Buxton Solicitors, dated 19 August 2023

⁸ As set out in the review of odour and air quality assessments prepared by Michael Bull & Associates (MBAL), dated 16 August 2023 and follow up dated 25 October 2023

⁹ Robertson, A.P. et al (2002), Commercial-scale Studies of the Effect of Broiler-protein Intake on Aerial Pollutant Emissions, Biosystems Engineering, 82 (2), 217-225

¹⁰ Environment Agency (2012), Odour Assessment of an Intensive Livestock Facility, ISBN: 978-1-84911-268-0

concentrations within the vicinity of residential receptors would exceed the recommended benchmark of 3 ouE/m₃ as set out within Environment Agency H4 Guidance¹¹.

52. At the Hearing, Mr Smith for the appellant suggested that the concentrations within the published EA report were unusually high and related to a farm which was known to be a problematic site whereas Dr Bull maintained that there was nothing atypical about the site referred to in the study. Frankly it is difficult to reach any definitive conclusion on that in the face of two expert witnesses telling me contrasting things. However, the exchange does highlight that variations in odour concentrations are likely between different farms and in that context, it seems to me that a robust assessment would take account of a range of figures, applying precautionary principle, given the relative proximity of residential properties. As it stands, the OIA provided does not fully explain, with reference to published material, how the predicted concentrations within the sheds were arrived at. The report simply says that the figures "are obtained from a review of available literature and measured concentrations available to AS Modelling & Data Ltd. A summary of this data plotted with the AS modelling & V Data model values is provided in Figure 2, the source reports from nine separate farms are available for inspection by regulators upon request".
53. The source material is not published and that does make it difficult for anyone seeking to scrutinise the findings of the OIA. Moreover, it does make it difficult to have confidence that the figures used are a reasonable representation of the likely odour concentrations. They may well be but it is hard to be satisfied on that point on the information before me.
54. Similarly, there is some uncertainty regarding the way in which odour emission rates have been calculated, particularly at high ventilation rates. The OIA describes a 'purging' effect whereby internal concentrations are 'reduced by a factor of the square root of 7.5 times the shed volume/ divided by the ventilation rate as an hourly figure'. The OIA notes that is a conservative approach based on observed effects from operational poultry houses in data available to AS Modelling & Data Ltd who produced the OIA. Again, the OIA states that data is available for inspection by regulators but it is not provided for the purpose of the application.
55. MBAL maintain that it is not common to apply such an adjustment. Again, it is difficult to ascertain where the balance lies but the air of secrecy surrounding the source data doesn't help the appellant's case due to the inability to scrutinise the basis on which the conclusions are made.
56. There are also contradictions within the ES relating to the point at which birds would be thinned. Paragraph 3.5 states that birds would be placed into the sheds at 1 day old and reared until day 38, with paragraph 3.8 stating that night-time catching would take place on days 30, 37 and 38. Oral evidence provided by the appellant at the event indicated that 27 or 28% thinning would need to take place after 30 days. However, the OIA states that 20% thinning will take place at day 34. Uncertainty surrounding how the units would operate could have implications for any odour modelling because the number of birds within the units at any given point would presumably have implications for odour concentrations.

¹¹ Environment Agency H4, Odour Management, How to Comply with your Environmental Permit, March 2011.

57. MBAL also queried whether the suggested 2 hour timeframe for clearing each shed between cycles was reasonable, given the size of the units involved. If the period was notably longer it could have implications for peak odour concentrations on account of the fact that doors to the units would be open for longer. The appellant maintains that the period is standard industry practice but little information to corroborate that was provided.
58. There is also uncertainty within the OIA and the ES as to how waste from the units would be disposed of. It would be possible to control that by condition, as discussed at the event, but any implications in that regard are not assessed within the submitted documentation.
59. Overall, I find it difficult to reach a definitive conclusion on the likely impact on living conditions relating to odour for the reasons set out. I have some sympathy with the appellant in that all of the issues raised above were largely aired at the appeal stage and not by the Council at the application stage, limiting the opportunity to respond fully. Nonetheless, I share the concerns of the Residents' Group relating to the robustness of the OIA in respect of the above and in light of those concerns am not satisfied that the effect on adjacent living conditions would be within acceptable limits.
60. In respect of noise, no technical assessment has been provided by any party to suggest that the noise assessment provided by the appellant is inaccurate in terms of the background data. Residents have raised issues in relation to potential noise from feed blowers, deliveries and the potential for ventilation systems to be used more frequently than accounted for in the noise assessment. Were I minded to allow the proposal I am satisfied that conditions could be imposed to control deliveries to the site, including the times at which any feed blowers may be used. Moreover, given the distance of separation I am satisfied that any noise from extraction systems would not be at a level that would cause undue harm to neighbouring living conditions.
61. Similarly, whilst I have identified that lighting would cause harm in respect of the NAS Observatory, the proposed lighting scheme and the distance from residential properties is such that it would not cause any harm to neighbouring living conditions as a result of light pollution.

However, for the reasons given, I am not satisfied that the proposal would maintain acceptable living conditions for neighbouring residents on account of odour, applying a precautionary approach, given my concerns relating to the assessment within the OIA. In that regard the proposal is contrary to the requirements of Policy 10 of the LP Pt 1, Policy 1 of the LP Pt 2 and paragraph 135(f) of the Framework which requires new development to provide a high standard of amenity, for existing and future users, without undermining the quality of life.

Other Matters

62. In assessing the proposal both Natural England (NE) and the EA raised no objection in respect of the ammonia deposition and likely effects on neighbouring wildlife sites, including the Kinoulton Marsh & Canal Site of Special Scientific Interest (SSSI) and Normanton Pastures SSSI. The modelling provided by the appellant concludes that the contribution from the units to annual mean ammonia concentrations would not have any significant effects.

63. Notwithstanding that the Residents' Group maintain that the ES should include a cumulative assessment, taking account of the 'in combination' effects of the proposal, together with other existing and planned development. Whilst they maintain that it is not clear that NE had the time or resource to review the matter fully, it is not unreasonable for me to conclude that a statutory consultee reviewed the information before it prior to reaching a conclusion that there would be no significant effects.
64. Moreover, due to the timing of submissions in relation to appeal proceedings the statutory consultees themselves have not had the opportunity to comment on the submissions of the Resident's Group to the effect that a cumulative assessment should be provided. The appellants themselves had limited time to respond to the issues raised due to the appeal timetable. I find the information before me inconclusive on the matter. However, given the absence of any objection from statutory consultees, and the likely balance of other material considerations, the technical issue of whether the ES should have considered cumulative effects in relation to ammonia is not a matter that has a significant impact in the determination of the appeal.
65. The development also has the potential to impact upon any wildlife present in the woodland and habitat immediately adjacent to the site. In that respect, the Preliminary Ecological Appraisal (PEA) submitted with the application was dated May 2021. That appraisal was compiled on the basis of a single visit to the site and the 'Limitations' section of the Appraisal notes that a single visit may not be sufficient for planning purposes and will inevitably miss species that were not visible on the day of the survey.
66. A holding objection was submitted by the Nottinghamshire Wildlife Trust (NWT) for various reasons. Amongst those, the NWT were 'incredulous' at the conclusion that the adjacent woodland provides 'negligible potential for roosting bats' and raised concerns regarding the lack of assessment relating to breeding birds and brown hare. According to the response the woodland habitat has been in situ since at least 1885 and contains mature, mixed, deciduous trees, dominated by ash. The extent to which the PEA surveyed the woodland is not clear from reading the report and, having visited the site I can understand the concerns of the NWT in respect of the conclusion that the woodland habitat provides negligible potential for roosting bats. The suggestion that brown hare and breeding birds should have been assessed would also appear reasonable given the nature of the habitat.
67. Given the age of the survey and the recognised limitations within the PEA, I am not satisfied that the potential impact on wildlife and habitat have been fully considered. Further survey work would be required to establish the nature of the habitat and any species that may be present. It would not be appropriate to condition such survey work because the baseline position should be assessed prior to any decision to grant planning permission. In fairness to the appellant it does not appear that the Council requested any further surveys prior to determining the application and the issue did not form part of the reason for refusal. Nonetheless, it is a matter that weighs against the development in my view.
68. Limited information is before me as to how the proposal would facilitate Biodiversity Net Gain, as required by Policy 38 of the LP Pt 2 but a suggested condition is put forward by the parties in the SoCG. The Council, and its

ecologist, would therefore appear to be satisfied that a satisfactory scheme could be provided within the appeal site. I do note that the proposed buildings and hard surfacing would take up a significant proportion of the area but there would remain scope for biodiversity measures outwith the developed area and even on the buildings themselves. Whilst details are limited I see no reason to depart from the agreed position of the main parties that a suitable scheme could be achieved.

69. In considering whether to grant planning permission for any development within the setting of a listed building am required to have special regard to the desirability of preserving the building, its setting or any features of special architectural interest it possesses. There are a number of listed buildings within the village, including the Church of St Margaret, which is Grade II*, headstones to the west and south of the tower, Hall Farm Cottage and adjoining cottage, and Hill Farmhouse, all of which are Grade II. The most prominent is the Church which is located in a distinctive position, slightly detached from the rest of the settlement, reached via a grass track leading from the village.
70. That sense of detachment is undoubtedly an important part in the special character of the church, along with its age and architectural interest, including associations with the Civil War. It sits within a distinctly rural setting within the Vale, as does the village as a whole. The listed dwellings are of interest on account of their age and representation of vernacular style. The rural hinterland surrounding the village is therefore an important element in the setting of the church and other listed buildings. Nonetheless, the topography surrounding the site is such that there would be very little inter-visibility between the listed buildings and the appeal proposal. When within the village itself and its immediate surroundings the development would have no discernible impact on the way the listed buildings are appreciated. I recognise that inter-visibility alone is not the only factor that may affect the setting of a building there would appear to be no functional or historical link between the appeal site and the listed buildings in question.
71. By and large, the buildings would still be appreciated in their rural context from vantage points in the locality and the relationship between the site and the buildings is such that the setting would be preserved.
72. Reference has been made to the potential impacts on Owthorpe Footpath 10, the PROW which passes the site. At present walkers tend to follow the edge of the field as opposed to cutting the corner which is the definitive line of the PROW. That is an informal arrangement and there is no suggestion that there is a proposal to divert the right of way, as confirmed by the appellant at the Hearing. Were I minded to allow the appeal details of any crossing points during and after construction could be secured by condition and that is not a matter that weighs against the proposal.
73. A number of representations have been submitted relating to animal welfare, associated with the intensive nature of the rearing process. However, the proposal would be in line with nationally regulated welfare standards and personal views relating to any ethical concerns would not amount to a reason to withhold planning permission.
74. The proposal would undoubtedly bring benefits to the rural economy in terms of the creation of jobs during and post construction and associated impacts. It

would also contribute to the national demand for poultry and help to reduce the need for imported chicken which would no doubt have environmental benefits associated with the reduction in food miles. Given the significant scale of the proposed operation those benefits are not insignificant and they attract weight accordingly in favour of the proposal.

Planning Balance and Conclusion

75. The development would not amount to inappropriate development within the Green Belt and, as such, it is not necessary to consider the effect on the openness of the Green Belt as a distinct matter. Nonetheless, the proposal would have a significant adverse impact on the character and appearance of the area and the distinctive local landscape. In fact, the location on top of the ridgeline above the Vale of Belvoir is particularly unsuited to a development of the scale and nature proposed in my view.
76. Similarly, from the perspective of its effect upon the NAS Observatory, the proposal could not be in a more unsuited location, directly to the south, beneath what are presently dark skies. The development is contrary to the relevant policies of the development plan in respect of those two matters and I attach significant weight to the harm that would be caused. Setting aside any other environmental issues the harm identified in those issues alone would be sufficient to outweigh the benefits associated with the proposal.
77. That is especially the case given the absence of any assessment of potential alternative locations within the ES/ as part of the application. In other words, no assessment has been made as to whether the associated benefits could be achieved in a location that would cause less harm.
78. My findings on the likely environmental impacts add to the weight against the proposal. On the information before me I am not satisfied that acceptable living conditions would be maintained for neighbouring residents. I also have concerns relating to the effect on adjacent wildlife and habitat, related to the absence of sufficient and up to date survey work.
79. I am aware that the EIA Regulations dictate that planning permission must not be granted unless an EIA has been carried out, including "the cumulation of effects with other existing and/or approved projects". However, whether the EIA in this case was deficient in that respect is less than clear in my view. In any event, given that the balance of material considerations in this case clearly indicates that planning permission should not be granted, I find it unnecessary to reach a definitive finding on that point.
80. Overall, the proposal is clearly contrary to the relevant policies of the development plan as a whole and no material planning considerations have been put forward to indicate that a decision should be taken contrary to those policies. Accordingly, I shall dismiss the appeal.

Chris Preston

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Ian Pick BSc (Hons) MRICS	Agent
Mr Richard Barlow	Appellant
Mr James Barlow	Appellant
Mr Stephen Smith	Environmental consultant
Mr Paul Smith	Noise consultant
Mr Matt Stoaling	Odour/ ammonia consultant

FOR THE LOCAL PLANNING AUTHORITY:

Ms Elizabeth Thomas	Principal Planning Consultant
Ms Helen Knott	Service Manager
Cllr Clarke	Leader of the Council and ex member of the planning committee

INTERESTED PERSONS:

Mr Ben Fullbrook	Of Counsel, acting for the local residents' group
Mr Tim Bowden	Local resident
Mrs Lindsey Bowden	Local resident
Dr Michael Bull	Michael Bull & Associates
Mr George Edwards	Local resident
Mr Andrew Shepherd	Local resident
Ms Samantha Farmer	Local resident
Mr Richard Folks	Local resident
Mr Richard Severn	NAS
Mr James Dawson	NAS
Cllr Tina Combella	Elected member
Mr Barry Jacksfield	Local resident
Mr Swales	Local resident
Mr Simon Phillips	Local resident