

Neutral Citation Number: [2018] EWHC 1730 (Admin)

Case No: CO/4713/2017

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 6 July 2018

Before:

RHODRI PRICE LEWIS QC
(Sitting as a Deputy Judge of the High Court)

Between:

NICOLA SQUIRE	<u>Claimant</u>
- and -	
SHROPSHIRE COUNCIL	<u>Defendant</u>
- and -	
MATTHEW J BOWER	<u>Interested Party</u>

Estelle Dehon (instructed by **Richard Buxton Environmental & Public Law Sols**) for the
Claimant

Hugh Richards (instructed by **Shropshire council Legal Services**) for the **Defendant**
Christian Hawley (instructed by **Hewitsons LLP**) for the **Interested Party**

Hearing dates: 7 June 2018

Approved Judgment

Rhodri Price Lewis QC:

Introduction:

1. The Claimant, who would be a neighbour to the proposed development, challenges the decision of the Defendant Council, as local planning authority, to grant planning permission for the erection of four poultry buildings with feed bins, a gate house, a boiler house and water tank and associated infrastructure and landscaping at Footbridge Farm, Tasley, Bridgnorth, Shropshire. There are two grounds of claim. Firstly, it is claimed that the Council failed to consider the direct or indirect effects of the proposed development and operations as a result of manure storage and spreading, contrary to the Environmental Impact Assessment Directive 2011 (2011/92/EU) and the regulations which transpose that Directive into English law, the Town and Country Planning (EIA) Regulations 2011. Secondly, it is claimed that the Council failed to take into account in deciding to grant planning permission the material considerations that the storing and spreading of manure from the proposed development would generate dust and odour. The Defendant submits that the committee of members determining the application had regard to all the relevant environmental information addressing manure storage and disposal and so complied with the requirements of the Directive and the Regulations. The Defendant further submits that the material consideration of the potential impacts of manure storage and spreading were fully taken into account before planning permission was granted. The Interested Party, the farmer at Footbridge Farm and the applicant for the planning permission, supports those submissions. Furthermore, since planning permission was granted, he has entered into a unilateral undertaking under section 106 of the Town and Country Planning Act 1990 which, he and the Council submit, provides for all appropriate control by the Council of manure spreading and storage so as to ensure there would be no unacceptable impact on the amenities of local residents and both the Defendant and the Interested Party submit that therefore relief should be refused under section 31(2A) of the Senior Courts Act 1981.

2. Permission to bring the claim was refused by Robin Purchas QC sitting as a deputy High Court Judge on the 28th November 2017 following consideration of the documents in the case but following an oral hearing of a renewed application for permission, Mark Ockelton, sitting as Judge of the High Court, granted permission on both grounds.

The Facts:

3. The development for which planning permission was granted would house a combined total of 210,000 birds. The birds would be brought to the buildings as day old chicks and reared for 38 days. Following their removal for slaughter, the buildings would be cleared out and the manure would be removed and used as a fertiliser on agricultural land. The development would produce about 2,322 tonnes of manure each year with some 1,171 tonnes each year being spread on the Interested Party's land with some 1,151 tonnes exported to the land of a neighbouring farmer. The buildings would then be washed out. Within 10 days another flock would be introduced and the process would repeat itself over this 48-day cycle resulting in 7.5 flocks being raised a year so a total of 1,575,000 birds would be dealt with in this way each year. The boiler house would provide hot water for the buildings.

4. The proposed development required environmental assessment under the Directive and Regulations (an "EIA") as it involved a proposal for the intensive rearing of more than 85,000 birds. So, an Environmental Statement ("ES") was prepared on behalf of the Interested Party by specialist agricultural and rural planning consultants. That ES contained an Odour Impact Assessment and a Manure Management Plan.

5. Consultations were carried out on the application for planning permission with local parish councils, with the relevant statutory bodies including the Environment Agency, Natural England and Historic England and with internal specialist officers of the Defendant Council including the Public Protection Officer (“PPO”). Members of the public were also consulted and that resulted in 235 objections, including concerns being expressed about the effects of manure spreading, and 38 representations were made in support. The Bridgnorth branch of the Council for the Protection of Rural England and the Shropshire Ramblers also expressed concerns about the effects of manure spreading.
6. The application was reported to the South Planning Committee of the Defendant Council on the 29th August 2017 under the name of the Council's planning officer, Mr Tim Rogers. A written report to committee was produced by Mr Kelvin Hall, the planning case officer, which recommended to the members of the committee that delegated authority be given to the Planning Services Manager of the Council to grant planning permission subject to the conditions set out in an appendix to the report with any amendments considered necessary. Members of the committee visited the site on the morning of the committee meeting. The members of the committee resolved to accept the recommendation and planning permission was granted on the 1st September 2017.

The Law:

7. EIA Directive 2011/92/EU sets the framework for assessment of the environmental impact of relevant developments so that the environmental effects of proposed developments are taken into account before any decision on the grant of planning permission is made. The Directive was transposed into English law by the Town and Country Planning (EIA) Regulations 2011. There are more recent regulations dealing with EIA but it is the 2011 Directive and Regulations which apply to this application as it was made before the date the 2017 Regulations came into effect.
8. Article 2 of the Directive requires that before consent is given to a project likely to have significant effects on the environment there must be an assessment with regard to its effects. By Article 3 the EIA must identify, describe and assess in an appropriate manner the direct and indirect effects of the project. The proposal here is a project listed in Annex 1 to the Directive as an "installation for the intensive rearing of poultry with more than 85,000 places for broilers" and so by reason of Article 4 (1) it had to be made subject to an assessment in accordance with Articles 5 to 10. By Article 5(1) the developer must supply the information specified in Annex IV. That information must include a description of the project and a description of the aspects of the environment likely to be significantly affected by the development. Paragraph 4 of Part 1 to Schedule 4 of the transposing Regulations requires that the ES includes "A description of the likely significant effects of the development, which should cover the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects of the development resulting from (inter alia) (c) the emission of pollutants, the creation of nuisances and the elimination of waste."
9. By Regulation 3(4) a planning authority shall not grant planning permission pursuant to an application for permission for EIA development unless they have first taken the environmental information into consideration. "Environmental information" means the environmental statement, including any further information requested by the planning authority under Regulation 22, any other substantive information relating to the ES provided by the applicant and any representations made by bodies consulted on the application and by any other person: see Regulation 2(1).

10. As was explained in the Opinion of Advocate General Kokott in *Abraham v Wallonia* [2008] Env. L.R. 666: "*The aim of environmental impact assessment is for the decision on a project to be taken with knowledge of its effects on the environment and on the basis of public participation. Investigation of the environmental effects makes it possible, in accordance with the first recital of the preamble to the EIA Directive and the precautionary principle under Article 174(2) of the Treaty, to prevent the creation of pollution or nuisances where possible, rather than subsequently trying to counteract them. The requirement of public participation implies that the participation can still influence the decision on the project.*"
11. In *R (oao Burkett) v LB Hammersmith and Fulham* [2003] EWHC 1031 (Admin) Newman J explained: "*The objective of the Directive and the Regulations, namely the making of the requisite assessment before the grant of permission, is to be achieved through a dynamic process, which starts with the statement from the developer but it does not end with the statement. The statement can be supplemented by the authority, and the environmental information includes the representations from members of the public, where they have been provided.*": [8]vi. He went on: "*Where likely significant adverse effects are identified consideration must be given to remedial measures to avoid, reduce or remedy such adverse consequences. First consideration in this regard rests with the developer and the information will be subject to the same dynamic process of consideration by the planning authority and the public.*": [8] xi.
12. The starting point is that it is for the local planning authority to decide whether the information contained in the ES is sufficient to meet the definition in the Regulations. That decision is subject to review on normal *Wednesbury* principles but information capable of meeting the requirements of the Regulations must be provided. A local planning authority is not deprived of jurisdiction to grant planning permission merely because it concludes that an environmental statement is deficient in a number of respects: see Sullivan J, as he then was, in *R (oao Blewett) v Derbyshire CC* [2004] Env. L.R. 29 at [31] to [40].
13. Whether a proposed development is likely to have significant effects on the environment involves an exercise of judgment or opinion. It is not a question of hard fact to which there can only be one possible correct answer in any given case. The role of the court is limited to one of review on *Wednesbury* grounds: see Dyson L.J., as he then was, in *R (oao Jones) v Mansfield DC* [2004] Env. L.R. 2 at [17].
14. All applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise: section 38(6) of the Planning and Compulsory Purchase Act 2004. "Material considerations" may include all planning considerations relating to the use and development of land: *Stringer v Minister of Housing* [1971] 1 All ER 65 at p.77 b to g. The local planning authority must make proper rather than perfunctory examination of those material considerations: *ibid* at p. 72 j. The court's role nevertheless remains one of review on *Wednesbury* grounds and does not seek to substitute its views on the material considerations.
15. The relevant development plan is the Shropshire Core Strategy but its policies are not relevant to either of the grounds of claim here.
16. Planning authorities are entitled to assume that matters of regulatory control can be left to the relevant statutory regulatory authorities such as the Environment Agency: see *R (oao Free Frack Balcombe Residents Association v West Sussex CC* [2014] EWHC 4108 (Admin) at [100]. The proposed poultry unit would operate under an environmental permit issued by the Environment Agency under the Environmental Permitting (England and Wales) Regulations 2016 which

transposed the EU Directive on Industrial Emissions into English and Welsh law. Such permits were previously known as IPPC permits.

17. Planning officers' reports to the members of a committee on an application before that committee "obviously have to be clear and full enough to enable them to understand the issues and make up their minds within the limits that the law allows them. But the courts should not impose too demanding a standard upon such reports, for otherwise their whole purpose will be defeated; the councillors will either not read them or will not have a clear enough grasp of the issues to make a decision for themselves. It is their job, and not the court's, to weigh the competing public and private interests involved." See Baroness Hale of Richmond in *R (oao Morge) v Hampshire County Council* [2011] 1 WLR 268.

Submissions on behalf of the Claimant:

18. **Ground 1 - EIA:** The Claimant submits that whilst it is accepted by all the parties that the effects of storage of manure and its spreading outside the area of land covered by the grant of planning permission (the site) is an indirect effect of the proposed development and therefore, by reason of Article 5(1) and Annex IV of the Directive and Regulation 2(1) and Part 1 of Schedule 4 of the Regulations, the ES should have included a description of those effects, it failed to do so.
19. Ms **Dehon**, on behalf of the Claimant points out that the Odour Impact Assessment that formed part of the ES and the dispersion modelling that formed part of that assessment assessed emissions only from the chimneys of the fans that would ventilate the new poultry houses **and** from the gable end fans in those buildings and so did not assess the effects of storing and spreading manure outside the area of the site itself. Similarly, the Manure Management Report that formed an appendix to that Assessment focussed on the impact of nitrogen deposition as a result of those activities and did not assess the potential for odours and dust arising from spreading the manure outside the area of the site.
20. She acknowledges that the Odour Impact Assessment provides as follows:

"9.2 In order to operate any poultry unit with more than 40,000 birds it is required by law to hold an IPPC permit which is administered by the Environment Agency. The permit must take into account the whole environmental performance of the plant, covering e.g. emissions to air, water and land, generation of waste, use of raw materials, energy efficiency, noise, prevention of accidents, and restoration of the site upon closure. The purpose of the Directive is to ensure a high level of protection of the environment as a whole. As the proposed poultry unit will be controlled under the IPPC permitting regime, the likelihood of significant impact on the environment from the proposed development is negligible due to the strict regime of control.

Odour Management

9.3 Odour control on a broiler rearing unit is based on operating to best available techniques. The proposed ventilation system is deemed by the Environment Agency as 'Best Available Techniques' and uses high velocity ridge mounted ventilation fans for the dispersal of odour.

9.3 The development has been assessed as part of the IPPC permit application and deemed acceptable subject to odour control conditions. The site is subject to an IPPC permit conditions which requires emissions from the activities shall be free from odour at level likely to cause pollution outside the site.

Manure Disposal

9.11 The proposed poultry units will operate a floor litter basis and will generate poultry manure. The manure will be disposed of through use as a sustainable agricultural fertiliser. The applicant's manure management plan is attached to this statement."

21. She points out that there is no further assessment of the effects of spreading manure outside the site in the ES. Consultation on the ES produced concerns about odours from a Professor Lockerbie, who had been instructed by local residents to consider the odour assessment in the ES, and the consultants responded stating: "Spreading of manures and slurries to land is a normal part of farming practices. Manure and slurries will be spread on the land irrespective of the source of the manures/slurries. The modelling is focused on chronic emissions from the proposed poultry houses. Carcasses are not permitted to lay around and rot at a poultry farm; mortalities are stored in sealed bins and removed from site frequently." The Claimant submits that this response shows that the effects of spreading manure outside the site have not been assessed.
22. The Environment Agency also responded to the consultation in a letter dated the 17th March 2017 which confirmed that an application for the environmental permit that would be needed for the operations and activities to take place had been submitted. The Claimant draws attention to the passage in the letter where the Agency wrote: *"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."* It is submitted that that shows that the Agency would not be able to control the effects of manure spreading outside the site under the terms of any permit issued. The Agency letter goes on to say:

***“Manure Management (storage/spreading):** Under the EP Regulations 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 applicant's 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 Practice (COGAP) and the Nitrate Vulnerable Zones Action Programme where applicable.*

The manure/litter is classified 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. "

23. The Claimant submits that in so far as offsite effects are covered this concern is focussed on nitrates in the soil and in ground and surface water and not on the effects on amenity of manure storage and spreading.
24. An environmental permit was issued by the Agency to the Interested Party on the 12th April 2017. The Claimant submits that under the terms and requirements of the permit, activities on the site are controlled but not the effects of manure storage and spreading off the site, which is defined tightly as the area around the proposed buildings.
25. The officer's report to committee quoted the Environment Agency's consultation response letter in full and observed that the Agency had "no objections".

26. The Council's own PPO, whose responsibilities are similar to those of an environmental health officer, also had no objections. He is quoted in the officer's report as saying: "It is my professional opinion that a poultry farm of this size and scale can operate without causing significant impact on the surrounding area. As such I have no objection to the application and have no conditions to recommend with the exception of recommending that poultry numbers are conditioned as these were the basis of input parameters on environmental reports reviewed." He commented on the responses of Professor Lockerbie but these did not cause him to alter his views on the acceptability of the proposal but he went on to observe:

"Professor Lockerbie correctly states that the odour assessment does not take into consideration spreading of manure. This is a common agricultural practice taking place in the UK and can occur on the land currently. Although spreading 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."

27. The Report goes on to consider both the impact on water resources where reassurance is given on the basis of the Environment Agency's responses and responsibilities and "residential and local amenity considerations" including "odour" and "dust" and again reassurance was provided to members on the basis of the need for an environmental permit and on the basis of the PPO's comments that were reported in full earlier in the Report.

28. The Claimant submits that the reliance in the Report on the permit and on other regulatory control such as the statutory nuisance legislation shows that the EIA has not properly assessed the effects of storage and spreading of manure off site as impacts may be significant in making a planning judgment as to their acceptability which would be less than to bring into play the statutory nuisance legislation. Information about the amount of manure likely to be produced, where it is likely to be spread and therefore the likely effects on neighbour's amenity could all reasonably be required to be provided by the Interested Party and his consultants and so should have formed part of the EIA so as to enable a properly informed decision to be taken as to whether planning permission should be granted. The fact that spreading of manure does not itself require planning permission does not mean that it does not have impacts which should be assessed in the EIA process.

29. The Claimant further submits that the Code of Good Agricultural Practice is no safeguard or comfort because it is statutory guidance only so far as nitrogen deposition is concerned and does not address amenity concerns from odour or dust and its guidance is no substitute for a proper assessment in the EIA process.

30. **Ground 2 -Material Consideration of the effects of manure storage and spreading:** The Claimant submits that the Council failed properly and conscientiously to consider the potential effects on the amenities of local residents of storing and then spreading large quantities of manure close to their homes. It is agreed by all parties that such effects are a material consideration but the Claimant submits that rather than taking those potential effects into account the Council discounted them on the basis of the absence of a need for planning permission for those activities and on the basis of other regulatory control. Ms Dehon accepts that odour, dust and manure are mentioned in the conclusion to the officer's report but submits that there is no substantive consideration of the potential effects and the regulatory regime cannot properly control the potential effects of these activities.

31. **Discretion and Section 31(2A) of the Senior Courts Act 1981:** The Claimant submits that the unilateral undertaking entered into by the Interested Party which requires firstly, the submission of a "manure management plan" setting out the means of disposal of the manure and the steps to be taken to minimise the impact of that disposal on the environment and on residential amenity, secondly, the approval of that plan by the Council and thirdly, its subsequent implementation does not provide a basis for the Court to conclude that the outcome for the Claimant would not have been substantially different if the conduct complained of, here the failure to carry out a proper EIA and to take into consideration the potential impacts on amenity of those activities, had not occurred. The Claimant submits that the undertaking does not provide any assessment or means of assessment of the effects of the relevant activities. She submits that the Defendant would still therefore not have the environmental information about the odour and dust caused by the spreading of the manure to judge whether the "restrictions and requirements" contemplated by the undertaking would address those effects. Further, it is submitted that as it is contemplated that some of the manure will be spread on land not owned by the Interested Party, it is questionable whether the undertaking could be enforced against such third parties. In any event it is submitted that the Court of Appeal in *Brown v Carlisle City Council* disapproved of the use of planning obligations to carry out later assessment as a means of addressing shortcomings in EIA given that the object of the Directive and Regulations is to ensure that environmental impacts are assessed before the decision is taken whether permission should be granted.

Submissions on behalf of the Defendant:

32. **Ground 1 -EIA:** Mr Richards on behalf of the Defendant Council submits that the duty on the Council is to take into account not just the ES but all the environmental information before it and provided it does so before reaching its decision, there is no breach of the Directive or Regulations. He submits that the Defendant did take into account all the environmental information relevant to the issue of the potential effects of storing and spreading manure. He draws attention to the dictum of Sullivan J, as he then was, in *R v Rochdale MBC ex parte Milne* [2001] Env LR 22 at [108] where he held: "*It is for the local planning authority to decide whether it has sufficient information in respect of material considerations. Its decision is subject to review by the courts, but the courts will defer to the local planning authority's judgment in all but the most extreme cases. Regulations 4(2) [now Regulations 3(4)] reinforces this general obligation to have regard to all material considerations in the case of a particularly material consideration; 'environmental information' which has been provided pursuant to the assessment regulations.*"

33. He points out that the ES described how the buildings are cleaned out at the end of each "flock cycle" and the manure is removed by machines and loaded directly into waiting vehicles, which are sheeted and the manure is removed from the site for disposal as a sustainable fertiliser on agricultural land. The Code of Good Agricultural Practice produced by the Department for Environment, Food and Rural Affairs and referred to by the Environment Agency in its response to the consultation on this application, gives guidance on the application of livestock manures to land and advises that "correct application of manures will reduce ...fertiliser costs, improve soil structure and reduce the risk of causing pollution." Advice is given as to what steps should be taken to that end. He points out that this guidance is not therefore limited to addressing nitrogen deposition on land.

34. He submits that the assessment of the potential effects of the storage and spreading of manure was carried out by the Defendant's PPO, based on the information before him, and was reported in the officer's report to the committee. Mr Richards draws attention to these passages where the PPO is quoted as advising:

"Professor Lockerbie correctly states that the odour assessment does not take into consideration spreading of manure. This is a common agricultural practice 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.

...As a result, I do not consider any additional odour assessment is necessary to support this application and find the initial assessment submitted to be generally satisfactory.

Having considered the amended noise and odour assessment I do not consider it likely that the development will have a significant adverse impact on existing properties or areas where properties may be proposed in future. As a result, I have no objections to the proposed development as it is possible to be developed in such a way which will not have a significant impact on land uses. As a result, the EA permit is sufficient to control noise and odour.

I would advise that a condition is placed to specify the number of birds to be kept on site at any one time as should additional birds be introduced this would have an impact on odour in particular. As a result, should additional birds be proposed in future it is relevant and necessary for additional assessments to be carried out to consider amenity impacts further."

35. Mr Richards submits that the minutes of the meeting of the committee show that the members were engaged with the issues dealt with by the PPO and specifically manure management and the PPO responded to questions about the role of the Environment Agency and of his team and the process and timescale for responding to any complaints. The PPO's position, as reported to members, was that so long as good practice was followed, there would not be a significant odour problem and if there was the statutory nuisance legislation under sections 79 to 81 of the Environmental Protection Act 1990 was available to control it.
36. He submits that the Defendant was right to take into account that the permit issued to the Interested Party can control management of waste off the site as the Interested Party is required by the terms of the permit to produce a written management system and to take appropriate measures in disposal or recovery of solid manure to prevent, or where this is not practicable, to minimise pollution. He submits that the Defendant is entitled therefore to reach the conclusion on the basis of the information before its members on the committee on the potential impacts of manure storage and spreading and in the light of the need for operations to be controlled by the Environment Agency under the terms of the permit that the effects are unlikely to be significant or that appropriate mitigation measures will be taken. He relies in that regard on a passage to that effect in the judgment of Mr George Bartlett QC, sitting as a Deputy High Court Judge, in *Atkinson v Secretary of State for Transport* [2006] EWHC 995 (Admin) at [29] where the learned deputy judge concluded: "[The decision maker] must have some information before him when coupled with the need for subsequent consent, enables him to conclude that the effects will not be significant or that appropriate mitigation measures will be taken."
37. **Ground 2: Material Considerations:** Mr Richards submits that given the limited supervisory role of the courts in relation to officers' reports and whilst there will always be room for dispute as to whether a report should be fuller (see *BT plc v Gloucester CC* [2011] EWHC 1001 at [118]) it is not for the court to second guess the officer as to how full the report needs to be, provided the report does not significantly mislead the committee about material matters (see, too, *Oxton Farms v Selby DC* [1997] EG 60. He points out that the report categorises "residential and local amenity

considerations” as one of the "main issues", manure management and odour are expressly addressed and the report quotes the PPO's views extensively. It concludes: “Officers consider that adverse impacts on residential and local amenity can be satisfactorily safeguarded. In addition, the Environmental Permit that has been issued for the operation would provide an additional level of control." He submits that the members clearly had before them and took into account the material consideration of the potential effects of manure management. He submits that the potential effects of manure spreading would be well known to members of a planning committee in a rural area.

38. ***Relief and the unilateral undertaking:*** It is submitted that if and to the extent that the permit and statutory provisions do not secure sufficient control over manure spreading then the planning obligations under the unilateral undertaking provide that control to the Council. Further it is submitted that those obligations would cure any defect of assessment of those potential effects. The controls would be available to the Council and there would be no reason for the Council not to use them, if needed. The Claimant's concerns are to ensure that there should be no unacceptable impact by way of dust and odour from storing and spreading the manure generated by this development and the planning obligations now provided ensure that and so there is no reason to quash the permission.

Submissions on behalf of the Interested Party:

39. Mr Hawley on behalf of the Interested Party endorsed and adopted the submissions on behalf of the Defendant Council. He went on to point out that the ES identified that the production of waste in the form of poultry manure was an expected residue and emission from the site and explained how the manure was to be disposed of through use as a sustainable agricultural fertiliser and that the operation of the site, including therefore the disposal of the manure generated, was to be subject to the "rigorous controls of the Environment Agency's IPPC permitting regime." Under the heading "Assessment" the ES reported: " As the proposed poultry unit will be controlled under the IPPC permitting regime, the likelihood of significant impact on the environment from the proposed development is negligible due to the strict regime of control." He submitted that there was an assessment therefore in the ES of whether there would be likely significant effects of the development, including from manure management
40. He submitted that it was clear that the permit did provide control over manure management. He pointed out that the introductory note to the permit, whilst not forming part of the permit, identified as a main feature of the permit that “at depletion [meaning the removal of the birds] the litter will be removed from the site and spread on the operator's own land and any surplus will be sold off and recorded." So this aspect of the operation was well in mind.
41. He submitted that as a manure management plan has to be submitted which has to accord with the Code of Good Agricultural Practice and as that Code deals with manure management, so the Agency would require the plan to accord with that guidance on off-site manure management and with best available techniques, as the Agency's Sector Guidance Note EPR 6.09 explains. So the guidance does not stop at the site boundary for the permit and expressly deals with spreading of manure to prevent or minimise emissions to air.
42. Mr Hawley submits that therefore the report to committee was right to rely on these other controls in the assessment of the potential effects of manure management.

Discussion and Conclusions:

43. **Ground 1: EIA.** In my judgment the Defendant Council did assess the direct and indirect effects of this proposed development before deciding to grant planning permission and did comply with its duties under the EIA Directive and the transposing Regulations. It is important to bear in mind that an EIA is a dynamic process that starts with the ES but does not end with that statement, as Newman J explained in *Burkett* supra. The ES here did focus on emissions from the fans on the buildings in its Odour Impact Assessment and on the deposition of nitrogen in its Manure Management Report but it did identify and describe production of waste in the form of poultry manure as an expected residue of the development. It did explain that the manure was to be disposed of as a fertiliser on agricultural land and it did explain that the operation of the site would be controlled by the permit regime of the Environment Agency and concluded that the likelihood of significant impact on the environment would be negligible.
44. But the assessment did not end there. The Environment Agency responded to the consultation on the application by pointing out that the permit would require a manure management plan to be submitted. Again, the focus of their response could on first reading seem to be on protection of groundwater and surface water but I am satisfied that on consideration of the permit, the Code of Good Agricultural Practice referred to in the Agency's response to the Defendant, and the Agency's Guidance Note ERP 6.09 that the permit can control the management of manure off site in order to protect the environment and amenities. So, the Council's PPO was right to advise the members that the permit could control odour off site. But he did not solely rely on the control provided by the permit. He was able to advise the Defendant Council, on the basis of his experience and expertise, that localised odour from manure spreading is short-lived where agricultural best practice takes place and that whilst stockpiled manure produces odour for a time until a crust forms thereafter there is little odour. In my judgment, that is an assessment of the likely significant effects of manure management in terms of effects on amenities. The members were entitled to rely on that assessment together with the other information they had in order to comply with the Defendant's duties under the Directive and Regulations. So, the members of the Council had before them the ES, the consultation responses, the assessment of the PPO on the potential effects of manure management, the correct advice that the permit would provide relevant control and the overall conclusion that officers considered that adverse impacts on residential amenity "can be satisfactorily safeguarded." Together with the benefit of their site visit, their local knowledge and all the environmental information before them the members were entitled to agree with the assessment of their officers and conclude that planning permission should be granted.
45. The members were not solely relying on the permit regime. They had all the environmental information before them as defined in Regulation 2(1), the advice of their officers and the knowledge that the operations, including the manure management, would be under the control of the Environment Agency. So, they were in the position of the decision maker referred to in *Atkinson* supra and so in a position to grant planning permission and in doing so to comply with their duties under the Directive and Regulations.
46. In my judgment it is clear that the permit does enable the Environment Agency to control manure management off site so as to control dust and odours. The introductory note recognises this element of the development. The Agency in their response to consultation explained that a manure management plan would be required and that any plan would be required to be in accord with the Code of Good Agricultural Practice. That Code goes well beyond matters relevant to groundwater and surface water protection, even if that is its sole statutory role, and deals expressly with the application of manure to land and gives practical guidance on odour

reduction. The Sector Guidance Note EPR 6.09 makes it clear that any permit will cover manure management and will require manure management off site to comply with the Code "to prevent or where this is not practicable to minimise pollution" and emissions to air are expressly dealt with.

47. **Ground 2: Material Considerations:** In my judgment the Defendant clearly did take into account the material consideration of the potential effects of manure management in deciding to grant planning permission. The issue is expressly dealt with in the officer's report and that report did contain the PPO's assessment of the likely effects of manure management, as I have explained. The report did not discount the issue because planning permission was not needed for that activity. The PPO expressed his professional view of the likely effects and he was reassured in his conclusions by the control that would be provided by the permit. The report contains ample information on this material consideration for the members to form their views, assisted no doubt by their site view and local knowledge. They were entitled to take into account the advice they had been given about the control that could be exercised through the permit.
48. **Discretion and the Unilateral Undertaking:** Given that I do not consider there has been an inadequate assessment here nor that any material consideration has been omitted from consideration, I do not need to address this issue save to observe that the unilateral undertaking should give the Claimant comfort in the controls it affords the Defendant.
49. The claim is therefore dismissed and I invite Counsel to seek to agree an appropriate order.