

DECISION DATE 11 May 2007	APPLICATION NO. 07/00174/FUL A14	PLANNING COMMITTEE: 19 March 2007
DEVELOPMENT PROPOSED RETROSPECTIVE APPLICATION FOR THE ERECTION OF TWO POULTRY BREEDER HOUSES AND EGG STORE AND ANCILLARY HARDSTANDING AND LANDSCAPING		SITE ADDRESS LAND BETWEEN CARLOW WOOD AND WOODMAN LANE BURROW WITH BURROW LANCASHIRE WOODMAN LANE BURROW LANCASHIRE
APPLICANT: Mayfield Chicks Ltd 21 Union Street Ramsbottom Lancashire BL0 9AN		AGENT: HOW Planning

REASON FOR DELAY

None.

PARISH NOTIFICATION

The views of Burrow with Burrow Parish Council are awaited.

LAND USE ALLOCATION/DEPARTURE

The site is designated as a Countryside Area within the Lancaster District Local Plan.

STATUTORY CONSULTATIONS

Environment Agency - They have no objections in principle, although the information regarding drainage requires clarification and as a result a planning condition is suggested requiring the foul drainage details to be submitted within 6 weeks of any grant of planning permission.

County Highways - Views awaited.

Environmental Health Service - Views awaited

OTHER OBSERVATIONS RECEIVED

No observations had been received at the time of compiling this report. Any correspondence received will be verbally reported to Members.

REPORT

The Site and its Surroundings

The Mayfield Chicks (Carlow Wood) Farm is sited on the western outskirts of the hamlet of Overtown within the Burrow with Burrow parish. A belt of agricultural land separates the business from the settlement. Land remains undeveloped on all other sides.

The Unauthorised Buildings

The buildings in question are the two long, central poultry buildings shown on the applicant's plan. One has a floor area of 1,525 square metres, whilst the other is longer but narrower at 1,440 square metres. The left-hand poultry house has an eaves level of 2.6 metres, rising to a ridge height of 5.4 metres, whilst the right-hand one is smaller at the ridge but slightly taller at the eaves. The egg storage building in between the poultry houses is comparatively small with a floorspace of 160 square metres and is 5.7 metres at the ridge and 4.25 metres at the eaves level.

Planning History

The planning history of the site is complex. To summarise, Mayfield Chicks acquired the site in 1985 following the disposal of surplus farmland. The first chicken breeder sheds were erected under agricultural permitted development rights shortly afterwards.

During the early-1990's planning applications were submitted proposing additional breeder houses. To avoid further sheds being erected under the previous permitted development regime, the City Council granted consent and the use of the site intensified.

In October 2003 the Local Planning Authority were alerted to the construction of 3 new units in the centre of the site. Following an enforcement investigation, it transpired that no planning application had been made for the structures and that they constituted unauthorised development. The first of these buildings became operational in January 2004.

The first retrospective planning application was submitted in February 2004 (Reference: 04/00137/FUL) and proposed the retention of two poultry breeder houses, an egg storage building and ancillary works within the site compound such as the provision of hardstanding areas. This application was deferred on two occasions, which allowed Members to visit the site, but the application was eventually refused in June 2004.

This second retrospective application was submitted in September 2004 (Reference 04/01327/FUL). The decision was delayed for a number of reasons, not least the applicant disputing the need for a new planning application. The Local Planning Authority had to seek the advice of Counsel, and Counsel confirmed that the stance taken by the Local Planning Authority was correct in that planning permission was required. The planning application was refused in December 2005.

During June 2006 the applicant submitted an appeal against the second refusal. This appeal has been scheduled for a Public Inquiry in April 2007.

In the meantime the applicant submitted three Lawful Development Certificate applications. Lawful Development Certificates (LDC's) are different from planning applications in that the individual merits of the development are not relevant - the LDC's were an attempt to prove to the Council's legal satisfaction that the use/development did not require planning permission, or had been in existence for such a period of time that it would be exempt from the usual process of applying for planning permission, or any enforcement action.

The first LDC application, (Reference: 06/00641/ELDC) demonstrated that the lawful use of the site was for agriculture as defined by the Town & County Planning Act 1990. This was clearly the case and therefore a certificate was granted in September 2006.

The second LDC application (Reference: 06/00642/ELDC) demonstrated that all units (other than the 3 buildings subject to the current application) either benefited from permitted development rights at the time of construction, or were lawfully erected under a previous planning approval, or were lawful because they had existed on site for the necessary period to qualify for immunity from enforcement action. After seeking a formal response from Counsel, it was concluded that the applicant had demonstrated that this was the case and a Certificate was issued.

Finally, a third LDC application (Reference: 06/00643/PLDC) sought to demonstrate that the 2 units in the middle of the site that had never been erected, could theoretically be erected under the terms of a 1991 planning approval, providing that the unauthorised units that occupied their positions on the site were demolished. Again the Local Planning Authority consulted Counsel and their formal response indicated that the 2 units could potentially be erected in the centre of the site under the 1991 planning permission.

The granting of the three LDC applications has led the applicant to pursue this third retrospective application, because the planning background to the case has altered.

Discussion

Notwithstanding the legal background to the proposal, the application should also be assessed in terms of the matters that were unacceptable last time, namely odour, the potential for PM particles, and highway/traffic impact. The issue of site appearance and landscaping is also referred to despite not being a reason for refusal.

Other matters such as noise and fly infestation were satisfactorily investigated last time and were not reasons for refusal.

Odour and PM10 Particles

There have been other developments since the determination of application 04/01327/FUL. The Environment Agency has granted a licence for the site under the Pollution and Prevention Control Regulations 2000. The site required a permit for the rearing of poultry following the construction of the poultry houses in question and the egg handling building.

Due to the scale of the stocking numbers at the site (in excess of 40,000 birds), responsibility for environmental protection has since passed from the Council's Environmental Health Service to the Environment Agency. Consequently any complaints regarding odour nuisance, dust/PM10 particles or environmental protection are not handled by the City Council.

The numerous odour studies and the PM10 particle emission study which accompanied the last planning application were useful. However the City Council concluded that some of the reports were not thorough; that some data was missing from other reports; and that methodologies for some of the studies had not been provided in full. Whilst this did not invalidate the studies, they weakened them to such a degree that Members were unconvinced of their content.

As part of this new application a firm operating as Acoustic Air Ltd has reviewed all of the previous odour and PM10 studies. With regard to odour they refer to the Environment Agency's Guidance Note H4, which identifies an 'odour threshold' of between 3 and 6 ouE/m³ for 98% of the year. The studies previously undertaken indicated that odour concentration does not exceed the upper figure at any of the 'sensitive locations' (dwellings and residential gardens). The highest odour concentrations arise in the immediate vicinity of the farm, where worst case concentrations of 20/ouE/m³ or more would be expected for 2% of the year. The report continues by stating that predicted concentrations "along

Woodman Lane immediately outside the farm lie in the range of 10-20 $\mu\text{g}/\text{m}^3$, which is consistent with a mealy odour occasionally detected on land immediately surrounding the farm". Ammonia concentrations were similarly low in relation to identified thresholds, with highest concentrations being found within and directly outside the complex. However the report concludes that ammonia concentrations at the receptor locations were "between 18 and 40 times lower than the Environment Agency's Environmental Assessment Level for ammonia".

PM (Particulate Matter) 10 is the name given to those particles that have a diameter of 10 micrometers or less. They often originate from smoke, dirt or dust from industrial practices, farming or from highways, and are then carried on the wind.

The PM10 study submitted last time was short in length but demonstrated that PM10 levels were generally below the Air Quality Standard levels. One area of concern related to higher recorded levels at the start of that study, which the applicant attributed to the monitor "settling-down". This was not verified.

Acoustic Air's assessment states that Air Quality Management guidance was updated in 2006 to consider PM10 emissions from poultry farms. The guidance stipulates that *"At this stage, unless the authority is aware of any local circumstances that indicate an exceedance of the PM10 objective is likely, there is no need to take further action"*. Since the Environment Agency has now granted a permit to the farm, it is considered that they are the appropriate body for monitoring PM10 emissions.

The Environment Agency's consultation response is therefore critical in relation to both odour and PM10 emissions. They confirm that the IPPC permit covers the site and has done since March 2006, three months after the previous planning refusal. They have no environmental objections to the principle of this retrospective development.

The only outstanding matter at present relates to egg room drainage and liquid arisings from the poultry houses, which should be connected to a sealed catchment tank. The applicant advises that they are connected to a septic tank. The Environment Agency has requested clarification over the term 'septic tank' but are satisfied that the matter could be dealt with as a planning condition, and have suggested appropriate wording.

Given that the Agency is the legislative body for environmental protection, and that they have no objections to the principle of development, there does not appear to be any valid planning grounds for opposing the retrospective development in terms of odour and PM10 emissions.

Highway Impact

For the first time the applicants have engaged transport consultants (WSP Development & Transportation) to assess the traffic and highway impacts.

They confirm that eggs from the site are despatched to hatcheries at various locations across Northern England.

As part of the Transport Statement that applicant analysed road traffic accidents in the vicinity during a period of 5 years to May 2006. One accident was recorded on Woodman Lane involving a bicycle and a car. Other accidents on the A683 and the A65 did not involve junctions with Woodman Lane.

Traffic levels along Woodman Lane were assessed as "very low" during the period of study, with an average of 130 vehicles per day using the lane.

The Statement has assessed four different scenarios involving traffic to and from the site. The first involves assessment of the current site operations involving all of the units; the second scenario considers traffic movements associated with the approved/authorised units only; the third considers movements if the 1991 consents had been implemented in full (i.e. - if the unauthorised units were removed and replaced by the 2 units approved under the 1991 consent) and the fourth scenario

assesses the use of the site as a broiler farm as opposed to a breeder farm, based upon permitted buildings only.

Annual Average Daily Traffic (AADT) differs only slightly between the first three scenarios, ranging from 14.16 vehicles per day to 14.35 vehicles per day. The last scenario sees the AADT fall to just over 7 vehicles per day, although the number of Heavy Goods Vehicles increases.

One of the headline figures states that the site currently generates 456 HGV two-way movements per annum. This is significant given the width of Woodman Lane. However the number of feed deliveries would still be the same under Scenarios 2 and 3. The applicant has also confirmed (via an email received in addition to the Transport Statement) that the weight/size of the feed delivery vehicles would not change, irrespective of the number of chicken sheds. This is because changes in legislation have resulted in an increase to 28-tonne delivery vehicles, which allow greater load capacity. The vehicles deliver to a number of sites on a single trip, and changes to circumstances at one chicken farm would not alter the size of the vehicle.

Other vehicular movements associated with litter removal, stock deliveries and power washing are slightly less over the course of the year under Scenarios 2 and 3.

The applicant refers to a 'Voluntary Route Management Strategy' that ensures that all non-daily site personnel arrive and depart via the A65. Only one daily vehicle arrives via the A683 and this carries 7 agency workers to the site.

Previously the applicant had agreed to a limit on delivery vehicles. It would seem that this would be difficult to effectively enforce because of the requirement for constant on-site monitoring. If Members are satisfied that they cannot oppose the vehicular movements then it may be more prudent to condition the agreement of a traffic route management strategy, where HGV's use one route only. The suggested route would be via the A683, because it would remove the negotiation of the tightest bend in Overtown Village.

The conclusion states that there "would be little or know (sic) change in the maximum traffic generated by the site, approximately 14-15 vehicles per day". Given that the applicant states that the scale of the HGV's would remain unaltered regardless of the number of sheds, and that the County Highways Department does not object to the proposal, there appears to be no justifiable planning grounds for opposition in highway terms.

Site Appearance & Landscaping

The situation regarding site appearance remains unchanged. From the south the site is quite densely screened by existing landscaping. However the elevated highway results in the light-coloured roofs being visible above the landscaping. This is considerably noticeable all year round, but especially during summer months when the glare from the roofs is striking and discordant with the rural surroundings.

During consideration of 04/01327/FUL the applicant had agreed, via their agents at the time, to re-coat the colour of all three new roofs an Olive Green colour. Whilst the appearance of the buildings was not opposed by Members last time, it is an issue which could be addressed via a planning condition should planning permission be retrospectively granted now.

A further justifiable condition would be the provision of additional planting, particularly on the north-east boundary of the site. Whilst it is recognised that there is only a thin strip of land that could accommodate landscaping, this will be preferable to the current arrangement where the site is totally visible through a small agricultural post and rail fence.

Recent Appeal Decisions

The applicant has submitted a copy of a recent appeal decision involving the erection of a poultry shed in Whissendine (Rutland Council). The applicant advises that the appeal was allowed and costs awarded against the Local Planning Authority. Whilst this does not set a precedent, and acknowledging that there are differences between that case and the current proposal, the Inspector made a number of general comments that are worth repeating.

With regard to dust, he acknowledges that "the keeping of free-range poultry can give rise to some dust, and that the stack effect of rising air currents in the buildings will carry a proportion, particularly of the smaller particles, outside through the ventilation system...The Environmental Statement (submitted with the Whissendine proposal) indicates that EU air quality guidelines are unlikely to be breached at distances greater than 100m from the source".

In relation to smell the Inspector also accepts that the "keeping of poultry can give rise to smell, especially from manure...however all types of poultry keeping do not smell to the same extent". He then cites intensive broiler keeping as a more odorous activity, before concluding that "It is not uncommon in a rural area for there to be smells from agricultural operations, including stock-keeping and the spreading of manure on land...against that background, I do not think it unreasonable for those living in a rural community to experience 'rural' smells from time to time, It is part and parcel of rural life".

A striking similarity between the Whissendine case and the proposal before Members is the granting of LDC's. At Whissendine, a Certificate was granted for use of the land for hens and the siting of sheds for shelter. The Inspector concluded that this was the appellant's "fallback position". He continues by stating that the "existence of a viable fallback position, while not central to my consideration of these appeals, nonetheless adds weight to my conclusions".

The fallback position in the Mayfield Chicks case would be the removal of the unauthorised units and the erection of the 2 unbuilt sheds permitted by the 1991 consent. It is recognised that the 1991 units are smaller in size than the unauthorised sheds. However, given the Transport Statement data and the absence of a highway objection, the Local Planning Authority concludes that there will be no significant changes to the scale of the HGV vehicles, and no considerable differences to traffic movements generally.

It may be assumed that smaller sheds would perhaps lead to less odour, but this too is not a reason for opposing the development, especially given that the Environment Agency, as legislative body, does not oppose the development.

Other Matters

The applicant correctly states that they would not require planning permission to change the use from a breeder farm to a broiler farm. Whilst vehicle numbers would fall (due largely to reductions in staff), broiler farms generally produce more objectionable smells.

If Members are minded to support the application, the applicant has offered a planning condition preventing the change of use occurring without a new planning application.

Conclusion

The Mayfield Chicks saga has continued for in excess of three years. This has been due, in no small part, to the actions of the applicant and in particular the complex legal debate that embroiled the 04/01327/FUL application. It is regrettable that the sheds were erected without permission in the first instance. Retrospective planning applications adversely affect public confidence in the planning system and often place the Local Planning Authority in a difficult position.

The fact that there is an imminent Public Inquiry appeal hearing should not affect deliberation of this case. Similarly, the Whissendine appeal decision is not a basis for making a decision on this proposal, although it provides an insight into how the Planning Inspectorate assessed the issue of odour and the use of a 'fallback' position.

The Local Planning Authority acknowledges that the background to the application has changed since it was last refused by Members. The Environment Agency's remit in monitoring any environmental impacts is a new and important development to the case. The granting by the Agency of an IPPC permit occurred after the last planning refusal and is a material consideration in this matter. The absence of any environmental objection from the controlling body is a significant development given their remit.

The highway data is not disputed by the County Highways Department and the fact that 28-tonne vehicles would continue to deliver to this site regardless of whether the sheds are demolished or replaced with the smaller units approved in 1991, removes any justifiable highway objection. Both the Local Planning Authority and County Highways would prefer delivery vehicles to be smaller, but given that the Carlow Wood site is just one delivery point it is highly unlikely that this will ever occur.

The presence of a fallback position places the applicant in a strong position, especially as the 1991 units can be erected without any input from the planning authority. In the event that this third application were refused and the appeal dismissed, an Enforcement Notice requiring the removal of the unauthorised sheds could not impose conditions on the replacement buildings, as they already benefit from planning consent. There is the prospect that an Enforcement Notice could direct that the existing sheds be reduced to the size of the lawfully approved units, in which case conditions may be permitted. However these would be open to challenge via an Enforcement Notice appeal.

The Local Planning Authority concludes that whichever course of action is eventually permitted, be it the retention of the existing units or the erection of the replacement (smaller) units, it would still lead to an intensification of the site over and above pre-2003 levels. It is felt that in the absence of environmental or highway objections from the relevant statutory consultees, the most prudent course of action would be to accept the unauthorised units subject to strict planning conditions. In particular, the applicant has indicated that they would be willing to accept a condition which removes permitted development rights to change the use of the site to broiler-rearing. Other conditions would seek to enhance the landscaping on the thin strip of land at the north-eastern boundary, to agree a traffic route for delivery vehicles and to change the colour of the roofs of the 3 units to Olive Green. Conditions regarding odour and dust are now inappropriate given the IPPC regulations.

It is on this basis that a recommendation of approval has been reached.

HUMAN RIGHTS IMPLICATIONS

This application has to be considered in relation to the provisions of the Human Rights Act, in particular Article 8 (privacy/family life) and Article 1 of the First Protocol (protection of property). Having regard to the principles of proportionality, it has been concluded that there are no issues arising from the proposal which appear to override the responsibility of the City Council to regulate land use for the benefit of the community as a whole, in accordance with national law.

RECOMMENDATIONS

That **PLANNING PERMISSION BE GRANTED** subject to the following conditions:

1. Removal of permitted development rights to prevent use of site for broiler keeping/rearing.
2. Traffic route management strategy to be agreed.
3. Additional planting to north-east boundary of site to be agreed.
4. Roof colour of 3 units to be re-coated Olive Green within 3 months of the date of the consent and maintained as such at all times.
5. As required by consultees.