Neutral Citation Number: [2023] EWHC 2629 (KB)

Case No: CO/4718/2022

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
PLANNING COURT

Bristol Civil Justice Centre
2 Redcliff Street,
Redcliffe
Bristol BS1 6GR

Date: 20/10/2023

Before :

MR JUSTICE JAY

- -

Between:

ANTHONY WARD	**Claimant**
- and –	
TORRIDGE DISTRICT COUNCIL	**Defendant**
- and –	
JAMES AND KELLY SEABRIDGE	**Interested Party**

- -
- -

Piers Riley-Smith (instructed by **Richard Buxton Solicitors**) for the **Claimant**
Ruchi Parekh (instructed by **Torridge DC**) for the **Defendant**
The Interested Party was neither present nor represented

Hearing date: 10th October 2023

- -

Approved Judgment

This judgment was handed down remotely at 10:30am on 20th October 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

MR JUSTICE JAY:

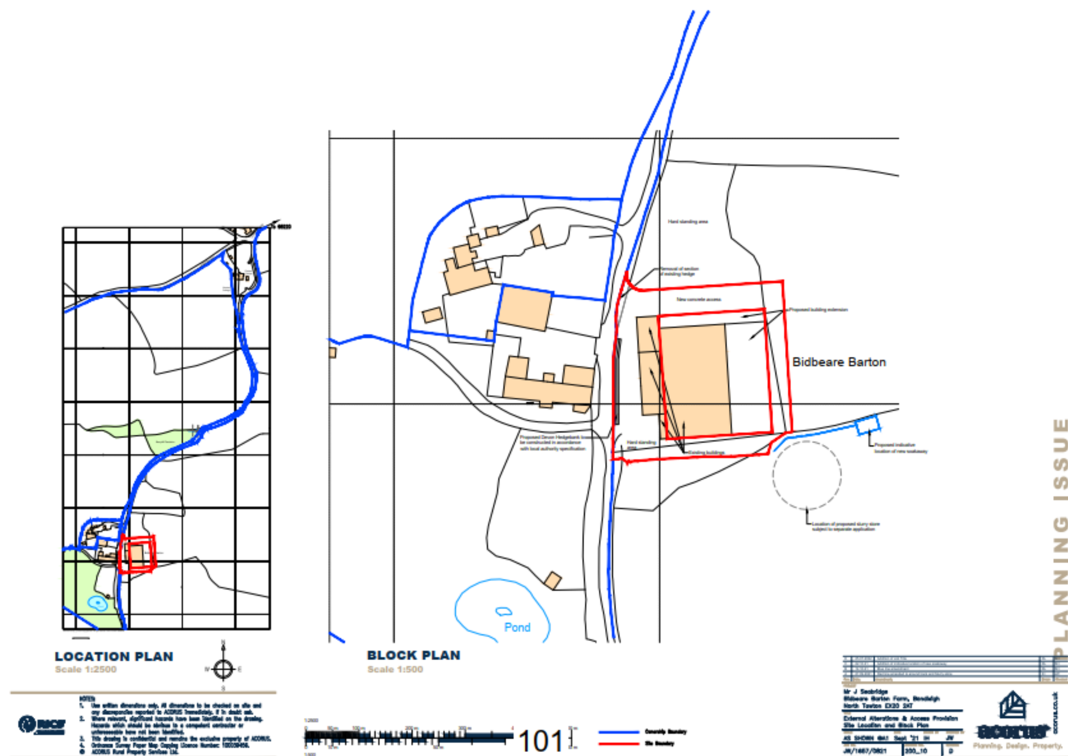
INTRODUCTION

1. Mr Anthony Ward ("the Claimant") owns Berry Hill Barn, Bondleigh, North Tawton, Devon. The Seabridges (to whom I will refer collectively as "the Interested Party") are their next door neighbours and own land known as Bidbeare Barton that is currently used as a dairy farm ("the site"). On 4th November 2022 Torridge District Council ("the Defendant") granted planning permission for what was described as "part retrospective alteration to external appearance of west elevation of barns and creation of a concrete yard around agricultural buildings".

2. By these judicial review proceedings the Claimant seeks an order to quash the grant of planning permission. Three Grounds of challenge are advanced, but these will not begin to make sense before I have set out the planning history of the site.

THE PLANNING HISTORY OF THE SITE

3. A plan of the site in relation to the Claimant's property is, I think, a useful starting point:



4. By way of explanation, the site is clearly located on this plan. The Claimant's land, including a house and a barn, are to the immediate west of the site. Although not clearly visible without magnification, the orange block on the site comprises what are described as "existing buildings" – three barns, which on my understanding are linked. The Interested Party has built a hard standing area to the south west of the barns; and to the south east, marked by the circular dotted line, we can see a proposed slurry store

(described in some of the papers as a “tank”). Although not marked on this plan, to the north of the blue line beyond the top left of the plan the Interested Party has constructed a slurry lagoon, apparently on a temporary basis. Planning permission for that is not required.

5. Before April 2020 the site was used for the storage of machinery as part of an arable farm. The Interested Party acquired the site in that month and set about creating a dairy farm. Since then, the barns have been used for the housing and milking of a dairy herd. That in itself did not amount to an unauthorised change of use. However, in order to facilitate, or enable, these new activities, the Interested Party built the area marked as a hard standing on the plan, raised the ground levels in a number of places, and erected concrete cladding (albeit by no means to full height) along *inter alia* the western elevation to keep his cows within the confines of the barns. Until 2020 the barns were predominantly open-sided. All of this constituted “engineering operations” and was unauthorised operational development.

6. In December 2020 the Interested Party made an application for retrospective planning permission in order to regularise the position. On my understanding, although nothing turns on this, the application did not relate to all the unlawful engineering operations I have specified. The planning officer described the application in these terms:

> “The retrospective engineering operations are fundamental to the building/site functioning as a dairy farm enterprise. For example, the concrete yard area is used a ‘loafing area’, which is essential for cow welfare standards.
>
> …
>
> 6. Conclusion and Planning Balance
>
> The proposal seeks retrospective planning permission for the retention of engineering operations carried out without formal planning permission. These works are required for this building/site to accommodate a dairy herd.”

7. The “concrete yard area” is the hard standing area marked on the plan. By “loafing area”, the planning officer presumably meant a space where the heifers could be kept pending going out to pasture or returning to the barns for the purposes of milking and repose. By “essential for cow welfare standards”, the planning officer was presumably making the point that to permit these cows to remain standing in the mud would be unhealthy because it would be difficult to clean this “loafing area” in such circumstances. Concrete, on the other hand, could be readily hosed down.

8. On my reading of the planning officer’s report, the Interested Party’s application would have been granted had not environmental concerns outweighed the benefits of the scheme. The Defendant’s Environmental Management Team (“EMT”) analysed the Environmental Management Plan (“EMP”) relied on by the Interested Party and concluded that it was not full and comprehensive, and had not been prepared by a qualified professional body. In short:

> "At present, the Environmental Protection Team does not consider sufficient measures have been demonstrated to address the concerns raised above. The Environmental Protection Team considers that robust control measures need to be implemented to prevent or minimise any potential detriment to amenity. The Environmental Protection Team requires the applicant to produce an environmental management plan, to be devised by an appropriately qualified professional body (eg. ADAS), that provides comprehensive details on measures that include noise and odour control, manure and slurry storage, pest control and fly management that will be introduced to prevent or minimise disturbance to neighbouring residential properties. The Environmental Protection Team will provide further comments upon receipt and following review of the environmental management plan."

9. The planning officer therefore recommended refusal. The December 2020 application was refused on 27th April 2021 after the Interested Party had withdrawn the inadequate EMP.

10. In September and October 2021 the Interested Party made four separate planning applications. In its retrospective application dated 28th September 2021 permission was sought for what was effectively an enlarged version of the failed December 2020 application. This application is the centrepiece of these proceedings, and I will therefore refer to it hereinafter as "the main application". By two further applications the Interested Party sought to extend the existing barns, add an entirely new barn (into which the dairy herd would be transferred) and increase the size of the concrete hard standing. The contours of the proposed new development appear on the plan. Finally, an application was made to construct the slurry store which is the circular dotted line on the plan.

11. The Interested Party submitted one composite planning statement in support of all four applications. For reasons which are not entirely clear, the Defendant proceeded to consider and determine the main application in advance of the others. In planning terms, that application had to be considered on its own individual merits, but – and as we shall see – when environmental impacts fell to be addressed an "in-combination" approach was required. It would have been artificial to ignore the Interested Party's wider aspirations.

12. The Interested Party's planning statement explained that the new barn to the rear would enable the heifers to be re-housed in appropriate conditions. Under the heading, "necessity for the purposes of agriculture", the Interested Party made it clear that the new barn would ensure that all relevant animal welfare standards, enforceable by criminal sanction, would be fulfilled. It is important to note that nowhere in this lengthy planning statement is there any attempt to contradict the view of the planning officer as expressed in connection with the December 2020 application that the unauthorised development, for which permission had been sought, was fundamental to the dairy operation. Moreover, nowhere in the planning statement is any alternative proposal put forward. In other words, the Interested Party was inviting the Defendant to evaluate the proposal as a composite whole, including the construction of an entirely new barn for dairy purposes. Insofar as it could be said that there was any implied "fall-back" if the

two applications for new and extended buildings failed, this was on the premise that the main application was granted. There was no suggestion that the Interested Party would maintain his dairy herd in the western barn with the unauthorised development removed.

13. Following the grant of the main application in November 2022 under delegated powers, the Interested Party withdrew the two applications for new building. Their reasons for doing so are opaque. One possible inference is that the Interested Party was and is acting tactically, and awaits the outcome of this application for judicial review before trying again. The application for the slurry store has not been determined by the Defendant.

14. I will be setting out additional essential factual background in the context of the Claimant's three Grounds.

THE CLAIMANT'S THREE GROUNDS

15. Ground 1 is that the Defendant unlawfully concluded that the Interested Party had a fall-back position of being able to operate the site as a dairy farm without the unauthorised development.

16. Ground 2 is that the Defendant failed to accord great or considerable weight to Natural England's objection in relation to the Sites of Special Scientific Interest ("SSSIs").

17. Ground 3 is that the Defendant failed to obtain sufficient information in relation to odour impacts.

18. The factual framework for these Grounds will be provided below.

19. I am grateful for both Counsels' submissions in connection with these Grounds. I will record just their main arguments during the course of the analysis which follows, but I have not lost sight of any of them.

GROUND 1: FALL-BACK

20. The planning officer concluded that the Interested Parry could continue to run their dairy farm in the western barn without planning permission for the unauthorised development.

21. His reasons for that conclusion were as follows:

> "The starting point for this application is to consider the existing baseline (i.e., what is going on on site and what can the applicant do without the need for planning permission). In this case none of the buildings have restrictions relating to the use of livestock, and the applicants are currently housing livestock in the buildings as a result. 3rd party representation notes that the buildings have not been used for livestock for a long time, but it appears to be accepted that they have been used for livestock in the past, and it is debatable about when this was. In addition, 3rd party representation claims that existing amendments to the buildings have enabled the buildings to be used for livestock (addition of doors on the southern elevation and some walling on

the west). In the opinion of the Planning Officer, no material change of use has occurred on site, and the applicants can and could have used the buildings for livestock without consent.

It is accepted that the walling on the western side of the building requires planning consent. In addition, it could be argued that the proposed walling on the western elevation increases the potential livestock numbers available to the applicants. On the other hand, it would not be development to put up internal walling within the building, such as cubicles (or walling on the outside of the building providing it was compliant with part 2 of the GDPO) to house the current stock, nor would a temporary/seasonal gale breaker be likely to be considered development. This would be similar to the existing current scenario, where a concrete plinth has been added to keep livestock in the buildings, and hay bales have been used as a windshield.

Thus, the existing buildings can be used to house cattle, and a nuisance could arise as a result (indeed the neighbouring dwelling considers nuisance is already occurring). Even if this application were to be refused, the livestock use could remain, along with the internal developments such as the milking robots etc.

The concrete yard area is not considered to increase stock numbers as it is an external area (despite 3rd party representations to the contrary). The cattle could have stood in proximity to the buildings previously, and the yard will simply assist in keeping the site tidy. It would not be common practice within the assessment of a planning application to suggest a yard area would increase stocking numbers.

In support of this application, a Sound Impact Assessment and Environmental Management Plan (EMP) have been provided by the applicants. Objections to both documents have been received from the neighbouring dwelling. In addition, a SCAIL assessment has been carried out by Isopleth, which again the neighbours object to.

An Odour Report has been submitted by the neighbouring dwelling, which identifies that the use of the building for cattle could have the potential for unacceptable odour pollution. This is responded to by Isopleth (on behalf of the applicants) who consider the submitted Odour Report inaccurate, and the author of the original report then proceeds to critique the Isopleth Response.

All of the above reports relate to the applicants wider aims of developing the site, which includes extensions to the buildings and the erection of a slurry store. This application (1/1131/2021/FUL) is slightly different to the others, because the

> development would not result in any significant difference in how the existing site is run or managed (or could be run or managed without any 'development' taking place)."

22. The submission of Mr Piers Riley-Smith on behalf of the Claimant was that the planning officer's consideration of the issue of fall-back was entirely theoretical. Although he was entitled to consider what *could* be done in the absence of planning permission, the planning officer failed to address the next question: namely, whether in such circumstances the Interested Party *would* continue to operate his dairy farm in the western barn. The inferences to be drawn from all the available evidence pointed strongly against that proposition.

23. The submission of Ms Ruchi Parekh on behalf of the Defendant is that planning officer's reports should be read benevolently and not legalistically, and that it is clear in all the circumstances that "could" embraced "would".

24. I have concluded without any real hesitation that Mr Riley-Smith's submission is correct. My reasons are as follows.

25. First of all, I accept Ms Parekh's submission that planning officer's reports are to be read with reasonable benevolence. The relevant principles have been encapsulated in the judgment of Lindblom LJ in *R (Mansell) v Tonbridge and Malling BC* [2017] EWCA Civ 1314; [2019] PTSR 1452, at para 42. In addition, the Court should proceed on the basis that a planning officer knows the relevant law unless there is a clear indication to the contrary.

26. Secondly, the law relating to fall-back development has also been encapsulated by Lindblom LJ at para 27 of his judgment in the same case. In *R (Widdington Parish Council) v Uttlesford DC* [2023] EWHC 1709 (Admin), Mr Dan Kalinsky KC sitting as a Deputy High Court Judge helpfully collected the relevant principles in the following passage, at para 30 of his judgment:

> "The key points (so far as material for present purposes) are:-
>
> a. The applicant has a lawful ability to undertake the fall-back development;
>
> b. The applicant can show that there is at least a *"real prospect"* that it will undertake the "fall back" development if planning permission is refused. In Mansell at §27, Lindblom LJ explained that : *"the basic principle is that "for a prospect to be a real prospect, it does not have to be probable or likely: a*
>
> *possibility will suffice"*.
>
> c. Where a planning authority is satisfied that a fall-back development should be treated as a material consideration, the authority will then have to consider what weight it should be afforded. This will involve:

> i. An assessment of the *degree* of probability of the fall-back occurring. As Dove J observes in Gambone at para 27, the weight which might be attached to the fall-back will vary materially from case to case and will be particularly fact sensitive; and
>
> ii. A comparison between the planning implications of the fall-back and the planning implications of the Proposed Development: Gambone paras 26-28.
>
> d. The Courts have cautioned against imposing prescriptive requirements as to how and with what degree of precision the fall-back is to be assessed by the decision maker. This is in recognition of the fact that what is required in any given case is fact sensitive. As Lindblom LJ observed in para 27(3) of Mansell, there is no general legal requirement that the landowner or developer set out *"precisely how he would make use of any permitted development rights*". Lindblom LJ continues that *"[i]n some cases that degree of clarity and commitment may be necessary; in others, not*"."

27. I agree with Ms Parekh that it is not a valuable exercise to consider the facts of *Widdington*, which were far removed from those of the present case. The point she advanced was that the Interested Party was already carrying out a dairy farming operation, and that it was reasonable to infer that he would continue even without the unauthorised development. A reasonably benevolent approach should enable me to conclude that the "could" (which appears in many places in the planning officer's report) encompasses "would".

28. Even bending over backwards in search of a benevolent interpretation, I cannot begin to accept these arguments. Although it might have been preferable to consider the four applications on the same occasion, the Claimant does not dispute that the planning officer was fully entitled to consider the main application on a standalone basis. He was required to consider not merely what was achievable or "doable" as permitted development under overarching planning law principles, but also whether there was a real prospect in practice that without planning permission the Interested Party would act in this fashion. There is no indication that the planning officer proceeded beyond the Deputy High Court Judge's stage (a) to stage (b).

29. In my judgment, all the available inferences, not that any were addressed by the planning officer, clearly pointed in the other direction: namely, that without planning permission on the main application the dairy operation could not be sustained.

30. These inferences include the following:

(1) The first planning officer said that the unauthorised operations were "fundamental" to use as a dairy farm.

(2) The Interested Party never sought to contradict that conclusion.

(3) In the planning statement submitted in connection with all four applications, the Interested Party were inviting the Defendant to consider the proposal on a

composite basis. I have said that this did not happen, for reasons which are not clear, but nowhere did the Interested Party say that without permission being granted on the main application, his dairy operation would or might continue.

(4) Given the copious references to animal welfare standards in the planning statement, the obvious inference is that absent the unauthorised development these standards would not be achieved. The fact remains that the unauthorised development was carried out for a reason: to enable the dairy operation to take place.

31. Taken together, these inferences are close to being unanswerable. Mr Riley-Smith did not need to submit that the inferences that the planning officer drew were perverse. The submission that he advanced in his reply, and which I accept, is that given that the inferences were all so obviously one way, the only reasonable conclusion is that the planning officer did not proceed to stage (b) at all. As I have said, the planning officer made absolutely no reference to these points, but they could not be ignored. Mr Riley-Smith did not advance, and does not need, the fall-back submission that had the planning officer proceeded *sub silentio* to stage (b), his conclusion was irrational.

32. Ms Parekh conceded that if Ground 1 were to succeed then so does Grounds 2 and 3. In those circumstances, it seems to me that I am able to address Grounds 2 and 3 quite briefly, and only on the premise that I am wrong about Ground 1.

GROUND 2

33. The site is within the Impact Risk Zones of the Popehouse Moor and Staddon Moor SSSIs.

34. On 20th September 2022 the Interested Party submitted a SCAIL assessment dealing with ammonia emission rates from the proposed developments. The Claimant's expert, Dr Bull, challenged the SCAIL assessment on the basis that it erroneously adopted as its baseline the presence of heifers on the site and that it failed to consider the slurry lagoon that had been regarded by the Defendant as permitted development.

35. The views of Natural England were sought as statutory consultee. On 30th September 2022 Natural England advised that further consideration was required to determine impacts on the SSSIs. In short, a detailed air modelling assessment was necessary. Natural England's reasons were twofold. First, an "in-combination" assessment was required: this would have to include the slurry lagoon as well as planning applications that were awaiting permission. That requirement had not been met. Secondly, the methodology of the Air Pollution Information System required that consideration be given to the baseline in 2019. That was before the dairy farm started. That requirement had not been met.

36. The planning officer's reasons for declining to accept Natural England's advice were as follows:

> "As previously discussed, (in section 3), this application (1/1131/2021/FUL) is unlikely to materially impact on the stocking levels which are possible in the existing buildings, nor would it impact on the slurry arrangements on the holding. Therefore, the proposal cannot be said to have a significant

> impact on the SSSI's mentioned above. In addition, the nature of the development is minor in nature (walling to existing buildings and a concrete yard), and the proposals are significantly distanced from the SSSI's (approximately 3.9 KM and 3.7KM respectively), again limiting any potential impacts.
>
> In combination with existing and proposed developments locally, this application will have a neutral impact due to the nature of the scheme (as previously discussed).
>
> In light of the above, this proposal is not considered to adversely affect the integrity of the above sites.
>
> This application has been screened against the Town and Country Planning (Environmental Impact Regulations), and due to the limited increases in any stocking, it is not considered that an Environmental Statement is required.
>
> Overall, the proposal is considered compliant with Policies DM08 and ST14 of the NDTLP and the NPPF."

37. The Natural England advice must be given great or considerable weight by the decision-maker. I am prepared to proceed on the basis pressed by Ms Parekh that the issue is whether the planning officer has given cogent reasons for departing from Natural England's expert view, although I am not convinced that "compelling" imposes a higher test. She submitted that the planning officer's reasons meet that standard.

38. It is true that Natural England was addressing four applications rather than just one. It is also true that the planning officer referred expressly to the combination effects of existing and proposed developments (that in and of itself is a recognition that in this particular context all four applications had to assessed in the round). Even putting to one side for the moment that the main reason that the Natural England advice was rejected was the fall-back, and I have rejected the Defendant's case in this regard, I accept Mr Riley-Smith's submission that the planning officer's report is clearly flawed.

39. First, the planning officer failed to address Natural England's advice that for methodological reasons alone, and putting fall-back to one side, the appropriate baseline was 2019 when there were no cows. Natural England made the perfectly valid point that the conversion of the barn to dairy use in 2020 meant that this was the first time air quality impacts would be assessed. Ms Parekh had no answer to that.

40. Secondly, an examination of the planning officer's main reasons for rejecting Natural England's advice was that he took an excessively narrow view of what this main application entailed. He did not have regard to anything else. Furthermore, the fact that the SSSIs were some distance away was, of course, well known to Natural England but they were advising that further consideration was required. Although the planning officer acknowledged that in-combination effects were relevant, his short paragraph dealing with this topic did not add to his main reasons. Ms Parekh conceded that in oral argument. In short, in-combination effects were not properly considered, either in the context of the extant slurry lagoon or the two applications that were still in the pipeline.

41. Ms Parekh's final argument was that the result would be no different on a reconsideration. She drew my attention to paras 8 and 9 of the planning officer's witness statement filed for the purposes of these proceedings. There, he states that Natural England would not require to be consulted on the main application taken in isolation because the surface area of the slurry store is below relevant thresholds.

42. I agree with Mr Riley-Smith that an examination of the underlying email correspondence between the planning officer and Natural England is valuable. There, the planning officer was making the point that, given that the surface area of the slurry tank application is 523m² which is below the threshold of 750m² at a distance of 4kms[1], Natural England would have no interest in this application. The planning officer's correspondent at Natural England assented to the proposition that was put to him.

43. The burden is on the Defendant to satisfy me that the outcome on any reconsideration would highly likely be the same. I proceed on the premise that I am wrong about Ground 1. I can readily agree that 523m² is below the threshold, but the slurry tank cannot be taken in isolation. Not merely is an evaluation of in-combination effects required, and that brings into scope the surface area of the western barn, but the methodological issue raised by Natural England remains salient. The baseline is the position in 2019, and the current use of the barn must be excluded from account. In other words, on any reconsideration the surface areas of both the western barn and the slurry tank must be considered in combination with each other. Ms Parekh did not submit that on this foregoing basis the 750m² threshold would not be transcended.

44. It follows that I cannot accept Ms Parekh's sterling efforts to save the planning officer's reasons even if I were wrong about Ground 1. Ground 2 therefore succeeds on an independent and free-standing basis.

GROUND 3

45. On 26th April 2022 the Interested Party provided an EMP in connection with the main application. It stated:

> "**3.3 Odour/Ammonia Emission Management**
>
> Odour from slurry is principally caused by ammonia, which is emitted in its gaseous form from slurry and can have a pungent, obnoxious odour, particularly in high concentrations.
>
> The prevailing wind at Bidbeare is between west to south-west. The residential property immediately to the west of the farmstead at Bidbeare will, most times, be upwind from the farmstead and not be affected should any odour emanate from the farmstead.
>
> Best farming practice will be followed. Regular scraping of slurry from the surfaces of yards and passageways into the covered slurry channel, flushing of the channel by parlour washings and storage in the covered tank will minimise, as far as

[1] The reasons given by the planning officer in rejecting Natural England's advice – the significant distances involved – are entirely inconsistent with this email.

> is practicable, ammonia emissions and odour throughout the year by limiting exposure of slurry to the air. Yards and passageways frequented by livestock will have excreta scraped to the slurry channel for storage, as necessary for livestock welfare and according to best farming practice, when occupied during the winter housing period.
>
> When livestock are at pasture and transiting from the field to the milking machines, the yard area to which livestock have access will be minimised and cleaned by regular scraping of slurry into the covered slurry channel, in order to minimise ammonia emissions and odour. Dry conditions can make a surface slippery for cows and scraping will be suspended if there is a danger to animal welfare.
>
> The steel tank will be emptied of slurry, in accordance with requirements of the NVZ Regulations, by pump to fill vacuum tankers or by using an umbilical hose which will apply the slurry to the land using low-emission techniques, to minimise ammonia emissions – a requirement of the Clean Air Strategy by 2025 - and odour."

46. In oral argument, I described this EMP as descriptive and not quantitative. The Interested Party's expert had carried out no modelling of odour impacts.

47. On 27th July 2022, the Claimant's expert, Dr Bull, carried out his own modelling applying what he says are accepted standards contained in IAQM Guidance, and concluded that there was an appreciable odour impact.

48. On 19th August 2022, the Interested Party's expert submitted a detailed critique of Dr Bull's reasoning and analysis. He did not carry out any modelling of his own. His conclusion was as follows:

> "Although as described above the results or conclusions of the MBAL report cannot be relied upon, I would agree that the EMP should be updated / added to in relation to measures to prevent odour release, monitoring and actions in the event of complaints, for example."

49. Dr Bull's approach was to accept the Interested Party's methodological critique and redo the calculations. His conclusion given on 16th September 2022 was that the remodelled results were still well above acceptable levels.

50. On 20th September 2022, the Claimant submitted a report which was described as a peer review of the Interested Party's evidence. Its conclusion was as follows:

> "In general, there is a complete lack of detail on how odour emissions from the site will be controlled and reduced. Consideration to sensitive receptor positioning, specific prevailing meteorological conditions, activities that have the potential for greater emissions, monitoring of impacts and

potential further mitigation measures for implementation during periods of abnormal emissions has not been provided. A risk assessment or similar to inform the process and the required level of control has also not been undertaken. Without this element it is unclear how potential impacts can be fully understood and the level of control required to reduce residual effects to the level required by the National Planning Policy Framework (NPPF)."

51. The Defendant's EMT analysed this material in the following way:

"29.04.2022

Further to the previous consultation response dated 13 April, the Environmental Protection Team has reviewed the final Environmental Management Plan which it considers addresses the representations raised with regards authenticity. Subsequently, the Environmental Protection Team wishes to update the previous response and recommends the imposition of the following condition:

The proposed development will be operated at all times in accordance with the ADAS Environmental Management Plan dated 26 April 2022.

09.09.2022

The Environmental Protection Team has reviewed both the Michael Bull and Associates Ltd report (July 2022) submitted by Mr and Mrs Ward and the Isopleth Ltd report (August 2022) submitted by the applicants. The Environmental Protection Team had initial concerns with the assumptions and modelling contained within the Michael Bull and Associates Ltd report and these have been highlighted within the Isopleth Ltd report. It is the opinion of the Environmental Protection Team that the concerns raised within the Michael Bull and Associates Ltd report have been satisfactorily addressed within the Isopleth Ltd report. As there is mention of odour complaints within the reports, it is worth reiterating that this Authority has undertaken an investigation pertaining to a complaint of odour nuisance in accordance with the Environmental Protection Act 1990 and a statutory nuisance was not established. However, it should also be noted that the investigation, comprising of site visits, was based on the current operations and practices as opposed to the proposed operations. Both of the aforementioned reports suggest the inclusion of a complaints process. Whilst the Environmental Protection Team considers this to be a worthy addition to the Environmental Management Plan, a complaints process as per the Environment Agency's H4 Odour Management guidance would seem onerous given the scale of the operation and especially in light of the recent High Court decision in Cathie v

Cheshire West andChester Borough Council (Case Number: CO/4229/2021).

In summary, the Environmental Protection Team is satisfied, notwithstanding the addition of a complaints process to the Environmental Management Plan, that sufficient measures have been proposed by the applicants that will provide betterment to the farm operation as well as ensure the impact on neighbouring amenity is minimised.

27.09.2022

In relation to the above applications, the Environmental Protection Team has reviewed all information provided by both the applicant and the objector at the neighbouring dwelling. Clearly there is disagreement between the two parties in relation to the amenity impact from the agricultural operations subject of the applications which has made the process of review somewhat complex and convoluted. Whilst the concerns of the objector are acknowledged, it is the opinion of the Environmental Protection Team that the measures proposed by the applicant will provide betterment in terms of the agricultural operations whilst ensuring the protection of neighbouring residential amenity. Subsequently, the Environmental Protection Team has no objections to the applications and refers to its previous consultation responses with regards the imposition of conditions pertaining to the environmental management plan and noise. It should be noted that the environmental management plan, as with any management plan, is an active document and should be regularly reviewed and updated where necessary. Therefore, it is recommended that the environmental management plan is appended with a section that ensures an annual review and more regular review where significant operational changes may be planned or introduced."

52. My attention was drawn to section 4 of the Local Plan for North Devon and Torridge published in 2020, entitled "Air Quality Supplementary Planning Document". Given that this policy is concerned with traffic pollution, its relevance to present circumstances is unclear.

53. Mr Riley-Smith submitted that the Defendant ought to have sought further information in order to determine the application properly and correctly. His essential complaint was that it was essential in the circumstances of this case to insist on the obtaining of an Odour Impact Assessment ("OIA"), and that was lacking. Without it the Defendant could not rationally conclude that the EMP, even with a condition, was sufficient. Further, Mr Riley-Smith submitted that, setting aside the lack of an OIA, the EMP also failed to accord with the minimum requirements of the 2018 IAQM Guidance. As was pointed out in the report dated 20th September 2022:

"Appendix 4 of the IAQM 'Guidance on the Assessment of Odour for Planning'[6] provides a comparison of Odour

> Management Plan (OMP) requirements in various documents produced by the EA, Scottish Environmental Protection Agency (SEPA) and SNIFFER. The IAQM's own requirements are outlined in Table 8 of the document. Of these factors, the Environmental Management Plan does not provide:
>
> Essential site details such as inventory of potential odour sources, a map of sensitive receptors and a wind rose of prevailing meteorological conditions;
>
> Assignment of responsibility to individuals to undertake the described actions;
>
> Identification of reasonably foreseeable abnormal conditions that may increase odour emissions and additional controls;
>
> Triggers for additional controls;
>
> Monitoring; and,
>
> The management structure which will ensure the outlined control measures are implemented appropriately and effective."

54. Mr Riley-Smith submitted that the deficiencies in the EMP were accepted by the Interested Party's own expert in his response to Dr Bull.

55. Finally, Mr Riley-Smith submitted in oral argument that the planning officer's report, which essentially endorsed the advice given by the EMT, was wrong to refer to "betterment".

56. My approach to Ground 3 is as follows. It is conceded that if Ground 1 succeeds (as it does), then so does Ground 3. But, on the alternative hypothesis that Ground 1 fails it seems to me that Ground 3 must struggle. This is because the relevant baseline is not no cows (as was the position, for example, in December 2020 when the first unsuccessful application was considered) but the Interested Party continuing their current dairy operation in the western barn. On that hypothesis, the sort of quantitative assessment which would ordinarily be required is simply not necessary – or, more precisely, the Defendant could reasonably conclude that it was not necessary. Indeed, on that hypothesis, what the Interested Party's EMP proposed, for all its failings, was better than the *status quo*. In my judgment, Ground 3 adds nothing to this case, and I need not consider it any further.

DISPOSAL

57. This application for judicial review succeeds on Ground 1. If I am right about Ground 1, it also must succeed on Grounds 2 and 3. If I am wrong about Ground 1, it succeeds on Ground 2 but not on Ground 3.