

# Public Document Pack



*Neuadd y Sir / County Hall, Llandrindod, Powys, LD1 5LG*

Os yn galw gofynnwch am - If calling please ask for

Carol Johnson

*Ffôn / Tel:* 01597826206

*Ffôn Symudol / Mobile:*

*Llythyru Electronig / E-mail:* carol.johnson@powys.gov.uk

## **PLANNING, TAXI LICENSING & RIGHTS OF WAY COMMITTEE**

**Thursday, 3rd May, 2018**

---

The use of Welsh by participants is welcomed. If you wish to use Welsh please inform us by noon, two working days before the meeting

---

### **SUPPLEMENTARY PACK**

- 1.1. **P/2015/0131 Land at Penarth Farm, Cregrina, Llandrindod Wells, Powys, LD1 5SF**

(Pages 3 - 40)

This page is intentionally left blank

# 4.2

## Planning, Taxi Licensing and Rights of Way Committee Report

### UPDATE REPORT

<b>Application No:</b>	P/2015/0131	<b>Grid Ref:</b>	310991.43 254053.58
<b>Community Council:</b>	Glascwm	<b>Valid Date:</b>	<b>Officer:</b> 09/02/2015 Tamsin Law
<b>Applicant:</b>	Mr V Powell Hundred House Garnwen Llandrindod Wells Powys LD1 5RP		
<b>Location:</b>	Land at Penarth Farm Cregrina Llandrindod Wells Powys LD1 5SF		
<b>Proposal:</b>	Full: Erection of an agricultural building for use as a free range egg production unit (16,000 bird) together with feeds bins, formation of vehicular access road and highway improvements at main junction off A481 and all associated works		
<b>Application Type:</b>	Application for Full Planning Permission		

### The reason for the update

A late representation has been received from CPRW and is appended to this report.

### Principal Planning Policies

#### National Policies

Planning Policy Wales (9th Edition, 2016)  
Technical Advice Note 5 – Nature Conservation and Planning (2009)  
Technical Advice Note 6 – Planning for Sustainable Rural Communities (2010)  
Technical Advice Note 11 – Noise (1997)  
Technical Advice Note 12 – Design (2016)  
Technical Advice Note 18 – Transport (2007)  
Technical Advice Note 23 – Economic Development (2014)  
Technical Advice Note 24 - The Historic Environment (2017)  
Welsh Office Circular 11/99 – Environmental Impact Assessment

#### Local Policies

Powys County Council Local Development Plan (2018)  
SP7 - Safeguarding of Strategic Resources and Assets  
DM2 – The Natural Environment  
DM4 – Landscape  
DM6 – Flood Prevention and Land Drainage  
DM7 – Dark Skies and External Lighting  
DM13 – Design and Resources

DM14 – Air Quality Management  
E6 – Farm Diversification  
T1 – Travel, Traffic and Transport Infrastructure

RDG=Powys Residential Design Guide NAW=National Assembly for Wales TAN= Technical Advice Note  
UDP=Powys Unitary Development Plan, MIPPS=Ministerial Interim Planning Policy Statement

## **Other Legislative Considerations**

Crime and Disorder Act 1998

Equality Act 2010

Planning (Wales) Act 2015 (Welsh language)

Wellbeing of Future Generations (Wales) Act 2015

## **Officer Appraisal**

The comments made by CPRW relate to the following;

- Unacceptable impacts on neighbours in very close proximity to intensive poultry unit
- Unacceptable traffic impacts
- No manure management plan
- Unacceptable landscape and visual impacts
- Unacceptable impact on the setting of Penarth Motte Scheduled Ancient Monument
- Unsuitability of and uncertainty regarding ranging areas
- Impacts on ancient woodland and Woodland Trust advice disregarded
- Failure to apply the Precautionary Principle to conservation of White Clawed Crayfish (European Protected Species) and to the protection of the Wye SAC

I will address these points along with the further consideration of the proposed development.

### Principle of Development

Policy E6 of the Powys Local Development Plan accepts the principle of appropriate farm diversification developments within the open countryside where the schemes are of an appropriate intensity, does not have a detrimental impact upon the vitality and viability of adjacent land uses, has adequate parking facilities and is located within or immediately adjacent to the existing farm complex. In light of the above, Officers are satisfied that the principle of the proposed development at this location is generally supported by planning policy.

### Impact on neighbour amenity

LDP policy DM13 and DM14 states that development proposals will only be permitted where the amenities enjoyed by the occupants of nearby or proposed properties shall not be unacceptably affected by levels of noise or odour.

### *Noise*

Consideration of neighbour amenity is provided within the original committee report which states the following;

The application is accompanied by 'Plant Noise Assessment' prepared by Matrix Acoustic Design Consultations, dated 21st January 2015. This report considers the operation of the fans on the poultry house and the potential for noise from their operation to harm amenity. It is noted that one of the residential properties closest (bungalow) to the application site is within the ownership of Penarth whilst there are a further two non-associated properties within 480 metres of the proposed development. The properties included within the assessment are as follows;

- Property A – Penarth Farmhouse (approximately 70 metres to the north-west, private ownership, un-associated with Penarth);
- Property B - Brookfield (approximately 480 metres to the south west, private ownership, un-associated with Penarth).

At the identified properties, the noise assessment indicates that subject to attenuation features, the noise levels will not exceed the agreed day and night rating level limits.

Members are advised that this assessment has been considered by the Councils' Environmental Health Officer. No objections have been received at the time of writing this report however a series of standard conditions have been recommended to control noise emissions and safeguard residential amenity.

The application is therefore considered in accordance with policy DM13 of the Powys LDP.

### *Odour*

In terms of odour, odour levels can be assessed using odour dispersal model based on standardised values. Odour concentrations are expressed as European odour units per cubic metre (ouE/m<sup>3</sup>). The Environment Agency (EA) has published guidance for the objective assessment of odour impacts: How to Comply with Your Permit- H4 Odour Management. It recommends the use of 98th percentile of hourly average odour concentrations modelled over a year. Appendix 3 of this document provides a benchmark of 3.0 ouE/m<sup>3</sup> for moderately offensive odours. Moderately offensive odours are identified as including those associated with intensive livestock rearing. It is noted that the use of this threshold has been supported by Inspectors in planning appeal decisions.

Concerns have been raised in the representations received from CPRW regarding the impact of odour on nearby residential dwellings. They highlight that TAN6 states the following;

*To minimise the potential for future conflict between neighbouring land uses, planning authorities should exercise particular care when considering planning applications for houses or other new protected buildings within 400 metres of established livestock units. It is important also for planning authorities to keep incompatible development away from other polluting or potentially polluting uses.*

In assessing the application odour assessments and manure management plan have been submitted in support of the application. The odour assessment concludes stating that odour exposures would be below the Environment Agency's benchmark for moderately offensive odours. The assessment also states that the predicted 98<sup>th</sup> percentile hourly mean odour

concentrations are also below the  $1.0\text{ou}_e/\text{m}^3$  at the majority of receptors considered and at these levels, odour from the poultry unit would be rarely detectable.

As part of this application process Natural Resources Wales, the county ecologist and Environmental Health officers have been consulted who have raised no objection to the odour assessment and proposed manure management plan and that the proposed development would not have an unacceptable adverse impact on the amenities enjoyed by occupants of neighbouring properties by reason of odour.

In light of the above, it is considered that the proposed development will not have an unacceptable adverse impact on the amenities enjoyed by occupants of nearby properties by reasons of odour. Following consultation, it is noted that no concerns have been raised by the Environmental Health Department in this respect. Therefore, Development Management considers the proposal to be in accordance with planning policy, in particular LDP policy DM13 and DM14.

### Traffic Impacts

Policy T1 of the Powys Local Development Plan 2018 states that development proposals should incorporate safe and efficient means of access to and from the site for all transport users, manage any impact upon the network and mitigate adverse impacts.

CPRW raise concerns regarding the impact of the proposed development on highway users and that movements using agricultural trailers to remove manure from the building have not been considered.

The proposed poultry development includes the provision of a new highway access and track to serve the application site together with highway improvements at the A481 junction in Hundred House. Information submitted indicates that the proposed development will generate 2.4 lorry movements per week including feed deliver, egg collection, bird delivery and bird collection. Following ongoing discussion and consultation with the Highway Authority, a response has been received which confirms that Highway Officers are satisfied that the appropriate visibilities can be provided both at the class I road junction and at the site access. On this basis, appropriate highway conditions have been recommended.

It is also considered that the current use of the site, for the purposes of agriculture, does not have any restrictions regarding the movement of trailers or other types of agricultural vehicles.

In light of the highways officer's comments and suggested conditions, officers consider that subject to the conditions suggested, the proposed development is in accordance with planning policy, particularly policy T1 of the LDP, Technical Advice Note 18 and Planning Policy Wales.

### No manure management plan

Policy DM2 of the Powys Local Development Plan seeks to maintain biodiversity and safeguard protected important sites. Policy DM2 states that proposed development should not unacceptably adversely affect any designated site, habitat of species including locally important site designations.

Within the update report for Committee Manure Management is discussed. An updated Manure Spreading Plan has been provided within the Method Statement Pollution Prevention Plan.

The manure management plan identifies that no manure will be spread within 10m of any watercourse. The manure management plan includes a Contingency Plan detailing plans for storing any manure, slurry and dirty water produced at times when spreading may not be possible. Details have been provided to demonstrate that sufficient land holding capacity to enable the spreading of manure at below the CoGAP guidance of 250kg/N per hectare. The measures identified within the document are considered to be in line with current guidelines regarding manure management.

Environmental Health, Ecology and NRW have been consulted on the application and offer no objection to the proposed development. The Powys Ecologist has recommended that the Manure Management is secured by condition. As such, it is considered that the proposed development complies with the relevant LDP policies.

### Landscape and Visual Impact

Comments from CPRW raise concerns regarding the landscape and visual impact of the proposed development.

Guidance within policy DM4 of the Powys Local Development Plan, indicate that development proposals will only be permitted where they would not have an unacceptable impact on the environment and would be sited and designed to be sympathetic to the character and appearance of its surroundings. Policy DM4 requires a Landscape and Visual Impact Assessment to be undertaken where impacts are likely on the landscape and proposals should have regard to LANDMAP, Registered Historic Parks and Gardens, protected landscapes and the visual amenities enjoyed by users of the Powys landscape and adjoining areas.

Policy DM13 of the Powys Local Development Plan seeks to ensure that development is designed to complement and/or enhance the character of the surrounding area in terms of siting, appearance, integration, scale, height, massing and design detail. Developments should not have an unacceptable detrimental impact upon the amenities enjoyed by the occupants or users of nearby properties by means of noise, dust, air pollution, litter, odour, hours of operation, overlooking or any other planning matter.

The application site comprises of agricultural land located immediately to the south of the existing farm complex, at a lower ground level. The proposed building will be sited in the north western area of the existing field whilst the proposed access track will run parallel to the northern site boundary. The application site is enclosed by mature hedgerows and slopes gently from west to east.

The application site is located within the 'Upland valley, Edw & adjacent' aspect area of Landmap and recognised as a well-defined valley comprising of distinctive small settlements, strong field patterns, hay meadows, hedges, tree and watercourse woodlands. Landmap acknowledges the tranquil and attractive qualities of the aspect area which has attractive views both in and out and further encourages the conservation of the landscape elements

identified above. For the purpose of Landmap, the overall visual and sensory value is identified as 'high'.

Officers consider that the development will be viewed against the backdrop of the existing buildings complex and due to the topography of the land, the site being set at a lower level, the profile of the building will be low therefore reducing any impact. A landscaping scheme has been submitted which provides additional tree planting which will aid in the assimilation of the building within the landscape.

Development Management acknowledges that the proposal will result in the loss of the north western part of the field and represents a substantial built addition to the rural landscape, given the location of the development adjacent to the existing complex together with existing screening, it is not considered that the proposed development would compromise the desire to conserve the key landscape elements defined above.

In light of the above observations and notwithstanding the scale of the proposed development, it is considered that the proposed development is in accordance with planning policy. Officers consider that the proposed poultry unit is in accordance with policies SP7, DM2, DM4, DM7, DM13 and E6 of the Powys Local Development Plan.

#### Impact on the setting of Penarth Motte, scheduled ancient monument

CPRW raise concerns regarding the impact of the proposed development on the setting of Penarth Mount Motte RD076, a scheduled ancient monument.

The desirability of preserving an ancient monument and its setting is a material consideration in determining a planning application. Where nationally important archaeological remains and their setting are likely to be affected by proposed development, there should be a presumption in favour of their physical preservation in situ. Paragraph 17 of Circular 60/96, Planning and the Historic Environment: Archaeology, elaborates by explaining that this means a presumption against proposals which would involve significant alteration or cause damage, or which would have a significant impact on the setting of visible remains.

Policy SP7 of the Powys LDP states that to safeguard strategic resources and assets in the County, development proposals must not have an unacceptable adverse impact on the resource or asset and its operation. Scheduled ancient monuments are identified as strategic resources and assets within this policy.

Technical Advice Note 24: The Historic Environment states the following regarding the setting of historic assets;

*The setting of an historic asset includes the surroundings in which it is understood, experienced, and appreciated embracing present and past relationships to the surrounding landscape. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral.*

The application site lies within approximately 180 metres (proposed access) of the scheduled ancient monument known as Penarth Mount Motte RD076, confirmed by Cadw to be a

substantial and partially tree covered artificial motte or mound of a medieval earth and timber castle.

Cadw were consulted on the application due to the proximity of the site to the scheduled monument. It is considered that the unit will not interrupt key views from the motte along the valley to the south, east and north east, which Cadw indicate was almost certainly sited to command. Furthermore, it is noted that the building will also be seen against the backdrop of the existing buildings at Penarth. In concluding their assessment, Cadw confirms that proposed development will have no significant adverse impact on the setting of the monument.

Cadw have recommended a condition regarding the submission, implementation and maintenance of a landscaping scheme which will be attached to any grant of consent.

Consideration is also given within the original report of the impact of highway improvement on the scheduled monument Colwyn Castle. No objection has been received from either Cadw or CPAT subject to a watching brief being secured by condition.

In light of the above, the proposed development is considered to be in accordance with planning policy, particularly policy SP7 of the Powys Local Development Plan, Welsh Office Circular 60/96, TAN24 and Planning Policy Wales.

#### Ranging Area

In their correspondence CPRW raise concern over the ranging area for the proposed development.

Following initial consultation on the application NRW raised concerns that the scheme did not demonstrate adequate ranging area in line with the relevant guidelines (an area of approximately 6.4 ha was required). Amended plans were submitted to demonstrate an extended ranging area and no further objections were received regarding the extended ranging area with regards to its size.

As such it is considered that the proposed development provides adequate land for the ranging of birds in accordance with the relevant guidance and DM2 of the Powys LDP.

#### Impact on Ancient Woodland

CPRW in their comments raise concerns over the potential impacts of the proposed development on ancient woodland due to an objection received from the Woodland Trust. In the update report for Committee the issue surrounding ancient woodland is discussed in the consultee response by the Powys Ecologist

Policy DM2 of the Powys Local Development Plan states that proposals which would impact on specific natural environmental assets will only be permitted where they do not have an unacceptable adverse effect on trees, woodlands and hedgerows of significant public amenity, natural or cultural heritage and habitats and species afforded protection in line with national policy and legislation..

A Report on the Modelling of the Dispersion and Deposition of Ammonia from the proposed Free Range Egg-Laying Chicken House at Penarth Farm, Cregina, Llandrindod Wells in Powys produced by AS Modelling & Data Ltd dated 31st January 2018. The report assesses the levels of ammonia likely to be deposited on areas of ancient woodland within 2km of the proposed development. The report predicted that the process contribution of the proposed development and range to annual ammonia concentrations would potentially be in excess of the recognised upper threshold percentage of the precautionary critical level at the closest ancient woodland. At other ancient woodland the process contribution would be below the recognised lower threshold percentage of the precautionary critical level. As the report predicted an exceedance on one of the ancient woodland further detailed modelling was undertaken. This modelling concluded that process contribution of the proposed chicken house and range to annual ammonia concentrations would not exceed the recognised lower threshold percentage of the precautionary Critical Level.

Following consultation with the Powys Ecologist who reviewed the submitted reports they concluded that, based on the results of the ammonia deposition assessment, the predicted process contributions would therefore not be likely to result in significant negative impacts to ancient woodland within 2km of the site and as such did not offer an objection.

In light of the above it is therefore considered that the proposed development complies with policy DM2 and PPW.

#### Failure to apply precautionary principle to White Clawed Crayfish

CPRW raise issue with the HRA screening report undertaken for the application.

Policy DM2 of the Powys Local Development Plan states that proposals which would impact on specific natural environmental assets will only be permitted where they do not have an unacceptable adverse effect on European Protected Species and habitats and species afforded protection in line with national policy and legislation.

Following receipt of the late representation from CPRW discussion was undertaken with the Powys Ecologist who advised that a survey of the watercourse at the site would demonstrate whether white clawed crayfish are present or not. In undertaking the HRA screening the Powys Ecologist applied the precautionary principle to white clawed crayfish by assuming that they were present within the watercourse. In the update report to Committee the Powys Ecologist details the considerations of the proposed development and the River Wye SAC and white clawed crayfish and technical advice was sought from NRW.

NRWs advice concluded that they did not consider that aerial emissions that would result from the proposed development would have a significant effect on white clawed crayfish. The Powys Ecologist therefore concluded that, considering the information submitted with the application and the information from NRW, that the proposed development would not result in a Likely Significant Effect to the River Wye SAC and or its associated features – including white clawed crayfish.

As such it is considered that the proposed development is compliant with policies DM2 of the Powys LDP, TAN5 and PPW.

## **RECOMMENDATION**

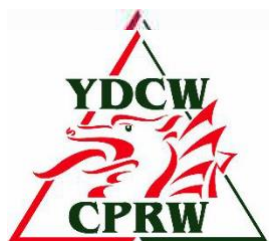
In light of the above, the Original Report and two update reports and careful consideration of the planning application, it is considered that the proposed development is compliant with planning policy. On this basis the recommendation is one of conditional consent subject to the conditions attached to the update report.

Environmental Information has been taken in to consideration in reaching the above recommendation.

---

Case Officer: Tamsin Law- Principal Planning Officer  
Tel: 01597 82 7230 E-mail: [tamsin.law@powys.gov.uk](mailto:tamsin.law@powys.gov.uk)

This page is intentionally left blank



**Campaign for the Protection of Rural  
Wales Brecon and Radnor Branch  
Upper Noyadd, Clyro, HR3 5JS  
01497 820814**

Gwilym Davies  
Planning Department  
Powys County Council  
The Gwalia  
Ithon Road  
Llandrindod Wells  
Powys  
LD1 6AA

2<sup>nd</sup> May 2018

**Dear Gwilym**

**Further Objection to P/2015/0131 Poultry Unit Development at Penarth**

**Brecon & Radnor Branch of CPRW object to this application on the following grounds:**

- **Unacceptable impacts on neighbours in very close proximity to intensive poultry unit**
- **Unacceptable traffic impacts**
- **No manure management plan**
- **Unacceptable landscape and visual impacts**
- **Unacceptable impact on the setting of Penarth Motte Scheduled Ancient Monument**
- **Unsuitability of and uncertainty regarding ranging areas**
- **Impacts on ancient woodland and Woodland Trust advice disregarded**
- **Failure to apply the Precautionary Principle to conservation of White Clawed Crayfish (European Protected Species) and to the protection of the Wye SAC**

**These grounds for objection are amplified below. We believe that the application should be refused.**

Brecon and Radnor CPRW is disappointed that this controversial application is coming to Committee with a recommendation for approval when, in spite of so much additional information, there are many issues which are either unclear or unacceptable.

Please also see our earlier objections to this application, dated 5/9/2016 and 4/10/2016.

The Officer's Report (OR) recommendation for the Planning Committee consideration on 3<sup>rd</sup> May 2018 relies on the 2016 OR recommendation for a decision which did not come before the Committee.

We do not think this is acceptable practice. A new LDP has been adopted and the Wellbeing of Future Generation Act must now be considered in Powys Planning. The fate of close residents and landscape issues are just two of the various issues which should be revisited. Furthermore a forthcoming Judicial Review of a Shropshire case about manure spreading raises new legal issues.

## Impacts on neighbouring dwellings

The two closest residents are.....

Penarth Farm 65m to North West of the proposed shed.

“Eastern Bungalow” about 30m to North East of the proposed shed.

Penarth Farmhouse is occupied by a County Councillor. The Councillor no doubt thinks this official role rules out a personal objection. We would like to make absolutely clear that neither this Councillor nor the occupant of the “Eastern Bungalow”, a tenant of the applicant, have approached us about this application.

We are addressing the principle of this development being allowed so close to residential properties which should be protected from becoming undesirable and unhealthy places to live for the sake of current and future residents.

Note that TAN 6, Paragraph 6.6.3 states:

*“To minimise the potential for future conflict between neighbouring land uses, planning authorities should exercise particular care when considering planning applications for houses or other new protected buildings within 400 metres of established livestock units. It is important also for planning authorities to keep incompatible development away from other polluting or potentially polluting uses.”*

It follows that the same particular care must be applied in the consideration of a new livestock buildings within 400m of existing residential housing. It’s entirely unacceptable that this advice is ignored in assessing the siting of a new livestock unit.

The residents of these properties will be exposed to visual intrusion, the noise of fans, traffic and all the activities associated with the IPU, to emissions of poultry dust (hazardous to health, according to the Health and Safety Executive), ammonia, smells and flies. The new access from the lane to the IPU will carry heavy vehicles directly in front of the bungalow, while Penarth Farm will be wrapped around on two sides by the poultry ranges and in full view of the sheds for which the existing barns will provide little screening – see aerial view below.

With respect to unpleasant odour, the Manure Management Plan map within the Method Statement and Pollution Prevention Plan (ref.4340360) shows manure spreading over an area exceeding 6 Hectares directly to the North of Penarth Farm and North West of “Eastern Bungalow” with other close areas to the West and South.

The cumulative impact of odour, dust particles and emissions from manure spreading together with the odour etc. from the free-range areas and the sheds themselves has not been considered.

Permission for Judicial Review has just been granted to a Shropshire resident close to the proposed Tasley Broiler Unit who argues that her home, 690m from the application, is surrounded by fields destined for regular manure spreading. It is claimed that Shropshire Council failed to consider the impacts of manure spreading on residents, citing article 3 of the EIA Directive”. (See Shropshire Council planning application reference 17/01033/EIA – grounds attached.)

The plight of the two properties here is clearly much worse. As in this Tasley case the Powys Officer cites noise and odour reports as “satisfying requirements” but has failed to consider the cumulative environmental impacts on living conditions.

We attach advice written by Kristian James, Principal Environmental Public Health Specialist, and Dr. Marion Lyons, Director of Health Protection, both of Public Health Wales, dealing with impacts on health of living close to an IPU. Note that both experts assert the need for provision by applicants of manure and dust management plans, which should include planning for 'adverse dispersion weather conditions'. Note that potential health impacts include '*exposure to infectious diseases, respiratory symptoms and lung function impairment*' and that '*people with pre-existing lung or heart disease, the elderly and children are particularly sensitive to particulate air pollution*' associated with poultry dust emissions. No dust management plan is provided.

We note that both the nearest residences are well within the highest 100% process contribution contour on Fig 6. of Ammonia Report (ref.4553251).

The site is not on the applicant's home farm, and the applicant has made a deliberate choice to site this intrusive development away from his own home, and immediately adjacent to two neighbours, despite the requirement for extra travel and the fact that the surrounding lanes can be impassable after heavy snow.

## **Traffic**

Although the application contains some contradictory information (ES Pages 53, 6 and 12) concerning frequency of cleaning and storage or removal of manure, we assume that manure is removed from the sheds twice weekly, being loaded by elevator from the conveyor belts into an agricultural trailer and is then stored on site in a redundant silage tank. This shed emptying operation will therefore necessitate twice weekly visits to the site with an agricultural trailer. As the manure is stored on site but must be removed from the silage clamp for spreading whether on nearby or more distant fields, the spreading operations will necessitate further visits to the site with an agricultural trailer and/or spreading gear. Depending on whether manure is moved offsite by trailer or by manure spreader, and on the capacity of whichever vehicle is used, spreading operations may require an average of 1 or 2 more visits by agricultural vehicles per week. Each of these 3 to 4 visits (average) per week, to remove manure from the sheds or from the site, will require two traffic movements of large agricultural vehicles along the rural lanes leading to the shed.

The DAS page 7 states that:

*'The traffic generated by a free range egg laying unit averages 2.4 lorry movements per week, including feed delivery, egg collection, bird delivery and bird collection.'*

Assuming this information to be correct, as far as it goes, the total weekly large vehicle traffic generated is very significantly underestimated. Moreover, shed cleaning, vet visits, daily management visits, fallen stock removal visits etc. will also be required.

It appears that Highways consultation advice is based on the assumption that the sheds are located on the applicant's home farm. The advice given requires reconsideration to take account of the additional traffic which this off farm site necessitates.

While we are aware that road modifications to address road safety have been proposed, we would like assurance that the width of the rural lanes leading to the site has been considered and found adequate for the HGVs which will require access to the site.

We believe that the application underestimates the impact on other road users, which will include leisure users such as walkers (to Hungry Green from the village for example), cyclists and horse riders.

## No Manure Management Plan reflecting the additional information

We can find no Manure Management Plan within the Method Statement and Pollution Prevention Plan (ref.4340360) with calculations as cited in the OR. (Fundamental site redesign has rendered the original MMP redundant.) There is only an updated plan of fields available. This omission is unacceptable, especially for an EIA development.

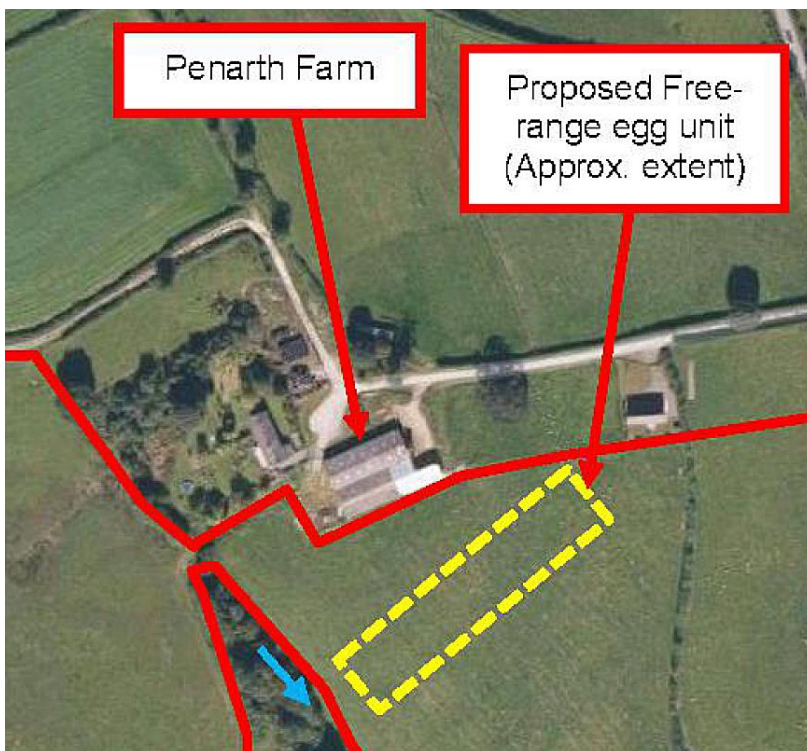
## Landscape and Visual Impact Assessment

The applicant has not provided an assessment of landscape and visual impacts, an omission the Officer should have challenged. The site lies outside a designated landscape and so the responsibility for assessing the acceptability of landscape and visual impacts falls to the LPA, who should follow LANDMAP guidance in their assessment.

Landscape impacts are dealt with in the 2016 Officer's Report (pp 40-42) and have not been revisited. The Planning Officer states:

*"Notwithstanding the scale of the proposed development, Officers acknowledge that the proposed building will be seen against the backdrop of the existing building complex and as such, potential landscape and visual impact is considered to be minimised."*

This completely ignores the relative scales of existing agricultural buildings and the proposed new building, illustrated below:



(From Figure 3 Flood Consequences and Water Management Report)

The proposed new building is many times the size of the existing barns. The IPU will not appear as part of an existing complex of farm buildings, but as a very out of scale new addition to the landscape, industrial in its appearance. No assessment has been undertaken of the whole complex, with hardstanding, new access track and new splay onto minor lane, feed silos etc.

The officer also fails to use LANDMAP in an appropriate manner, referring only to the Visual and Sensory layer of LANDMAP (rated HIGH), and failing to draw attention to the OUTSTANDING Historic LANDMAP layer (aspect area RDNRL914). The Officer also fails to draw attention to the LANDMAP assessor's remarks in relation to the Visual and Sensory aspect area (RDNRVS127) remarks that this landscape is "*...one of the finest landscapes in the region*".

Landscape impacts of Intensive Poultry Units (IPUs) are substantial. At Bage Court, Dorstone in neighbouring Herefordshire, the impacts on landscape have been a reason for repeated refusal of a proposed intensive poultry unit and for the dismissal by the Planning Inspectorate of three separate planning appeals.

### **Impact on the setting of Penarth Motte, scheduled ancient monument**

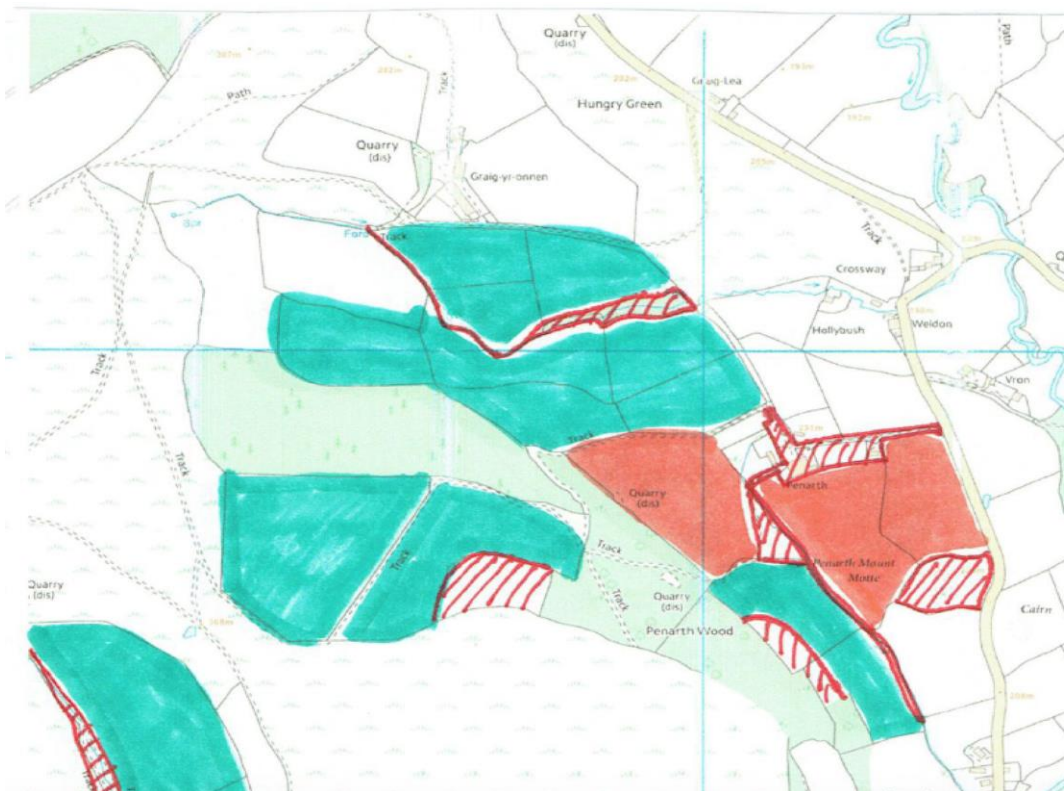
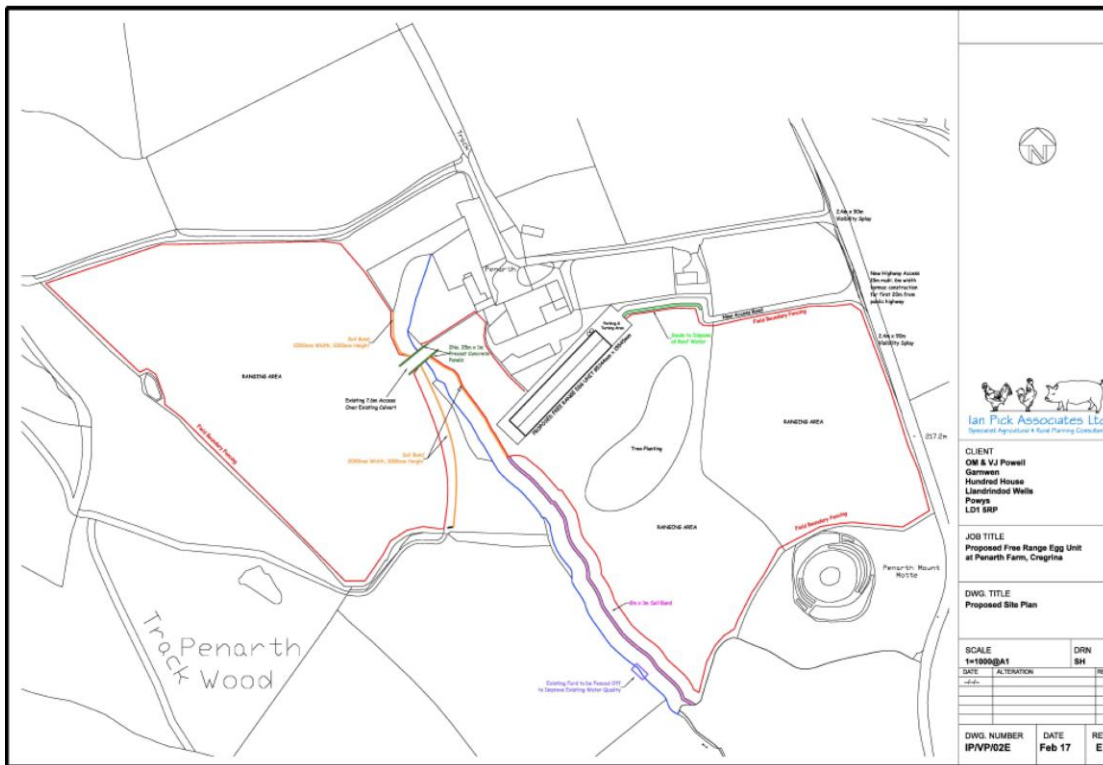
Local topography and the location of roads dictates that the best and most frequent views of Penarth Motte are experienced from the south, and while there are views from the east and west, the motte is not much visible from the north. The motte is raised above the immediately surrounding area but sits at a slightly lower elevation than the site. It follows that the best views of the motte, from raised ground to the south, will see it entirely eclipsed by a vast, modern, industrial building directly behind and above. CADW's assessment of impacts on the setting of the Scheduled Ancient Monument misinterprets the meaning of 'setting' and looks only at views from the failing to take account of views of the motte. This is incorrect and seriously understates the severity of an important impact.

### **Is this a suitable free range egg application?**

In order to increase the range to the 2,500 birds/hectare range requirement, the chickens will have to cross a river. There are inconsistent maps of the range area in various documents.

The map included with the OR shows very limited space for the birds to pass between the western end of the shed and the river buffer and then cross the river into the (new) western part of the range. The spur of range to the north of the farm building includes the river according to Fig 1 Location map in the Flood Risk and Surface Water Management report (ref.4203892).

This range spur is missing in all other maps, including the developer's site location plan (ref. 4203840) and the orange area in the manure spreading plan in the Pollution Prevention Plan (website 4340360) both reproduced below.



## The Range size is Uncertain

We cannot tell whether the range, which is hardly readily accessible to the birds, is even a nominal 6.4 Ha, especially given the undertaking in the OR (p90) that the range should be fenced 10m back from Penarth Mount and the watercourse set-back with bund and swale construction set out in Fig B-4 of the SWMP (ref.4203892). The 6.4 Hectares allows no rotation of range area and exceeds the 2,000 free range laying hens per hectare over the life of the flock set by RSPCA Welfare Standards for Laying Hens (p22).

Fig.3 the aerial photograph in the Flood Risk and Surface Water Management report (ref.4203892) shows the western range impinging on Penarth Wood whereas Fig 3 of the Ammonia Report (ref.4553251) shows the areas source (Ran-4) for the western range at the furthest point from the wood and the area sources do not accord with the range layout making it difficult to assess the remarkable difference between the preliminary and detailed ammonia concentrations at Penarth Wood.

## **Impact on Ancient Woodland**

In September 2016 the Woodland Trust wrote to Powys Planning about this development to express concern about impacts on ancient woodland. The Woodland Trust recommended the planting of a shelter belt of trees at the edge of the range abutting the ancient woodland to alleviate the impact of ammonia emissions. It appears that no account has been taken of this advice, which we do not see discussed in the Officer's report.

## **The Precautionary Principle and White Clawed Crayfish in the tributaries of the Wye SAC**

The HRA screening report concludes “Not *Likely* to be Significant Effects” however the required test is that the Competent Authority is satisfied *beyond reasonable scientific doubt*, using the best information, science and technical know-how, that the mitigation in the HRA would protect this particular SAC and relevant species. There is a Report by crayfish expert, Fred Slater (ref. 4056071), who must be regarded as the most expert source of information, with a recommendation that there should be a check by a licenced, experienced crayfish expert but this expert advice has not been heeded.

It must be rare that an intensive poultry farm range actually straddles a vulnerable river and the infiltration of manure products into the soil just 10m away on both sides of the river surely constitutes an extra risk.

We note that the details of construction of the river crossing has been relegated to a condition (C23) when it should have been required prior to determination, as should the subjects of Conditions 4, 5 and 21, as set out in TAN 5 4.3.2.

### **Conclusion: This application should be refused on the following grounds:**

- **Unacceptable impacts on neighbours in very close proximity to intensive poultry unit**
- **Unacceptable traffic impacts**
- **No manure management plan**
- **Unacceptable landscape impacts**
- **Unacceptable impact on the setting of Penarth Motte, scheduled ancient monument**
- **Unsuitability of and uncertainty regarding ranging areas**
- **Impacts on ancient woodland and Woodland Trust advice disregarded**
- **Failure to apply the Precautionary Principle to conservation of White Clawed Crayfish and protection of the Wye SAC**

The Campaign for the Protection of Rural Wales (CPRW) established in 1928 is Wales' foremost countryside Charity. Through its work as an environmental watchdog it aims to secure the protection and improvement of the rural landscape, environment and the well-being of those living in the rural areas of Wales.

Yours sincerely,

Jonathon Colchester

Chair, Brecon & Radnor Branch  
Campaign for the Protection of Rural Wales  
Registered charity number 239899

cc. Dr. Mohammed Mehmet, CEO, Powys County Council

**Attachments:**

1. Grounds for Judicial Review, Tasley IPU, Shropshire Countil planning ref. 17/01033/EIA
2. Pdf – comments from Kristian James, Principal Environmental Public Health Specialist, and Dr. Marion Lyons, Director of Health Protection, both of Public Health Wales

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW**

**BETWEEN:**

**R (on the application of) NICOLE SQUIRE**

**Claimant**

**and**

**SHROPSHIRE COUNCIL**

**Defendant**

**and**

**MATTHEW J BOWER**

**Interested Party**

---

**STATEMENT OF FACTS AND GROUNDS**

---

**References:** References [CB/n/n] are to the Claim Bundle/Tab no/Page no  
**Essential Reading:** Environmental Statement Sections 8-9 [CB/3/122-125]  
Appendix 3 to Environmental Statement [CB/3/136-155]  
Manure Management Report [CB/3/161-175]  
Officer's Report [CB/3/205-238]

**Introduction**

1. This is an application for permission to bring a claim for judicial review of the Defendant Council's decision, dated 1 September 2017, to grant planning permission to the Interested Party ("**Decision**") for the erection of four poultry buildings with feed bins, one gate house, one boiler house and circular water tank, associated infrastructure and landscape scheme ("**the Proposed Development**") on land at Taseley, Bridgnorth, Shropshire ("**the Site**"). The Decision will result in an estimated 1,150 tonnes of manure a year being spread on neighbouring arable land in the ownership of the Interested Party and 1,151 tonnes being exported to fields owned by an unspecified neighbouring arable farmer.
2. The Claimant is an individual who lives on the outskirts of Bridgnorth. Her home is 300m from one field and 500m from another field on which the manure will be spread. It is also 690m to the east of the Site. The Claimant made representations objecting to the grant of planning permission for the Proposed Development.

3. The Claimant challenges the Decision on the following grounds:
  - a. Failure to consider the direct or indirect effects of the Proposed Development and operations, contrary EIA Directive 2011/92/EU (“**the EIA Directive**”) and the Town and County Planning (EIA) Regulations 2011 (“**the EIA Regulations**”);
  - b. Failure to take into account material considerations relevant to the grant of planning permission.

## **STATEMENT OF FACTS**

### **Factual Background**

4. The Proposed Development is a facility comprising four steel frame, sheet-metalclad "poultry buildings" for rearing up to 210,000 broiler chickens for meat production and associated outbuildings, infrastructure and equipment. The application site is shown edged red on the Location Plan [CB/2/101]. The Proposed Development, by virtue of its size, fell within Annex I of the EIA Directive and an environmental impact assessment was therefore required.
5. The facility would be operated on a 48-day cycle, with 210,000 day-old chicks brought in, reared in the houses for 38 days, and then removed, with 10 days required to clean and prepare the buildings for the next flock. Based on this 48-day cycle, the facility is planned to rear 7.5 flocks of 210,000 birds per annum.
6. The Proposed Development would create around 1,500 tonnes of manure per annum [CB/3/164]. Of this, approximately 1,171 tonnes will be spread on specified fields owned by the Interested Party, while approximately 1,151 tonnes of manure will be “exported” to fields owned by an unspecified “neighbouring arable farmer.” [CB/3/164-166].
7. A Manure Management Report identifies 178.5 hectares of the Interested Party’s land that are available for spreading manure and provides maps of these fields [CB/3/169-175]. In addition to fields adjacent to the Site (which effectively surround neighbouring houses and lie near residences at Leasowes), these include fields near Brook House Farm that are also near residences, and fields which lie near residences and businesses in or near the village of Alveley. Field 2078 [CB/3/172, which is also identified, directly abuts a residential neighbourhood in Bridgnorth. It would appear that dozens, if not hundreds of homes lie within 100 metres of Field 2078 alone [CB/3/172].

8. The Claimant lives approximately 300 metres from Field 2078 [CB/3/172], and approximately 500 metres from “Prarie Field 4543” [CB/3/170], on both of which manure is proposed to be spread. The Claimant’s house is also within approximately 50 metres of the fields of Laesowes Farm, which owned by the Claimant’s brother. It is not known whether this is the unspecified “neighbouring arable farmer” referred to in the Manure Management Report.
9. On 29 August 2017 the Council’s South Planning Committee met to consider the planning application for the Proposed Development. The Committee was provided with an Officer’s Report recommending granting delegated authority to the Planning Services Manager to grant planning permission for the proposed development, subject to conditions.
10. The Officer’s Report recommended that delegated authority to grant planning permission be granted, inter alia, on the basis that:

“The concerns raised regarding the potential impacts of the proposal, including in relation to residential amenity issues such as odour, have been given due consideration. Officers consider that the technical assessments submitted as part of the Environmental Statement are generally satisfactory. No significant concerns have been raised through consultation with the relevant pollution control bodies to suggest that the proposal is not an acceptable use of land. Officers consider that adverse impacts on residential and local amenity can be satisfactory [sic] safeguarded. In addition the Environmental Permit that has been issued for the operation would provide an additional level of control.” [CB/3/230 §7.1].
11. The Committee resolved to grant delegated authority.

The Environmental Statement (“ES”), Odour and Dust

12. The Environmental Statement (“ES”) for the proposed project notes that the proposed development is expected to generate: “Airbourn (sic) emissions in the form of odour, ammonia, nitrogen, and dust” as well as create “waste in the form of poultry manure and dirty water.” [CB/3/111].
13. Section 8 of the ES sets out the Odour Impact Assessment. It makes clear the assessment refers to the “application site” [CB/3/122] – ie it assesses the odour from the sheds and the broiler house within the site edged red. This is made clear

in §§8.2 and 8.3, which refers to odour emission “from the proposed broiler rearing unit” and odour emission rates “from the proposed poultry houses” [CB/3/122]. It does not assess any odour caused by the spreading of manure on the fields.

14. The Assessment in the ES relies on a technical appendix: “A Dispersion Modelling Study of the Impact of Odour from the Proposed Poultry Houses at Footbridge Farm, Tasley, Bridgnorth, Shropshire”, amended and dated 25 April 2017 (“**the Odour Impact Assessment**”) [CB/3/136-155].
15. The Odour Impact Assessment makes clear at the outset that its author, AS Modelling and Data Ltd was instructed to “assess the impact of odour emissions from the proposed broiler rearing unit” [CB/3/137]. The assessment was therefore limited to odour impact caused within the Site edged red. This is made clear in Section 4.2 [CB/3/149], which lists the “emissions sources” which were assessed as:
  - a. The chimneys of the uncapped high speed fans that would be used for primary ventilation on the new poultry houses;
  - b. Gable end fans which would be used to provide supplementary ventilation in hot weather conditions.
16. The Odour Impact Assessment did not assess any odour emissions source other than the four poultry buildings. In particular no assessment was made of the odour impacts likely to arise from manure storage or spreading.
17. Paragraph 9.11 of the ES deals with “Manure Disposal”. It only records the following:

“The proposed poultry units will operate on a floor litter basis and will generate poultry manure. The manure will be disposed of through use as a sustainable agricultural fertiliser. The applicants [sic] manure management plan is attached to this statement as Appendix 4.”

[CB/3/125]
18. No mention is made of the amount of manure. Nothing is said of where the manure will be spread or what the effects of the spreading will be.
19. The Manure Management Report at Appendix 4 to the ES is dated 17 October 2016 [CB/3/161-175]. It does not address odour or dust from the spreading of the

manure. It states explicitly in its first paragraph that the purpose of the Plan is to ensure that the “broiler litter” is exported and spread in a way that falls “under the maximum application of 170kg/ha under the [Nitrate Vulnerable Zone] area farmed and 250kg Nitrogen/ha per annum under the Good Code of Agricultural Practice” [CB/3/163].

20. The Manure Management Report thus seeks to manage the spread of manure in relation to nitrogen. Its key concern is that some of the land on which the manure is proposed to be spread is within a “Nitrate Vulnerable Zone” on NVZ, which is a designated area of land that drains into nitrate polluted waters, or waters which could become polluted by nitrates. The NVZ regulated the amount of nitrogen caused by agriculture to enter any such waters: see Government’s Guidance on Nitrate Vulnerable Zones [CB/4/nn]. Records are thus required to be kept on the amount of manure exported to land, both inside and outside the NVZ.
21. The Manure Management Report does not address the odour or dust impact of the manure, nor does it seek to address or “manage” that impact. Its focus is solely on nitrates.
22. In relation to dust, the ES summarises a DEFRA research project related to dust emissions from poultry housing units, stating that the finding of the project show that “emissions from poultry units in terms of particulate matter reduced to background levels by 100m downwind of even the highest emitting poultry houses.” [CB/3/123-124].
23. No assessment is made nor any information provided in the ES concerning the potential dust-related impacts of manure storage or spreading.

#### The Permit Issued by the Environment Agency

24. The Permit issued to the facility by the Environment Agency is designated EPR/YP3932DT and dated 12 April 2017 [CB/3/180-199]. The permit installation boundary is shown at Schedule 7 of the permit and is limited to within the Site boundary [CB/3/198]. It does not encompass any of the fields on which manure storage and spreading will take place. The Permit does not set out to, nor does it purport to, regulate the spreading of manure.

#### The Officer’s Report and Environmental Information

25. The discussion of dust impacts in the Officer’s Report begins by stating that “Dust can be emitted into the atmosphere through the ventilation systems of the

proposed buildings. The Environmental Statement provides an assessment of potential impacts from dust emissions.” [CB/3/230 §6.8.15]. The Report then summarises the ES summary of the DEFRA research project.

26. In the following paragraph, the Officer’s Report states:

“An Environmental Permit for the operation has been issued and the Environment Agency has confirmed that, through this, issues such as odour, noise and dust will be addressed. Officers consider that this will provide an effective system for controlling emissions from the facility. Furthermore it is concluded that the proposal is in an acceptable location and would not give rise to adverse impacts on residential and local amenity, including that of residents of Bridgnorth. As such it is not considered that the proposal would adversely affect tourism in the area.” [CB/3/230 §6.8.16].

27. No discussion or information is provided as to the dust-related impacts from manure storage or spreading.

28. The Officer’s Report also sets out the comments received from the Environment Agency. In relevant part, these state:

“Environmental Permitting Regulations: The proposed development will accommodate up to 210,000 birds, which is above the threshold (40,000) for regulation of poultry farming under the Environmental Permitting (England and Wales) Regulations (EPR) 2010. The EP controls day to day general management, including operations, maintenance and pollution incidents. In addition, through the determination of the EP, issues such as relevant emissions and monitoring to water, air and land, as well as fugitive emissions, including odour, noise and operation will be addressed.

Based on our current position, we would not make detailed comments on these emissions as part of the current planning application process.

...

...

**For the avoidance of doubt we would not control any issues arising from activities outside of the permit installation boundary. Your Public Protection team may advise you further on these matters.**

..

Manure Management (storage/spreading): Under the EPR the applicant will be required to submit a Manure Management Plan, which consists of a risk assessment of the fields on which the manure will be stored and spread, so long as this is done so within the applicants land ownership. It is used to reduce the risk of the manure leaching or washing into groundwater or surface water. The permitted farm would be required to analyse the manure twice a year

and the field soil (once every five years) to ensure that the amount of manure which will be applied does not exceed the specific crop requirements i.e. as an operational consideration. Any Plan submitted would be required to accord with the Code of Good Agricultural Policy (COGAP) and the Nitrate Vulnerable Zones (NVZ) Action Programme where applicable.

The manure/litter is classed as a by-product of the poultry farm and is a valuable crop fertiliser on arable fields.

Separate to the above EP consideration, we also regulate the application of organic manures and fertilisers to fields **under the Nitrate Pollution Prevention Regulations.** [CB/3/209-210 §4.1.4] (emphasis added).

29. It is clear, therefore, that the Environment Agency did not, in its permitting role, consider any impact outside of the boundary of the Site. Although the Agency went on in its consultation response to address the spreading of manure, its assessment was limited to the nitrate impact of the spreading and ensuring the requirements of the NVZ would be complied with. The Environment Agency specifies that the only basis on which it regulates the application of manures and fertilisers is under the Nitrate Pollution Prevention Regulations.
30. The Officer's Report also summarises the findings of the Odour Impact Assessment. [CB/3/228-229 §§6.8.8 - 6.8.11]. It then notes that members of the public raised the concern that the "[o]dour report is fundamentally flawed as it takes no account of the odour from the manure which would be spread on adjacent fields." [CB/3/229 §6.8.12].
31. However, in the following paragraph, in which the Report sets out its responses to the public's concerns, the Report implies that the Council was not required to consider the effects of manure spreading, stating:

"The proposal does not seek permission for manure spreading. This is an agricultural activity and any permission granted for the broiler operation would not seek to control the location for manure spreading. This matter is controlled by other regulations." [CB/3/229-230 §6.8.13].
32. Separately, the Report records comments of the Shropshire Council Public Protection Officer, including:

"The site will be regulated under an Environmental Permit issued and regulated by the EA. As a result it is not the place of the planning system to condition aspects that the permitting regime will address which included odour and noise"

...

"Professor Lockerbie correctly states the odour assessment does not take into consideration spreading of manure. This is a common agricultural practise taking place in the UK and can occur on the land currently. Although spreading of manure does cause localised odour it is short lived where agricultural best practice e.g. ploughing in asap, takes place. Stockpiled manure produces odour for a time until a crust forms at which point little to no odour is emitted. Again this could occur without the development and is not considered relevant. Should manure be stockpiled inappropriately close to receptors legislation exists to address this." [CB/3/215-216 §4.1.10].

33. On this basis, it appears that odour from manure storage and spreading was not considered by the Council, its officers, or the Committee in determining the application.

### LEGAL PRINCIPLES

34. EIA Directive 2011/92/EU (**"the EIA Directive"**) provides the framework for environmental impact assessment, ensuring that the environmental implications of a proposed development are taken into account before any decision on the grant of planning permission is made. The EIA Directive was transposed into English law by the Town and County Planning (EIA) Regulations 2011 (**"the EIA Regulations"**).
35. Article 1 of the EIA Directive defines a project as "the execution of construction works or of other installations or schemes, [or] other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources;..."
36. Article 3 provides that the environmental impact assessment must identify, describe and assess the direct and indirect effects of a project in relation to, inter alia, the "population"; "land, soil" and "air" and the "interaction between" these factors. Accordingly, the impact on people arising from an indirect effect of a project (for example from odour caused by spreading manure) is an indirect environmental effect which must be assessed.
37. Article 5(1)(b) of the EIA Directive obliges the developer to supply in an appropriate form the information specified in Annex IV inasmuch as the Member States consider that a developer may reasonably be required to compile this

information having regard, inter alia, to current knowledge and methods of assessment.

38. Annex IV mandates the inclusion of a description of the main characteristics of the production processes as well as a: “description of the likely significant effects of the proposed project on the environment resulting from ... the existence of the project” including “the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects of the project”.
39. “Environmental information” is defined under Regulation 2(1) as “the environmental statement, including any further information and any other information, any representations made by any body required by these Regulations to be invited to make representations, and any representations duly made by any other person about the environmental effects of the development”.
40. The information in Part 2, Schedule 4 of the EIA Regulations 2011 that must be included in the environmental statement includes “the data required to identify and assess the main effects which the development is likely to have on the environment” and “a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects”.
41. An environmental statement has to include such information as is reasonably required to assess the impacts of the development and which the applicant could reasonably be required to compile having regard to current knowledge: *R(Khan) v Sutton LBC* [2014] EWHC 3663 (Admin), per Patterson LJ at §121.
42. The CJEU has held that the term “indirect effects” is to be “construed broadly”: §31 of AG Kokott’s opinion in *Abraham v Wallonia* [2008] Env LR 32 (“**Abraham**”) [CB/5]. This includes the environmental impacts “liable to result from the use and exploitation of the end product of works”: *Abraham* at §43.
43. The Court of Appeal addressed indirect cumulative effects in the case of *Brown v Carlisle City Council* [2011] Env LR 5 (CA) (“**Brown**”) [CB/5], where planning permission was sought for a Freight Distribution Centre at Carlisle Airport, and also for upgraded airport facilities and repair/renewal of the runway. Sullivan LJ set out the correct in principle approach to indirect cumulative effects at §21, finding that “there may be a cumulative effect notwithstanding the absence of a functional link” between two developments. The instant matter is stronger in that

there is a clear functional link between the Proposed Development, the production of the manure and its spreading on surrounding fields.

44. The relationship between the planning regime and other regulatory regimes was discussed in *R(Frack Free Balcombe Residents Association) v West Sussex CC* [2014] EWHC 4108 (Admin) ("**Frack Free Balcombe**") [CB/5], where Mr Justice Gilbert stated at §100 that there is "*ample authority*" to the effect that planning decision-makers have a discretion which permits them to assume that matters of regulatory control can be left to the statutory regulatory authorities. The obvious corollary is that there is a discretion to consider relevant matters which cannot be left to the regulatory authority, particularly where there is evidence that matters of concern cannot or will not be addressed by the regulator.

### Standing

45. The Council indicated in pre-action correspondence that it challenged the Claimant's "precise standing" to bring the claim [CB/4/260]. It did so on the basis that the Claimant only lives 690 metres from the Site. That is wrongheaded – proximity to the boundary of an application site is not the sole marker of whether an individual will be affected by the grant of planning permission, particularly where the Proposed Development will cause environmental effects. The Claimant is directly affected by the Decision, given her home is surrounded by the fields on which over 1000 tonnes of manure a year, created by the Proposed Development, will be spread. The Council's approach to standing reflects its failure to acknowledge the indirect effects of the Proposed Development.
46. Furthermore, the Supreme Court in *Walton v Scottish Ministers* [2013] Env LR 16 pointed out that the courts have moved away from an unduly restrictive approach to standing which presupposed that "the only function of the court supervisory jurisdiction was to redress individual grievances and ignored its constitutional function of maintaining rule of law" (§90 of Lord Hope's judgment). The Claimant is plainly an individual who has a "reasonable concern" about the Proposed Development, as described in *Walton* §92. She objected to the Proposed Development and has demonstrated a real and genuine interest in the decision under challenge: *R(Kides) v South Cambridgeshire District Council* [2003] 1 P&CR 19 (CA) §§132-133.

## **GROUND S OF CLAIM**

### **Ground 1 – Failure to give reasons for accepting the Unilateral Undertaking as an appropriate mechanism for securing affordable housing**

47. The manure is clearly an “effect of the operation of the project”, as understood by the CJEU in *Abraham* [CB/5] and the Court of Appeal in *Brown* [CB/5]. The CJEU in *Abraham* emphasised at §45 that EIA requires assessment of effects where the impact of a project will lead to a foreseeable increase in something that will have an impact on the environment – for example, railway works leading to an increase in trains and thus in noise and emissions from more trains or airport works leading to an increase in intensity of air traffic, and thus more noise and emissions from the air traffic. Similarly, in the instant matter, the Proposed Development will foreseeably lead to an increase in manure, which is to be spread on the surrounding fields. The environmental impact arising from that increase, particularly in terms of odour, must therefore be assessed.
48. It appears the Council does not take issue with the fact that the spreading of manure is an indirect effect of the Proposed Development [CB/4/260-266]. Instead, the Council claims in its pre-action response that the effect was assessed, but that was not the case. As set out above, the Environmental Assessment only assesses the impact of manure and odour on the Site and does not assess the spreading of the manure on surrounding fields at all. The Odour Assessment assesses the odour from the proposed poultry houses only. The Odour Consultant did mention in later correspondence the odour from the spreading of manure and slurries “to land”, but does not assess this impact – instead the correspondence dismisses the spreading as a “normal part of arable farming practice” [CB/3/156-157]. The Manure Management Plan aims to manage nitrates and does not assess or manage odour or dust from the spreading of manure. There is simply no assessment of the odour from the spreading on the fields.
49. The Council and Odour Consultant also both rely on the fact that manure spreading is a lawful use of the surrounding agricultural land. But that is not relevant, as the approach of the CJEU in *Abraham* and the Court of Appeal in *Brown* makes clear. The fact is that the Proposed Development will cause 1,500 tonnes per annum more manure than is presently caused, and that will be spread on surrounding land where there is no evidence any such spreading presently takes place. In the same way that it was irrelevant that an increase in rail traffic or an

increase in air traffic was an existing “lawful use” in the examples cited by the CJEU in *Abraham* §45, the fact of the lawfulness of the spreading of manure on the surrounding fields is irrelevant in assessing the environmental impacts arising from dust and odour caused by that spreading. That impact has simply not been assessed.

50. The Council also relies on the fact that the Environment Agency did not object to the Proposed Development. However, the environmental effect of the manure from spreading on surrounding fields was not something the Environment Agency would or did take into account in consulting on the Proposed Development. So the lack of objection from the Agency is irrelevant to the point under challenge. Furthermore, the Environment Agency’s consultation did not consider the adequacy of the Environmental Impact Assessment in relation to odour or dust from spreading manure on the surrounding fields. The Council cannot therefore properly rely on any assessment by the Environment Agency as to the direct or indirect effects arising from that spreading.
51. In any event, the mere fact that the Environment Agency did not object is not determinative of the issue. While the views of statutory consultees are material planning considerations, there is no obligation on an objector to a development to show that her view is “corroborated” by the statutory consultee: *O’Connor v SSCLG* [2014] EWHC 3821 (Admin) at §§34-37. The planning determination to be made by the Council is not dictated by the Environment Agency’s lack of objection. The planning decision maker is entitled to refuse permission despite a lack of objection by the Environment Agency, where there is a proper basis for refusal. This is particularly so where the Agency’s assessment either did not deal with an issue (as in the instant matter) or was not up to date in relation to an issue. This is exemplified by *O’Connor*, where the High Court held that an Inspector was entitled to uphold a refusal of planning permission, despite a lack of objection from the Environment Agency.
52. In *R(Palmer) v Herefordshire Council* [2015] EWHC 2688 (Admin) [CD/5], the High Court considered a challenge based on a failure to assess the spreading of manure caused by a chicken farm development. The instant matter is clearly distinguishable, because:
  - a. The court in *Palmer* believed that the Environment Agency permit would regulate the odour from the spreading of the manure. That is, however, not the case. In the instant matter and the Agency’s consultation response,

set out in the Officer's Report, made it plain that the Environmental Permit did not address matters outside the boundary of the Site and the only regulatory power of the Agency over the spreading of manure is in relation to nitrates.

- b. The Council in the instant matter relies on references to documents which it contends carried out the requisite assessment, but when those documents are read, it is plain that the impact of odour and dust arising from the spreading of the manure was not in fact assessed. That is different from the situation in *Palmer*.

- 53. Accordingly, the Claimant asks that permission be granted to bring her claim on this ground, as it is plainly arguable that there has been a failure to assess an important indirect effect of the Proposed Development, in breach of the EIA Directive and the EIA Regulations.

## **Ground 2 – Failure to Take Material Considerations into Account**

- 54. The Council does not appear to dispute the materiality of the environmental effects of spreading the manure produced by the Proposed Development on surrounding fields [CB/4/260-266]. Instead, it Council relies on various references in the decision-making process to the ES, the Odour Assessment, the Manure Management “Plan” and the Environment Agency’s consultation response [CB/4/262-263]. For the reasons just outlined, that does not assist, as those documents did not take into account the effect of odour and dust arising from the spreading of manure caused by the Proposed Development. There is therefore no evidence that the Council took into account that material consideration.
- 55. The Council also relies on the environmental permitting regime to control to effects of the manure and the fact the Environment Agency has not objected. This is misguided. In the instant matter, the permitting regime does not purport to regulate the effect of odour and dust from the spreading of the manure. This is an example of where the planning system is required to take account of an effect that falls outwith the permitting regime. Accordingly, in line with §100 of the *Frack Free Balcombe* decision, the Council should have taken the issue into account.
- 56. The Claimant therefore asks that permission be granted to bring her claim on this ground, as it is also arguable that there has been a failure to take into account a material consideration.

### **Protective Costs**

57. The claim is an Aarhus Convention claim under CPR 45.41(2), as it falls within the scope of Article 9(2) of the Aarhus Convention, given it raises matters concerning the environmental impact of an agricultural development and the consequential impact on individuals. The Claimant seeks a costs capping order under CPR 45.43 and that the costs limit in CPR 45.43(2)(a) be applied.
58. The Claimant's statement of financial resources is at **CB/1/21-23**.

### **Remedy**

59. The Claimant seeks an order quashing the Decision and an order for her costs of making the claim.

13 October 2016

ESTELLE DEHON



**GIG**  
CYMRU  
**NHS**  
WALES

Iechyd Cyhoeddus  
Cymru  
Public Health  
Wales

**Tim Amddiffyn Iechyd**

Iechyd Cyhoeddus Cymru, Y Deml Iechyd a Heddwch  
Parc Cathays, Caerdydd, CF10 3NW

**Health Protection Team**

Public Health Wales, Temple of Peace and Health  
Cathays Park, Cardiff CF10 3NW

10<sup>th</sup> October 2014

Gwefan/Web: [www.iechydcyhoedduscymru.org](http://www.iechydcyhoedduscymru.org)

[www.publichealthwales.org](http://www.publichealthwales.org)

**Paul Bufton**

**Senior EHO**

**Powys CC**

Neuadd Maldwyn

Welshpool

SY21 7AS

Dear Paul

**Re ENQ 349 Enquiry regarding the transmission of campylobacter, ecoli and salmonella through airborne poultry dust.**

Further to your email received on 07th October 2014, regarding the following:-

1. *Concerns that Campylobacter, Salmonella and e-Coli may poison drinking water via the unregulated spreading of chicken faeces and the emission of poultry dust;*
2. *Concerns with regard to the unregulated spreading of chicken faeces containing Campylobacter, Salmonella and e Coli on fields which could drain into sources of drinking water;*
3. *Concerns regarding the spreading of Campylobacter, Salmonella and e Coli via the emission of Poultry Dust from the ventilation equipment*

I can advise that manures can contain a range of zoonotic pathogens and incorrect storage can encourage the development of large fly populations that can have nuisance or disease transmission potential.

We would expect that the design, construction and management of manure stores will prevent or minimise emissions (and flies) and that such controls to be exercised through standard permit or planning conditions.

The farm operator should be required to devise, maintain and review a manure management plan detailing when and where manures will be stored and applied to land. The plan should be completed during the planning process or before a permit is issued and contain details of the control measures to avoid ground water contamination.

The potential impact to water should be low since discharges to ground or surface water should fully comply with the Groundwater Regulations 2009 (via the Environmental Permitting Regulations 2010).

Dusts and bioaerosols (airborne particles that contain living organisms, fragments, toxins, and waste products) may have possible health effects including exposure to infectious diseases, allergic reactions, respiratory symptoms and lung function impairment.

It is likely that the dispersion of bioaerosols will be dependent upon environmental circumstances such as local topography and prevailing weather conditions.

Mitigation measures addressing occupational health of workers within the farm and farm buildings will contribute to the protection of local communities. Best Available Techniques; including dust management plans, are required by permit conditions to avoid or mitigate emissions, including fugitive emissions.

There is little evidence on the health impacts from bioaerosols from intensive poultry farms. However, composting sites are known to produce considerable quantities of bioaerosols. When permitting composting industries regulators have considered a minimum distance of 250 metres from local communities. However exceptions to this 'limit' are allowed if effective mitigation techniques are employed. This limit is based on published studies which indicate that bioaerosols are generally reduced to background levels within 250 metres of the facility, although it is accepted that under certain circumstances, such as stable atmospheric conditions, bioaerosol concentrations may occasionally not be reduced to background levels within 250 metres.

Manure and dust management plans should therefore also contain actions to avoid and mitigate offsite dusts and bioaerosols during adverse dispersion weather conditions.

### Conclusion

Intensive poultry farms may cause pollution but provided they comply with modern regulatory requirements any pollutants to air, water and land are unlikely to cause serious or lasting ill health in local communities.

If you have further queries please contact the undersigned.

**Kristian James**  
**Prif Arbenigwr Iechyd Cyhoeddus Amgylcheddol**  
**Principal Environmental Public Health Specialist**



**GIG**  
CYMRU  
**NHS**  
WALES

**Iechyd Cyhoeddus**  
**Cymru**  
**Public Health**  
**Wales**

**Tim Amddiffyn Iechyd**

Iechyd Cyhoeddus Cymru, Y Deml Iechyd a Heddwch  
Parc Cathays, Caerdydd, CF10 3NW

**Health Protection Team**

Public Health Wales, Temple of Peace and Health  
Cathays Park, Cardiff CF10 3NW

Gwefan/Web: [www.iechydcyhoedduscymru.org](http://www.iechydcyhoedduscymru.org)  
[www.publichealthwales.org](http://www.publichealthwales.org)

26 May 2015

**Our ref A00J60**

Mr Alan Loveridge  
Pencwm  
Saint Harmon  
Rhayader  
Powys  
LD6 5NG

Dear Mr Loveridge

### **Health impacts of broiler units**

Thank you for your letter dated 20th May 2015. I can confirm that Public Health Wales may be consulted upon relevant planning or environmental permitting applications for intensive poultry units. We may receive consultation either directly from local authorities or regulators, or indirectly via Local Health Boards. Public Health Wales is consulted because there is either a statutory requirement to do so or where there may be public health queries.

Below is an outline of potential health issues we may comment upon. The nature of our comments ultimately depends upon the context of the individual planning or environmental permit application.

#### **1. Health Concerns**

Such operations have the potential for fugitive emissions to air, discharges to water and manure management impacts. Nuisances including noise, malodours and flies also need consideration. The impact of nuisance upon quality of life and wellbeing are difficult to quantify, as they can be subjective.

However adoption of the best available techniques, strict adherence to regulatory guidance and industry best practice can minimise such impacts. Mitigation measures addressing occupational health of workers within the farm and farm buildings may also contribute to the protection of local communities.

emissions and sensitive receptors the greater chance for dilution, subject to local topography and meteorological conditions.

Therefore our recommendation is to ensure that emissions can be minimised in the use of best available techniques and strict adherence to regulatory guidance and industry best practice.

#### **4. Manure management and application on nearby land**

The handling, storage, transport and manure spreading may cause odours. Sometimes odour impacts are modelled during the planning and permitting process, generating odour contours.

Manure management should include the control of flies and other pests to avoid nuisance and potential vector borne disease.

We would advise that manure storage and spreading impacts are also within any modelled odour contours or that overlap the modelled odour contours to avoid cumulative adverse odour impacts upon local residents.

We therefore would recommend that

- manure storage and spreading associated with the poultry sheds must be considered including manure storage and spreading within or overlapping the predicted odour contours to avoid cumulative odour impacts
- manure management should include the control of flies and other pests to avoid nuisance and potential vector borne disease
- regulators be satisfied that any odour model inputs, outputs and conclusions are locally applicable.

#### **5. Public health impacts via groundwater/private drinking water supplies due to of manure storage and spreading**

Manure spreading must not compromise local water supplies and therefore farm operators should be required to devise, maintain and review a manure management plan detailing the control measures to avoid ground water contamination.

#### **6. Noise**

A noise management plan is in place for all potentially noisy site sources and activities including for example

- Ventilation / roof fans
- Generators including emergency generators mounted plant
- Mobile plant
- Feed silos
- Site deliveries and stock despatch activities

emissions and sensitive receptors the greater chance for dilution, subject to local topography and meteorological conditions.

Therefore our recommendation is to ensure that emissions can be minimised in the use of best available techniques and strict adherence to regulatory guidance and industry best practice.

#### **4. Manure management and application on nearby land**

The handling, storage, transport and manure spreading may cause odours. Sometimes odour impacts are modelled during the planning and permitting process, generating odour contours.

Manure management should include the control of flies and other pests to avoid nuisance and potential vector borne disease.

We would advise that manure storage and spreading impacts are also within any modelled odour contours or that overlap the modelled odour contours to avoid cumulative adverse odour impacts upon local residents.

We therefore would recommend that

- manure storage and spreading associated with the poultry sheds must be considered including manure storage and spreading within or overlapping the predicted odour contours to avoid cumulative odour impacts
- manure management should include the control of flies and other pests to avoid nuisance and potential vector borne disease
- regulators be satisfied that any odour model inputs, outputs and conclusions are locally applicable.

#### **5. Public health impacts via groundwater/private drinking water supplies due to of manure storage and spreading**

Manure spreading must not compromise local water supplies and therefore farm operators should be required to devise, maintain and review a manure management plan detailing the control measures to avoid ground water contamination.

#### **6. Noise**

A noise management plan is in place for all potentially noisy site sources and activities including for example

- Ventilation / roof fans
- Generators including emergency generators mounted plant
- Mobile plant
- Feed silos
- Site deliveries and stock despatch activities

## 7. Ammonia

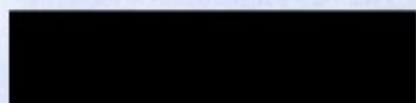
Ammonia may be emitted from poultry houses which may potentially impact on local people. The health effects of exposure to ammonia at low levels include cough, phlegm, headaches, nausea, wheezing, breathing difficulties and asthma. However, it is unlikely that ammonia emissions from a well run and regulated farm will be sufficient to cause ill health. Levels of ammonia will decrease rapidly once diluted in ambient air. We therefore recommend that the regulator is satisfied that the construction and operation of the sheds and the appropriate management of manure and feed/feeding cycles are appropriate to minimise ammonia emissions.

For information on control measures you may wish to view "Intensive farming environmental permitting guidance" via [www.gov.uk](http://www.gov.uk).  
<https://www.gov.uk/government/publications/intensive-farming-introduction-and-chapters>

Public Health Wales provides its comments via Local Health Boards who may in-turn offer additional local health advice. However final decision upon local planning or permitting rest with either local authorities or regulators - Natural Resources Wales.

I trust the above outlines Public Health Wales response. If you do have further queries you can contact the Environmental Health Protection Team.

Yours sincerely



Dr Marion Lyons

**Director of Health Protection**