

UPDATE REPORT

Reference: 10/00055/FUL

Date submitted: 28.01.10

Applicant: Melton Meat Limited

Location: Farm Buildings Next To Baytree Farm, Stygate Lane, Pickwell, ,

Proposal: Conversion and extension of existing farm building to form Abattoir and associated facilities.

A: The Council has received notice of an intention to legally challenge the determination of the application should it resolve to grant planning permission. A full copy of this notice is attached to this addendum and the basis for the notice are summarised as follows:

- Failure to assess the site in the context of the availability of alternative sites.
- Failure to take account that the need for abattoir facilities is about to be met elsewhere through the provision that is soon to exist at Six Hills.
- Failure to explain why the existing facilities in Melton must be vacated.
- A comparison should be made with the buildings as they should have been erected, not as they stand at present, which is unauthorised.
- Waste disposal remains unresolved – the Council cannot be assured that a satisfactory method is available.
- The report does not explain why a rural location is acceptable in terms of odour.
- It is unlawful to grant planning permission for that development and then require the possible impact on protected species to be assessed at a later date.
- The proposal has capacity for 5000 animals per week and the Council is in no position to determine whether a throughput of more than 2,000 animals a week would be acceptable in planning and environmental terms.

It is stated that these points all demonstrate that a decision by the Development Committee to grant planning permission pursuant to this application would be wholly unlawful.

The Council has taken independent legal advice on this matter and considers it necessary to clarify the basis for the recommendation. Accordingly, it is requested that the following is taken into account as a substitute for the ‘Conclusion’ section of the report:

The proposed abattoir will be located in the open countryside close to the A606. The proposal is considered to be contrary to the Development Plan due to its scale exceeding the exceptions permitted by Policy OS2 and the extent of rebuilding and extension exceeding those specified in C6. Employment developments outside of the main settlements are generally considered unsustainable within the Development Plan and emerging policy in the LDF. However, it is considered that there are material considerations unique to this proposal that should be balanced against the policy position. The site is considered to benefit from access links to the A606 and also its character makes it less suitable for allocated industrial locations. In addition, the proposal would eliminate the need for the transportation of animals from the site (which is currently used as a ‘holding pen’) to the abattoir in Melton Mowbray, thus eliminating these vehicle movements, removing the abattoir’s contribution to the congestion within Melton town centre and assisting in improving animal welfare standards by reducing the length of animals journeys.

The visual impact is considered to be acceptable given the partial re-use of an existing building and the landscaping proposals and with conditions to control lighting and materials. As such, with appropriate controls (see below), it would meet with the objectives of policies insofar as they relate to the protection of

the countryside (including these aspects of Policies OS2 and C6). Similarly, inferring from Severn Trent's recommendations that effluent can be accommodated (and with no reason to believe that it cannot), conditions can be applied to ensure an appropriate waste and pollution strategy is put in place, and can safeguard the capacity of the proposal and the nature of the operation (in terms of the species to be handled) to ensure it operates on the same basis as it has been submitted and assessed. The application is not 'EA' development under the Environmental Impact Assessment Regulations and with regard to safeguarding protected species there is no indication of their presence, but our expert advisors have nevertheless recommended a condition to protect any encountered during the course of development. .

On balance, it is considered that whilst the proposals can be regarded as contrary to the development plan and emerging policy as set out above, its character is such that it not ideally suited to locations normally identified for industrial purposes and its location would bring benefits in terms of sustainability (through the reduction of vehicle movements and congestion) which accord with wider policy objectives. On balance it is considered that these considerations outweigh the provisions of the development plan and the proposal is accordingly recommended for approval.

B: In addition, further representations have been received as follows:

Parish Council: stressing the importance of the conditions as set out in the main report. Without these conditions, the PC would not register acceptance of the proposal

1 additional objection: Questions what material considerations are present to justify departure from policy (on similar lines to the notice of legal challenge described above)

2 additional letters of support: replicating the reasons for support set out in the main report.

4 letters explaining that representations from the 'Pickwell and Leesthorpe Residents Association' are not representative of all residents in the area.

C: Further consideration has been given to the Parish Council comments on conditions and the following advice and recommendations are offered:

- 1 **Capacity** – it would be possible to apply a condition limiting throughput to the levels on which the application has been assessed (1900 per week, average).
- 2 **Species restriction** – this similarly can be restricted by condition, limiting the species to sheep and goats only.
- 3 **Specific conditions re smells** – Condition 8 of the recommendation addresses this but it is considered it could be enhanced to be prescriptive in terms of fully requiring a detailed scheme for the storage and disposal of waste products. It is not considered that a condition requiring a general prohibition of odours is appropriate for a general condition. Firstly, consultation responses from Environmental Health indicate that appropriate management will negate the generation of odour and secondly, in accordance with circular 11/95, such a condition would conflict with the requirement not to duplicate the powers of a separate legislative regime.
- 4 **Improved signage on Stygate Lane** - this could be imposed by condition.
- 5 **Specific conditions to be written into customer contracts to prevent/preclude traffic using Main Street Pickwell** – it is not considered that this could be addressed by condition because the applicant would not be in control of all of the traffic visiting the premises and as such fulfilling such a condition would not be enforceable. However, more fundamentally it is considered that such a condition would not be justified as 'necessary' because the physical configuration of the access would prevent vehicles using Stygate Lane (from Pickwell to the site) from being able to enter the site. It is considered that this engineering solution would provide a greater, and adequate, deterrent to the use of a Pickwell/Stygate Lane route than a condition.
- 6 **Condition external lighting to be downward facing/diffusing only** – this is covered within the scope of condition no. 13 in the recommendation of the main report.

- 7 **Refrigeration and Air conditioning units to be sited along the North Wall** - this could be the subject of a condition.
- 8 **Building must harmonise with surroundings** – in terms of materials and landscaping, it is considered this is accommodated within the scope of conditions 2, 3 and 4 of the main report. In terms of the core issues relating to its size and position, this should be a key consideration for the Committee that should be taken into account in determining whether to grant permission.

The Planning Law Practice

Wood End, 20 Oaklands Park, Bishops Stortford, Hertfordshire CM23 2BY
Tel : 01279 652505 Mobile : 07743 824230
e-mail : peter@planninglawpractice.co.uk

21st September 2010

Mr J Worley
Planning Officer
Melton Borough Council
Nottingham Road
Melton Mowbray
Leicestershire
LE13 0UL

Dear Mr Worley

Application no 10/00055 : Abattoir at Stygate Lane

I act for Simon Mansfield of Leesthorpe Hall in Leesthorpe and a number of other residents of Leesthorpe, Pickwell and Somerby. Mr Mansfield is the Chairman of the Pickwell and Leesthorpe Residents Association. These representations are submitted on behalf of Mr Mansfield, the other local residents and the Residents Association.

Can you please confirm that these representations will be drawn to the attention of the Committee when this planning application is considered. My clients are forced to submit further lengthy representations in this case because of the unsatisfactory way in which the relevant issues are dealt with in the Committee report.

My clients have previously objected to this application on the grounds that the development will have an unacceptable impact on this rural area and will contravene the policies of the Melton Local Plan. Despite those clear objections, the application is being recommended for approval at the 23rd September meeting of the Development Committee. The analysis of the proposal which is set out in the Committee report is seriously flawed and fails completely to deal properly with a number of very important planning issues as follows.

Policy

The report to the Committee advises the Members that the proposal amounts to commercial development outside the settlement boundaries and that the application site *'is remote from any settlement and is contrary both to the Local Plan and the emerging LDF in this respect'*. The Members are therefore invited to give consideration to *'the particular nature of the proposal to*

determine whether both the use and the location are sufficient reasons to allow a departure from the policy framework'.

You will know that Section 38(6) of the Town and Country Planning Act 1990 requires a planning application to be determined in accordance with the provisions of the development plan unless material planning considerations indicate otherwise. The law therefore requires those other considerations to be properly identified before a decision-making body can decide whether those considerations are sufficient to override the very strong presumption in favour of the development plan.

No such other material planning considerations are put forward in the Committee report. It is not suggested that there is a pressing need for this development which cannot be met on another site which does comply with the provisions of the development plan. I return to the issue of alternative sites later in this letter.

There are therefore no material planning considerations put forward which could justify a decision on this application otherwise than in accordance with the policies of the Local Plan. It follows therefore that this application must be refused and that any attempt by the Development Committee to approve the application would be wholly unlawful.

The report concludes that the development complies with Policy C6. That could only be the case if the proposal involved the reuse and adaptation of a rural building '*without major or complete reconstruction ...*'. In fact, this proposal involves the significant rebuilding of and significant extension to existing buildings which are being converted to an industrial specification and will bear no resemblance to an agricultural building. There is therefore no basis on which the Members could properly be advised that this proposal complies with Policy C6.

Alternative sites

The Council asked the applicants some time ago to produce an analysis of the alternative sites that had been considered. In making that request, the Council must have formed a view at that stage that sufficient objections to the proposal existed to justify a refusal. The applicants have simply refused to provide any information about alternative sites. The Committee report records their response as being that '*the application is not promoted on the basis that there are no alternative sites available, but that the site proposed is preferred from both an operational and impact point of view*'.

There is no material anywhere in the Committee report or in the documents submitted as part of the application to show that this site will have a lesser impact than any alternative. The position therefore is that there is no material to enable the Committee to decide whether the impact that will undoubtedly result from this development is both necessary and unavoidable.

The Committee report completely fails to refer to the new abattoir facility which is currently under construction at Six Hills and which would be able to meet any local need which is shown to exist. The minutes of your Development Committee meeting which considered the Six Hills project described it as a facility designed not only to feed the Borough but also to receive animals from the biggest livestock market in the East Midlands at Newark.

Again, your Members are being asked to grant planning permission for a development which contravenes the Local Plan without being reminded that the need for abattoir facilities is about to be met elsewhere.

Finally, the report does not set out any reason why it is necessary for the operators to vacate their existing site.

Therefore, it would be wholly unlawful for the Committee to resolve to grant planning permission for a development which is accepted to contravene the policies of the Local Plan when it is not demonstrated either that the development is necessary or that this is the only site which can accommodate the activity.

Animal Welfare

The report advises that the location of this proposal '*will assist in reducing journey distances and preventing holding annual in an urban area prior to slaughter. These factors assisting benefiting animal welfare and compliance with Freedom Food requirements*'.

This assertion is incorrect. The sheep are kept in pens or sheds irrespective of where the abattoir is located. The existing abattoir is currently slaughtering 500 sheep per day. This high throughput means that the animals are kept in sheds or pens while awaiting slaughter (or transfer to the abattoir) in order to avoid unnecessary rounding-up and for ease of operation (eg feeding and conducting medical checks). The 100 or so sheep which are currently in the fields at Baytree Farm are understood to be there for fattening over many weeks or to have been bred there by the site owner. This is a very small portion of the annual throughput.

It is therefore quite incorrect to suggest that the development of an abattoir at the application site will create an improvement in animal welfare.

Buildings

The report advises that '*the proposed extensions are considered to be in keeping with the scale and height of the existing buildings ...*'. The comparison in the report between the proposed development and the existing buildings is quite inappropriate and misleading. A comparison should instead be drawn between the proposed buildings and the existing development as it should have been carried out.

The 1995 planning permission which created Baytree Farm was based on an agricultural need and was for 2 general purpose buildings (120x60x15ft), a corn store (80x60x15ft), a hay store and barn (60x30x30), a feed store and mill (40x30x12ft), a machine store and workshop (75x30x12ft) and a farm house. Not all of these agricultural buildings were developed and the farm house was not built until much later. The planning permission required the buildings to be '*cut into the ground where possible rather than built up and sited to reduce the visual impact*'. This has not been done with the result that some of the buildings on the application site are on built up land and are therefore far more prominent than should ever have been the case.

The Members should therefore be advised to assess the development proposal by comparing it with the way in which the site should have been developed in a much less intrusive manner and not with the intrusive way in which these buildings have been erected in breach of the terms of their planning permission.

Waste disposal

The application does not contain any proposal for the disposal of effluent. In response to the indication from Severn Trent Water that effluent from the site cannot be accommodated at the nearby treatment plant, the applicants now apparently intend to tanker the effluent to an unidentified facility. There is no indication that this facility has the capacity and the necessary waste management licence to accommodate the type and volume of effluent that the abattoir will produce.

The Council simply does not know at this stage whether a suitable scheme for disposing of effluent is achievable. A planning condition requiring such a scheme could only be imposed if there was clearly a reasonable prospect of a satisfactory scheme coming forward. The fact that the proposal has now been endorsed in principle by the Environment Agency does not alter the position.

It follows therefore in this case that a grant of planning permission subject to a condition requiring an effluent treatment and disposal scheme to be produced would be an unlawful condition. A planning permission with that condition attached would also be unlawful.

Odour

The 3rd party objections in relation to odour impact are dismissed in the report on the basis that '*if a robust odour and waste strategy is put in place, the amenity of the neighbouring dwellings would not be reduced to an unacceptable level as a result of the proposal*'. The report does not explain what that '*robust odour and waste strategy*' will be. As in the case of effluent disposal, a grant of planning permission with a condition requiring the submission of an odour and waste strategy would be unlawful.

The argument that the abattoir should be located within an industrial area is countered by the argument in the report that '*An abattoir is generally regarded as a bad neighbour activity and as such central locations, and even existing or new commercial locations, are not always perceived as attractive*'. There is nothing in the Committee report to explain how an activity which is regarded as a bad neighbour in an industrial location is nevertheless entirely acceptable in a rural location in close proximity to residential properties.

Protected species

The report includes the advice of the Leicestershire County Council Ecology team that a watching brief for bats and all other protected species should be maintained throughout the development and that, in the event of any protected species being discovered, '*work should cease whilst expert advice is sought*'. The suggestion that this matter can be dealt with by way of a planning condition is wholly wrong.

The High Court held in *R v Cornwall County Council ex parte Hardy* that, where there is a possibility

that a development may affect a protected species, it is wholly unlawful to grant planning permission for that development and then require the possible impact on protected species to be assessed at a later date. The position therefore is that a grant of planning permission for this development will be unlawful unless and until it has been demonstrated that there is not likely to be any adverse impact on protected species.

Capacity

The proposal is described in the Committee report as '*intended to replicate the existing facility in Melton Mowbray*'. However, no planning condition is proposed in order to limit operation of the new facility to that figure. All of the assessments in this case have been carried out on the assumption that the facility will have a weekly throughput of no more than 2,000 animals. However, the facility clearly has the capacity to handle up to 5,000 animals a week.

Unless that condition is imposed on any grant of planning permission, what the Council will have done is to grant planning permission for a development which has a capacity significantly beyond that which has been assessed. The Council is in no position to determine whether a throughput of more than 2,000 animals a week would be acceptable in planning and environmental terms.

The Council cannot therefore be satisfied that the grant of planning permission would respect all of the relevant considerations.

Conclusion

These points all demonstrate conclusively that a decision by the Development Committee to grant planning permission pursuant to this application would be wholly unlawful. The Committee is being invited to set aside its Local Plan policies for no valid reason whatsoever. The development is not shown to be necessary and the applicants themselves concede that there is no basis at all for taking the view that this is the only possible site for this development.

I therefore have to put the Council on notice that any attempt by the Development Committee to approve this application will be unlawful and will be challenged in the High Court.

Yours sincerely

Peter Brady
Solicitor
The Planning Law Practice

Member of the Law Society's Specialist Planning Panel

Regulated by the Solicitors Regulation Authority