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The Planning Inspectorate
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Attn: Ian Aston, Case Officer

By email only: RT1@planninginspectorate.gov.uk

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

Our ref: STR3/1-MM/RS

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30 April 2021

Dear Inspectorate,

**Submissions on behalf of Stradbroke & Thorndon Parish Councils –
Appeal of Mid Suffolk Council's decision to refuse planning permission for
poultry sheds at Castle Hill Farm, Castle Hill, Eye, Suffolk, IP23 7JT (Council ref.
DC/20/02052); APP/W3520/W/21/3266498**

We are jointly instructed by Stradbroke & Thorndon Parish Councils to object to the above appeal made in respect of Mid Suffolk Council's decision to refuse a planning application for the "Erection of 3no. poultry houses (following demolition of 3 existing houses) with associated admin block, store, feed bins and alterations to vehicular access" at Castle Hill Farm, Castle Hill, Thorndon, Eye, Suffolk IP23 7JT.

We have read and support the points made by the Council in their Statement of Case and do not seek to repeat those reasons for refusal in our submissions. However, we would highlight that paragraphs 170 & 180 of the NPPF clearly mean that odour is a material consideration which must be considered in planning decisions. Odour impacts are encompassed within the duty on decision makers in para 170 to prevent new development contributing to unacceptable levels of air pollution and to help improve air quality. If there was any doubt this was the case, this is made abundantly clear by the section of the National Planning Practice Guidance (PPG) headed "What air quality considerations does planning need to address?" which states that "Odour and dust can also be a planning concern, for example, because of the effect on local amenity." (Para 001 Reference ID: 32-001-20191101)

The applicant also appears to argue that Para 180 of the NPPF does not encompass odour. However, Para 180 is drawn in broad terms, stating:

“Planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development.”

This is then followed by three specific factors/actions that should be considered as part of this duty, but these three clearly do not form a ‘closed list’. The policy is drawn in broad general terms. Such a reading of Para 180 is in line with the general thrust of the Framework which is clearly drawn to protect local amenity, as set out in Para 127 (f), to the effect that policies and decisions should “create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users...”.

Odour is therefore clearly a material consideration which must be considered.

Odour

Peak odour emissions

We note that the odour assessment submitted on behalf of the Applicant does not quantify the peak odour emissions that will be generated at the site. This is significant because it is admitted that “Peak odour emission rates are likely to occur when the housing is cleared of spent litter at the end of each crop. There is little available information on the magnitude of this peak emission, but it is likely to be greater than any emission that might occur when there are birds in the house.” (Odour Report, ES Appendix 3, section 3.5)

Given that peak emissions are likely to be significantly higher than at other times, it is necessary for the applicant to provide details about the upper limits of these emissions in order for the impacts at the times of clear-out of the sheds to be assessed.

Additionally, whilst the Odour Report asserts that clean-out is normally “around two hours per house,” the time taken to clear out chicken sheds can vary greatly and, in reality, the time taken can be much longer. We understand from experts whom we have consulted and others living near similar installations that it is not unusual for the clear-out process to take place over multiple days for a facility of this size. By assuming that clear-out will take place over such a short time, the 98th percentile values in the applicant’s Odour Report are unaffected by the much greater odour levels generated during this period. It should be noted that if the clear-out process were, in fact, to take 24 hours, this would mean that the 98th percentile value would have to reflect the odours produced during the clear-out process.¹

More generally, the Odour Report is completely opaque in how certain figures have been arrived at. The Report simply states that “The specific odour emission rate used for the clearing process is approximately 3.35 ouE/bird/s and the 98th percentile emission rate is approximately 1.45 ouE/bird/s.” These figures for the odour emissions

¹ 24 hours, equivalent to 1 out of a 48-day cycle (38 days plus 10 days between each crop) means that this period would involve more than 2% of each cycle.

purportedly likely to be generated by each bird are then used as inputs into a detailed dispersion model to arrive at the odour likely to arise at nearby sites. However, no information is given as to why these per bird figures were used and no source is cited to indicate that they are supported by any other guidance or scientific literature or that they represent a reasonable estimate of the actual odour likely to be produced. Should the figures be underestimates, or subject to any uncertainty, the actual odour experienced at nearby receptors could be significantly higher than the model predicts. It is notable that – contrary to IAQM guidance – the Odour Report does not include a section on uncertainty which considers factors which might give the reader information on the possible extent to which the model results might differ from real-world conditions.² We respectfully submit that the lack of such information on uncertainty means that the Inspector must take a cautious approach to reliance on the figures in the report - particularly where the applicant attempts to argue that certain exceedances of the thresholds for significant odour impact are minor. (See ES Addendum, para 2.24)

Objection by The Environmental Agency and Environmental Health Officer

The Applicant argues that the Environment Agency and Council fail to appreciate the significance of NPPF Para 183, which states that planning decisions should assume that pollution control regimes will operate effectively. The facility here will be subject to an environmental permit and the planning decisionmaker must not seek to duplicate controls in the permit based on a belief that the EA might fail to ensure compliance with the permit, for instance.

However, far from meaning that the EA's strong objection should be ignored, a proper reading of Para 183 in fact supports refusal. The EA's objection underlines the fact that the Agency does not consider that it can effectively control the odour to avoid unacceptable impacts on nearby sites.

The EA made a particular point about the impact on the nearby work site and residential properties in its objection letter 3 July 2020, firmly stating that "it is not appropriate for its location, having regard to the effects of pollution on health when taking account of the potential sensitivity of the nearby workplaces and dwellings to adverse effects from pollution".

Given that it is the role of the Environment Agency to regulate IPU operations so as to minimise odour pollution and meet national air quality standards, its recommendation for refusal of the application clearly indicates that it considers that the site's location means that the EA would not be able to prevent "unacceptable odour pollution" via the permitting process. This position is set out clearly in their objection letter of 3 July 2020:

"the location is too close to the research facility/workplace to the north. Due to this the development would not be able to adhere to Best Available Techniques, in relation to odour, that would be required by the Environmental Permit... The Environmental Statement... suggests that such a workplace can be classed as "Low Sensitivity receptor" as it is assumed to be only occupied during working hours. However, the Environment Agency's H4 Odour Management Guidance classes Industrial or Commercial workplaces as "Medium Sensitivity". Therefore the conclusion of the report under plays the risk of odour pollution at this workplace. The effect of this farm being granted planning permission is likely to be unacceptable odour pollution."

² IAQM Guidance pages 35-36.

The Applicant has also argued that the EA's objection incorrectly classifies the nearby Covance site as being a medium sensitivity receptor, and that this led the Council officer to also evaluate the site incorrectly. However, even if one accepts that the IAQM guidance is the only relevant guidance from this standpoint (which we do not)³, the site clearly falls into the medium sensitivity category because of its status as a workplace and commercial premises. The IAQM guidance specifically gives as an example of a medium sensitivity receptor "places of work, commercial/retail premises". This is in contrast to examples of low sensitivity receptors which the guidance indicates would be areas where "people would reasonably be expected to be present only for limited periods of time as part of the normal pattern of use of the land" (IAQM Guidance page 12). Examples given include "industrial use, farms, footpaths and roads". Therefore, under the IAQM guidance, the conclusion by the EA and Council that the Covance site is a medium-sensitivity receptor is clearly the only sensible result. Any claim by the Applicant that the EA has misunderstood the guidance that should be applied is clearly academic as it would clearly not have materially changed their conclusions about sensitivity of the site.

Classification of the Covance site

Further to the above, the Council's Officers had clear regard to the IAQM guidance in their decision and cannot be said to have applied the wrong guidance as is asserted by the Applicant. The Council's internal conservation officer, whilst agreeing with the EA that there would be unacceptable odour impact, considered the commercial (rather than industrial) nature of the site as the reason for its classification:

"I agreed with the Environment Agency' comments and recommendation for refusal due to the predicted and unacceptable odour impact on the existing neighbouring commercial premises (Covance Site). I understand the Agency have also raised concerns about the residential premises under the applicants' control (Castle Hill Farm (a bungalow)) and also Elm Cottages (a terrace) to the north of the development. The odour dispersion report by AS Modelling & Data limited concludes that: "At the nearby commercial properties to the north of the proposed poultry houses, the predicted odour concentrations exceed 5.0 ouE/m³ as an annual 98th percentile hourly mean, which is in the range that UKWIR research suggests gives rise to a significant proportion of complaints. The Environment Statement submitted, however, states that this concentration will have low to negligible impact on the neighbouring premises due to its low sensitivity to odour. The low sensitivity is based on the Covance site being considered industrial in nature.

I feel this is not correct. The Covance site, I understand, comprise research facilities and offices more akin to a commercial premises as described in guidance and as a result will have a medium (higher) sensitivity to the predicted odour. In this circumstance the predicted odour concentration will have an unacceptable impact on the Covance site which the Environment Agency cannot control through the permitting regime they enforce." (email dated 4.11.20)

³ It may be noted in this regard that the Applicant's own Odour Report in Section 3 which is described as setting out "relevant guidelines" (page 2) discusses the Environment Agency's H4 Odour Management guidance at length and does not mention the IAQM Guidance – and nor is the IAQM guidance mentioned anywhere in the Report.

Furthermore the Officer who carried out the Report recommending refusal of planning permission clearly set out the IAQM guidance and carried out an analysis of the site based on that guidance:

“The location and nature of the proposed development has the potential to have an unacceptable odour impact on the amenity of local residents and workers. A number of concerns have been raised by residents and Parish Councils regarding the impact of odour from the development, in context with existing odour impacts from other operations in the area on the health and living conditions of the community.

The application documents include an odour and ammonia assessment for the proposal. These documents explain that odours from intensive livestock operations have the potential to be ‘moderately offensive’ with the likelihood of impact increasing as the birds mature through the cycle with increased odour production and the need for ventilation resulting in greater emission levels. Peak emission levels are predicted to occur at the end of each cycle when the litter is cleared out of the buildings.

The odour assessment concludes that the predicted odour levels at the nearest residential properties would be below the Environment Agency threshold for moderately offensive odours and would therefore be acceptable but it finds that the levels likely to be experienced at the Covance site would exceed the threshold and have potential for significant complaints.

There are approximately 300 people employed at the Covance site, working in office and laboratory spaces within the complex. The buildings are also understood to have air intake equipment which may have the effect of passing odours into the buildings.

...There is likely to be an odour impact experienced by employees at the Covance site that would result in an unacceptable loss of amenity at this site. The land is therefore not appropriate for the proposed use because the odour generated by the operation would contribute to unacceptable levels of air pollution in the locality, contrary to the objectives of the NPPF.”

The Officer’s discussion of amenity at the work site clearly utilises the IAQM framework which compares a medium sensitivity receptor as a site where “users would expect to enjoy a reasonable level of amenity...” to a low sensitivity receptor which includes surrounding land where “the enjoyment of amenity would not reasonably be expected”.

The Applicant also argues that the issue of whether “the Covance site is a low sensitivity receptor or a medium one is a moot point because the receptor impacts to the Covance site are either “negligible” or “slight”; however, it is not clear on what basis the Applicant can make this assertion. The applicant in its statement of case circles the section of Table 7 from the IAQM Guidance which relates to values from 3.0 to less than 5 C₉₈, O_{1E}/m³. However, in fact the values reported by the Applicant’s consultant exceed this level.

As noted by the Council’s Environmental Health Officer in his email 4 November 2020, the odour dispersion report by AS Modelling & Data Ltd concludes that “At the nearby commercial properties to the north of the proposed poultry houses, the predicted odour

concentrations exceed 5.0 ouE/m³ as an annual 98th percentile hourly mean, which is in the range that UKWIR research suggests gives rise to a significant proportion of complaints”. Thus, even the Applicant’s own (optimistic) modelling indicates that odour concentration would exceed the threshold to have ‘moderate’ impacts for a medium-sensitivity receptor.

Potential impact of manure spreading

The Council’s reason for refusing the application centred on the unacceptable odour impact that would be caused by the poultry sheds themselves if permission were to be granted. This conclusion was notwithstanding the fact that the Applicant has failed, as it is required to do, to provide information about the further odour impacts that may arise as a result of the removal and spreading of waste generated by the site.

As far as we can see from our review of the documents, the Applicant has provided only vague assurances about how waste from the site will be processed. The Council Officer’s Report states that “it is likely that dead birds will go to the Cranswick site and litter waste to Thetford biomass power station. Waste water will also be removed from the site by a contractor, yet to be determined”. But no condition has been proposed which would restrict the spreading of manure nearby the site. In the absence of such a condition, the simple say-so of the applicant is insufficient to avoid any duty to assess the cumulative odour impacts that could be caused by manure spreading nearby (indeed, including on the unused portion of the field nearer the Covance facility).

The Court of Appeal in the case of *(Squire) v Shropshire Council [2019] EWCA Civ 888* made clear the importance of assessing waste when determining the impacts of a poultry development. In that case, the Environmental Statement failed to consider the odour and dust effects arising from storing and spreading the manure on land nearby the application site. Lindblom LJ’s view was that the ES was unlawful because it was “incomplete”.

The applicant’s statements in this case do not prevent the spreading of the manure nearby the site should that become more convenient or economic. Odour and dust impacts from the spreading of manure are therefore a foreseeable indirect effect of the proposed development in the absence of a condition or planning obligation ensuring that the waste will, in fact, be delivered to the Thetford biomass power station.

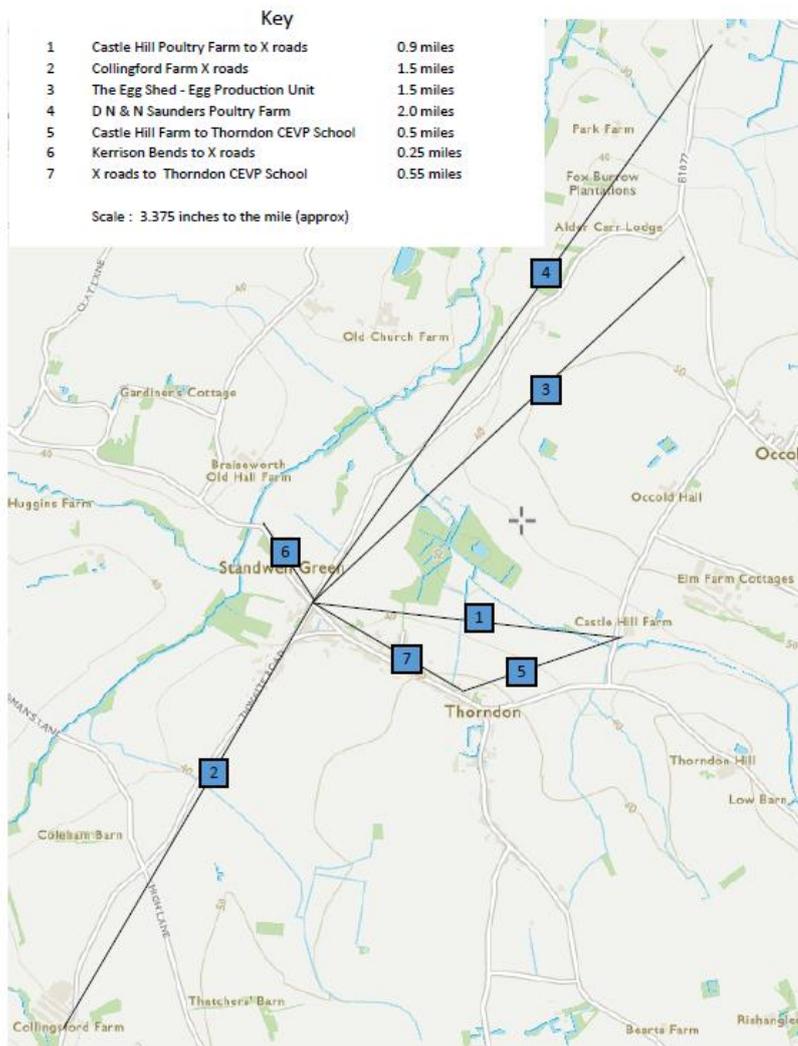
This failure to assess potential impacts from the potential spreading of manure is obviously significant given that the odour emissions are already considered by the Council and the EA to be unacceptable.

We also emphasise that, as discussed above, due to potential contributors to odour pollution presently being missing from the applicant’s odour assessment, the lack of any information on the uncertainty in the modelling, and the fact that certain assumptions appear optimistic, it is reasonable to consider that factoring in these additional elements may make predicted impacts even more severe, or increase impacts on other sensitive receptors such as nearby residences which are presently calculated as being exposed to lower odour concentrations. For example Elm Farm Cottages are currently said to be exposed to 2.10 ouE/m³. As a residential dwelling Elm Farm Cottages are a high sensitivity receptor and as such an increase in odour emissions could increase the impact from “slight” to “moderate” according to the IAQM guidance.

Traffic impacts

Both Parish Councils, along with other neighbouring Parishes, have objected to this proposal on the basis of traffic impacts. Particular concern has been raised about the routing of the HGV vehicles to and from the site. The Applicant has stated that it intends that traffic will likely pass through Thorndon or Eye, however Thorndon cannot reasonably be used to access the A140 due to an existing 7.5t environmental weight restriction, which by definition indicates that this road is unsuitable for use by heavy goods vehicles. We understand that the weight restriction was put in place for safety reasons because of lack of pedestrian foot paths.

Our clients have prepared a map which also draws attention to other traffic routing problems in the area.



We are instructed that at No. 6 on the map, there is an S bend on the through road from the proposed site to the A140 where the road is less than a full width and Suffolk Highways have refused to put a white line down the middle owing to the fact that 2 vehicles of any size could not pass each other. The road from Thorndon to the A140 is also the bus route on which it would be inappropriate to have HGVs carrying waste passing by bus stops. No. 7 indicates a crossroads to the north east where there are

many collisions every year. Additionally we are instructed that there is a further cross road (not represented on the map) where Stoke Road (coming from Thorndon) joins on to A140 which is frequently the site of major traffic incidents.

Eye Town Council has also commissioned a Town Centre Traffic Review which recommends that more roads through the town (which is just north of the area shown on the map) be weight restricted. As such, the current travel plans (which are not formally documented by the Applicant) seem not only to be unsafe but also potentially infeasible and may well result in traffic being diverted through smaller villages and/or onto other minor roads, which obviously brings with it further risks to safety and road suitability. As such, it is not possible to say at present that the development is appropriate from a traffic standpoint due to the lack of clarity about the proposed route to be used by vehicles. The Applicant must provide a detailed travel plan so that impacts of HGV traffic to and from the site can be properly evaluated. Without prejudice to the position that permission should be refused, if the application were approved, then a defined travel plan setting out the route of vehicles and the numbers allowed would also need to form a condition on the permission to ensure compliance.

Additionally, saved Policy T10 of the 1998 Mid Suffolk Local Plan requires a planning authority to “have regard to: i) the suitability of existing roads giving access to the development, in terms of the safe and free flow of traffic and pedestrian safety; ii) whether the amount and type of traffic generated by the proposal will be acceptable in relation to the capacity of the road network in the locality of the site”. Neither allowing weight restricted roads to be used for HGV vehicles or, in the alternative, allowing such vehicles to be diverted through small residential areas would accord with this policy and therefore the Applicant would need to offer a cogent solution to this dilemma.

Given the lack of certainty provided by the Applicant about the destination of waste, residents of Stradbroke are also particularly concerned about traffic impacts in their area, which would be probable if the waste is sent to an anaerobic digester plant which is situated in the Parish. We are also instructed that there is a pinch point in the main road running through Stradbroke which would require HGV vehicles to mount the pavement to pass other oncoming traffic.

Separately, it appears that the HTTC Transport Statement submitted by the applicant fails to depict the traffic impacts when HGV movements will be at a peak – namely during the last two weeks of the bird growth cycle (when numbers of feed deliveries increase) and during the period of bird removal/ harvesting, litter removal, clear-out and restocking with the next crop of birds. The HTTC Transport Statement only provides vehicle numbers for the whole cycle and as such does not capture the fact that there will be a concentrated period during which HGV traffic is likely to be heaviest, which means that the traffic levels are much more likely to cause disturbance than if the traffic was evenly dispersed over the period.

Cumulative impacts

There is also concern about the cumulative impacts of the operation of this site given a number of existing farms in the area. The map shown above helps to illustrate the proximity of neighbouring farms. The endpoint of the line labelled No. 1 on the map (eastern end) is the site of the proposed development. The endpoint of the line labelled No.2 is a well-established intensive poultry farm housing 350,000 birds each cycle. The endpoint of line No. 3 is a recently built free range egg production unit.

We are instructed that cumulative odour, dust, and other air emissions are of particular concern to Thorndon Parish Council given that at Thorndon primary school (the southern point of the triangle between lines no.7 and 5 on the map) 17.5% of the attendees have a diagnosed breathing problem.

Residents represented by Thorndon PC already experience smell and dust arising from the site at Collingsford (no. 2), particularly during a clear-out. Additionally, we understand there is another broiler unit at Braiseworth (not shown on the map) which also houses chickens from 1 day – 1 month old before exporting the chickens to another farm. An additional chicken farm in the area will have the effect of encircling the village of Thorndon with intensive poultry unit sites and the cumulative odour and traffic impacts of this on residents should be considered.

Our clients are also particularly concerned about the issue of cumulative effects, given the proposed expansion of the Cranswick chicken processing factory in Eye. The Cranswick site currently has capacity to process up to 1.6 millions birds per week, but Stradbroke Parish Council are advised that there are plans to double the weekly processing capacity at the facility, such that there is an anticipation of growth in all areas of the supply chain including farming and HGV traffic across the area.

In terms of traffic impacts, we are instructed that HGVs from neighbouring enterprises sometimes use the weight-restricted road through Thorndon and there is concern that the proposed development would increase this traffic, which is already difficult to regulate.

Conclusion

For all these reasons, we consider that this appeal should be refused.

Yours sincerely,



Richard Buxton Solicitors
Environmental, Planning & Public Law