

**NORTH PLANNING COMMITTEE
SCHEDULE OF ADDITIONAL LETTERS**

Date: 23rd July 2019

NOTE: This schedule reports only additional letters received before 5pm on the day before committee.

Any items received on the day of Committee will be reported verbally to the meeting

Item No.	Application No.	Originator:
5	19/01154/FUL	Member of the public.

A letter of objection has been received from a member of the public raising concerns with regards to an anticipated negative impact of the proposal on an annual international three- day horse event known as the Brand Hall Horse Trials. Concerns are raised with regards to 300 heavy horse boxes on main road and impacts further increased traffic will have on surrounding highways as well as commercial issue of the exacting requirement of three-day eventing which would no longer be satisfied. Loss of the event it is considered will have a significant economic impact to both the existing operators and the surrounding community in relation to commercial activity as well as tourism. (A full copy of the objection is available for inspection on the Council's application website).

Officer's comments

It is not considered that the proposed development under consideration will have any significant detrimental impact on the event as referred to above. Highway and transportation issues are referred to in the Officer's report to Committee and this is considered acceptable.

Item No.	Application No.	Originator:
5	19/01154/FUL	Environment Agency

I refer to amendments received in support of the above application which were received on the 10 June 2019. We have also had subsequent internal discussions and would offer the following comments and clarification for your consideration. Environmental Permitting Regulations (EPR): As previously stated the proposed development will accommodate 32,000 birds which falls below the threshold (40,000) for regulation of poultry farming under the Environmental Permitting (England and Wales) Regulations as amended. As such we would normally have no bespoke comment to offer on the application. Notwithstanding the above we have previously provided comment, and raised no concerns, on the submitted ecological report with regards matters within our remit, specifically the presence of otters in this area which were highlighted to us. Whilst we did provide advice on the ecological report we would not comment on the planning application in relation to potential emissions from operations associated with the proposed poultry operation, or from similar emissions (to land and water, dust or odour) from related manure management operations. These would be for

the Local Planning Authority (LPA) to consider and assess where appropriate as part of the planning application determination.

We do regulate any pollution to water from manure storage or spreading. We also regulate Nitrate Vulnerable Zone (NVZ) compliance. This is undertaken as part of a farm visit or any potential notified operational breach.

In relation to Free Range Poultry Farms and the livestock manure nitrogen limit, the NVZ rules include a requirement known as the livestock manure nitrogen farm limit or whole farm limit. Livestock farmers must ensure that the amount of nitrogen in livestock manure that is applied to the farm (whether directly by grazing livestock and/or by spreading) does not exceed 170 kg per hectare. This is averaged over the whole area of the farm rather than per field.

These loading limits only apply to livestock manure applied to the land and are separate from the 250 kg total nitrogen per hectare maximum field limit for organic manures. The current DEFRA guidance (Table 32: nitrogen and excreta production by poultry places) confirms that, for free range poultry sites where the manure from the houses is exported from the farm; “when calculating storage requirements, you should make an allowance for the proportion of time that birds are not housed.

Commonly, free range laying hens are housed for 80% to 90% of the time. Figures given assume 80% of excreta are deposited in buildings”.

Further details are at: <https://www.gov.uk/guidance/storing-organic-manures-in-nitrate-vulnerable-zones#storing-slurry-and-poultry-manure>

Based on our current position, we do not comment on any detailed information submitted to confirm the potential allowable/maximum bird numbers required to avoid breaching the 170kgs/hectare limit. Your Council may wish to consider this as part of your decision making process, to ensure the land use is acceptable.

In relation to subsequent control of the impacts to water from manure management, the Environment Agency is responsible for enforcing these rules which relate to The Reduction and Prevention of Agricultural Diffuse Pollution (England) Regulations 2018, which came into force on 2 April 2018.

It is an offence to break these rules and if they are breached we would take enforcement action in line with our published Enforcement and Sanctions guidance.

The above Regulations are implemented under The Farming Rules for Water. All farmers and land managers are required to follow a set of rules to minimise or prevent water pollution. The new rules cover assessing pollution risks before applying manures, storing manures, preventing erosion of soils, and managing livestock. The full information can be found at: <https://www.gov.uk/guidance/rules-for-farmers-and-land-managers-to-prevent-water-pollution>

Item No.	Application No.	Originator:
5	19/01154/FUL	Shropshire CPRE

We understand that this application has now been listed to be heard by the North Planning Committee on 23rd July as agenda item 5 and although your Development Management Report, recommending that permission be granted subject to conditions, was not available on the website for this application at the time of writing, we note that it is available with the committee papers.

We believe that you may have overlooked important aspects of the recent Tasley decision, as set out below, and we also wish to re-state our objection to the application, and the comments in our previous letters dated 3rd November 2018,

16th April 2019 and 14th May are still relevant.

*It appears that the re-consultation has been triggered by the submission of revised documents by the agent, Ian Pick, following the Court of Appeal decision in *Squire v Shropshire Council and Matthew Bower EWCA Civ 888 (the Tasley decision)*. Mr Pick is also the agent for the Tasley application and revised documents were also submitted by him at much the same time for that application (ref 17/01333/EIA). For this Betton application, there appear to be just two revised documents, namely the Manure Management Update and a revised Landscape and Visual Impact Assessment.*

In the Tasley decision, the court laid down important principles concerning the environmental impact of intensive farming. It also established the correct approach to interpreting the environmental permits under which such intensive farming facilities operate.

The Court of Appeal first addressed the environmental permit. It held that the permit encompassed the disposal of the waste manure outside the permit installation boundary (which was tightly drawn around the chicken sheds).

However, that simply required the permit holder to produce records and a written management system to identify and minimise the risks of pollution from the disposal. It did not create any obligation on the Environment Agency ("EA") to control any dust or odour pollution issues arising from activities outside of the permit installation boundary, whether on the developer's land or on any third party land. The EA would control nitrogen impacts of the manure on groundwater and surface water, but only in Nitrate Vulnerable Zones. This control was irrelevant to other pollution impacts, such as from odour and dust.

The Court of Appeal went on to address EIA. It accepted the position, agreed by the parties in the High Court, that the odour and dust impact of the storage and spreading of the manure were indirect effects of the proposed development, which it was necessary to assess in the EIA.

The Court held that the EIA which had been carried out was deficient – it relied on a future proposed Manure Management Plan, which would only relate to the storage and spreading of manure on the developer's own land. It did not appreciate that the Environmental Permit would not control the odour and dust effects of the storage and spreading of the manure. And it wrongly relied on comments made by the Public Protection Officer, which were "broad and generalized" and which relied on the officer's general experience of agricultural practice rather than on actual assessment.

It is against the above that the amendments to the application have to be considered. The gist of the Court of Appeal judgment is that the environmental impact of the final destination of the manure has to be assessed. This would remain the case whether or not the application is subject to EIA. It is not enough merely to specify the proposed destination of the manure.

The agent, in his letter dated 6th June 2019, confirms that the original proposal

was that all of the manure generated from the proposed development was to be removed from the site by contractors either to anaerobic digester plants or for use as raw fertiliser. The Manure Management Update, submitted as a direct result of the Tasley decision, now proposes to take all of the estimated 624 tonnes of raw manure a year arising from the proposed development to Ercall Park, High Ercall, Shropshire, TF6 6AU, to be used as raw fertiliser on 800 acres of arable land there. Ercall Park is in the Telford & Wrekin Council area.

Officer comments.

Comments as made in the further comments above from Shropshire CPRE are very well covered in response received from the applicant copied in full below. The application is not EIA development and in relation to intensive poultry development is considered small scale because as pointed out in letter below development is neither EA permitting development or subject to EIA development legislation. The applicant has submitted a manure management plan and draft heads of Terms which will cover issues around manure management and disposal and this will be subject to a Section 106 agreement in accordance with Section 33 of the Local Government (Miscellaneous Provisions) Act 1982

Item No.	Application No.	Originator:
5	19/01154/FUL	Applicant's agent.

The following has been received from the applicant's agent in respect of comments made by CPRE as referred to above.

I am writing in response to the CPRE letter dated 17th July concerning my client's planning application for a free range egg laying unit near Betton.

The first important point is that this proposed development is of a small scale such that it requires neither an environmental permit nor an Environmental Impact Assessment (EIA). In this significant way, which appears to have been overlooked by the CPRE, it is distinguished from the situation in Squire.

The comments by the CPRE in relation to the scope of an environmental permit and concerning the EIA, are not relevant to the application now before the Council because no EIA is required and therefore the legal requirements relating to an EIA do not fall to be considered. There is no environmental permit because one is not required.

In this case, the effects of the disposal of manure must be considered only as a material consideration and the weight to be given to them is a matter for the Council. Tesco Stores Ltd v Secretary of State for the Environment [1995] 1 W.L.R. 759. Such decision will rarely be the subject of criticism by the Courts and the amount of information which the Council requires to enable it to reach its decision is also a matter for its own judgement, acting reasonably.

In relation to the proposed development at Betton, there will be substantially less manure produced than in the Squire case. The Council has been told that the manure will be disposed of to farm land and knows the location at which it will be

spread. A binding undertaking has been offered to define where the manure is spread and that it is handled in accordance with good practice. The land in question is currently fertilised and conditioned by the spreading of poultry manure and therefore, in terms of the environmental impact, there will be no material change. The farmer is currently free to source manure from any location and to apply it as he sees fit, subject to complying with the law. There is no increased likelihood of any negative environmental effects of spreading arising if the manure is sourced from Betton. The spreading of manure is not controlled by planning and there would be no reason to consult with Telford and Wrekin Council over the impacts of the spreading of this manure. The degree of change in impact from manure spreading from the status quo (or baseline) at Ercall Park will be nil. The manure which is currently spread there has to be imported by road and can come from any source.

The CPRE letter refers to the Manure as being “raw” which is a somewhat pejorative term. The Manure from this unit will be similar to the manure from other poultry units, including that currently spread on the Ercall Park land. At present the farmer of that land is free to acquire or not to acquire manure from any source so the suggestion that there is any manure which can be identified as having been “displaced” by it is somewhat fanciful. Even if such “displacement” could be identified it is far too remote a consequence of this development to be assessed. The “displaced” manure could arise or be spread anywhere in the UK. Due to the declining quality of UK soils resulting from reduced spreading of organic manures in the last 60 or so years, livestock manure of all kinds is in high demand to improve soil quality and cropping and is transported significant distances.

It is somewhat surprising that the CPRE seems to be opposed to the field spreading of manure, which is a traditional and environmentally friendly way of dealing with manure, which is a valuable by-product of livestock farming. The COGAP for Protecting out Water Soil Air says at 3.2

The most economic and environmentally friendly way of dealing with livestock manures (slurry and solid manure) and dirty water will usually be to apply them to agricultural land at appropriate rates for the benefit of soil and the crop.

This positive contribution made by the field spreading of manure is a material consideration for the Council in relation to this application.

The duration of the spreading operation over the whole of Ercall Park will be in total about 7 hours per year, so the duration of any impact in any one location will be minimal. The benefit to the soil and the crop of the spreading will be long term. There is no published data to allow the odour or dust arising from spreading to be assessed objectively, so the Council will need to make an informed decision based on its experience and the knowledge that it has. There is no requirement to provide information which does not exist. The COGAP is recognised as representing best practice in the application of manure and thereby reducing the impact of doing so.

The Squire Court of Appeal decision requires a proportionate response. The decision concluded that for a poultry development in relation to which an EIA is

required, an assessment needs to be made, as part of the EIA, of the impact on the environment of the disposal of manure. It concluded that the Council is entitled to take into account the existence of an environmental permit and the extent to which that contributes to the control of those impacts. It did not make any comment on how the assessment should be carried out, the extent of the information which ought to be required or the weight which should be given to the information obtained. On those issues the Council must make a reasonable judgment in the circumstances.

The ammonia, landscape, visual and traffic impacts of this development have been assessed and there is no basis on which they could form a ground for refusal.

It is wholly wrong to conclude that the economic benefits accrue to the applicant alone and the CPRE should know the value to the wider economy and to the countryside as a whole of economically successful farming enterprises which bring increased prosperity to a wide area and benefit a number of service industries as well as contributing socially by supporting generations of farming families to stay on the land and to continue making use of local facilities. The development will also make a contribution to food supply and security, all of which carries weight in its favour.

Item No.	Application No.	Originator:
5	19/01154/FUL	BAN – Mr. Moulson

In support of their objections. Mr. Moulson and BAN (Betton and Norton Action Group) have submitted an economic appraisal prepared on their behalf by Reading Agricultural Consultants dated 18 July 2019. . This report concludes stating:

In any farming sector, there will always be producers who can demonstrate technical performance efficiencies and through good management, judgement and planning, take advantage of market prices and withstand risks and volatility.

The free-range egg sector however is currently undergoing a challenging period, categorised by an imbalance in the supply and demand relationship in the wider marketplace.

It is advisable therefore that a 32,000-bird development should have full and proper financial modelling on which to base any plans, in order to allow for contingency planning and sensitivity analysis when egg prices reduce and input costs increase, as has been shown in recent years.

The financial factors as stated in Sections 4 and 5 of this report highlight the importance of sensitivity analysis in such plans, with small changes in egg price, feed cost, and loan interest rate for example impacting significantly on overall viability.

Achieving profitability therefore will depend on various factors including a secure contract for the unit, technical efficiency in its performance, and sound financial acumen in forecasting and monitoring viability and returns.

The applicant's agent has responded in relation to the BAN economic report indicating:

In terms of the market, currently free range egg production makes up approximately 58% of the UK egg market. The major retailers have signed up to making all retail egg sales to be free range by the end of 2025, and therefore, over the next 6 years, significant numbers of extra production are required to meet this challenge.

The UK egg market is an unsubsidised industry and is the subject of market forces of supply and demand, like any other business, and there is volatility of market place. The market is cyclical, and taking an average over the past 10 years, the industry is very profitable. The Reading Agricultural Consultants assessment takes a Snapshot in time when the market is at the bottom of the cycle in terms of egg price. There are however some assumptions in the document which conflict with the applicants' budgets and a comparison is shown below

<i>Assumptions</i>	<i>BAN</i>	<i>Merlott Chitty Farms</i>
<i>Production</i>	<i>306 to 325</i>	<i>320.1</i>
<i>Price</i>	<i>79.1p</i>	<i>80p</i>
<i>Feed</i>	<i>£250</i>	<i>£230</i>
<i>Pullet Price</i>	<i>£4.17</i>	<i>£3.85</i>
<i>End of Lay Pullets</i>	<i>5p</i>	<i>5p</i>
<i>Wages</i>	<i>£55k</i>	<i>£22.5K</i>
<i>Building costs</i>	<i>£1.28m</i>	<i>£950k</i>

The applicants' figures are based on the position with his egg and pullet contract, and his quotations for the construction of the building. The assessment prepared by the BAN action group significantly overestimates the costs of the development and the associated running costs.

Case Officer comments.

Whilst it is appreciated that economic objectives are one of the three strands of sustainable development in accordance with the NPPF, (Section 2), this is one of the three, all of which must be considered together and are interdependent. It does not translate as a requirement for development of this nature to demonstrate that it is financially viable. Economic considerations as considered in the report to Committee. Policy CS13: Economic Development, Enterprise and Employment in the Shropshire Core Strategy refers to rural areas, recognising the continued importance of farming for food production and supporting rural enterprise and diversification of the economy, in particular areas of economic activity associated with agricultural and farm diversification. Paragraphs 6.3.3 and 6.3.12 in relation to siting, scale, landscape and visual impact make reference to economic benefits. This must not be confused with issues in relation to landscape and visual impacts and Policy CS6 considerations. Policy MD7b of the SAMDev in paragraph 2 refers to appropriate rural economic development but this is in relation to 'replacement

buildings'. Any economic benefit arising from the development is a material consideration in the wider assessment of the application as a whole. As concluded in the report in relation to this development, overall there is little in the planning balance in relation to overall economic benefits. The Officers conclusions overall remain as per the report recommendation.

Item No.	Application No.	Originator:
5	19/01154/FUL	Case Officer

Paragraph 6.4.11 of the Committee report refers to 'no significant harm'. This is in error and should read 'no harm'.

Item No.	Application No	Originator
5	19/01154/FUL	Public

Further representation has been received from Nancegollan Action Group in relation to amenity impacts from manure spreading activities and what it considers misleading assumptions by the applicant with regards to manure production and that Ercall Park Farm, (proposed receiver of the manure), is within a Nitrate Vulnerable zone, and there needs to be transparency if the farm intend to use the additional manure supply from Merlott Chitty.

Officer comments.

The manure proposed to be spread on farmland at Ercall Park Farm is land in arable production that currently receives chicken manure from other sources. It is proposed to use the chicken manure from the application site in replacement of some of this imported manure and not in addition. Further still as referred to in paragraph 6.7.3 of the report to Committee the storage and spreading of farmyard manure is controlled through the Nitrate Pollution Prevention Regulations 2015. These regulations dictate where manure can be stored, where it can be spread and the timing of spreading during the year. Compliance with the regulations is monitored by DEFRA under cross compliance legislation with fines in place for none compliance. The applicant has submitted a manure management plan and this along with the Section 106/Section 33 legal agreement will manage and control manure generated as a result of the proposed development. (A copy of the draft heads of terms to be included in the legal agreement is attached to the update sheet).

The applicant's agent has explained in an email that Ercall Farm covers an area in excess of 930 hectares (2,300 acres), and has more than enough land to absorb manure earmarked for spreading on the land.

The proposed section 106 agreement relates to the land at Ercall Park Farm itself, and not Mr Walkers other farms.

DEFRA manure management figures confirm that 2.32 hectares is required by 1000 free range hens for spreading so the free range egg unit at Betton needs 74 hectares (183 acres) of land for manure spreading .

It is acknowledged that the land is nitrate sensitive and subject to testing by the EA and this matter has been taken into consideration .

Mr Walker has a consent for a broiler unit, at Ercall Park Farm (not implemented to date), and this makes no difference to his capability to accept the manure arising from the proposed development at Betton as he has more than enough available land.

Item No.	Application No	Originator
5	19/01154/FUL	Applicant
Attached to this update sheet is a copy of a draft Heads of Terms, site plan and the associated manure management plan in relation to the proposed Section 106/Section 33 agreement in relation to manure management and spreading.		
Item No.	Application No	Originator
5	19/01154/FUL	Applicant
The applicant has submitted an updated manure management plan this will be referred to as part of the Section 106 agreement should members be mindful to approve the application.		