

**Concerns Regarding the
Impact of Odour on Residents' Amenity
Under NPP Framework Paragraph 17 and CLLP LP26
for
Planning Application PL/0125/16 (L/1076/16) Appeal
(APP/Q2500/W/17/3181477)**

Version 2.0

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Example of Waste Code 20 03 01 Mixed Municipal Rubbish

Veolia plan to shred Waste Code 20 03 01 at their
Long Leys plant to produce Refuse Derived Fuel

Summary

Veolia ES's application PL/0125/16 to build a Waste Management Facility on Long Leys Road, Lincoln was refused in February 2017. The applicant is now appealing this decision. Their development includes the construction of a new building to produce refuse derived fuel (RDF). General commercial waste will be trucked in from around Lincolnshire before being shredded inside the building; the shredded waste will then be loaded onto HGV's for transport elsewhere in the country.

Residents maintain that Lincolnshire County Planning should recommend refusal as the applicant's submission fails to demonstrate that the RDF facility, shredding potentially odorous waste close to residents' homes (within 50 metres), will not have an adverse impact on residents' amenity with regard to odour. This is contrary to paragraph 17 on Achieving Sustainable Development of the National Planning Policy Framework (NPP Framework 2012) and also contrary to LP26 of the Central Lincolnshire Local Plan (CLLP 2017) on Design and Amenity.

This report details the specific concerns which should lead planning authorities to review the applicant's submissions on odour to either establish with confidence that the development will not result in unacceptable risks from pollution (odour) or to recommend refusal.

1. Introduction

This report presents reasons why planning authorities should recommend refusal in their statutory consultee response on Veolia's planning appeal APP/Q2500/W/17/3181477.

The applicant has failed to demonstrate the development will not have an adverse impact on residents' amenity with regard to odour and this is contrary to paragraph 17 on Achieving Sustainable Development of the National Planning Policy Framework (NPP Framework 2012) which states:

"always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings."

It is also contrary to LP26 of the Central Lincolnshire Local Plan (CLLP 2017) on Design and Amenity which states:

"The amenities which all existing and future occupants of neighbouring land and buildings may reasonably expect to enjoy must not be unduly harmed by or as a result of development."

"Proposals should demonstrate, where applicable and to a degree proportionate to the proposal, how the following matters have been considered, in relation to both the construction and life of the development:

- *m. Compatibility with neighbouring land uses;*
- *s. Adverse impact upon air quality from odour, fumes, smoke, dust and other sources;"*

It highlights where the applicant's proposal does not adequately address odour emissions. As DEFRA's Odour Guidance for Local Authorities (DEFRA 2010) explains:

*"In all cases where the generation of odours from the development can be readily anticipated, **the local authority should expect to be provided with objective evidence that demonstrates that odour emissions will be adequately controlled to prevent any significant loss of amenity to neighbouring sensitive land users.** This is important not least because possible odour mitigation measures could in themselves have land use and amenity implications."*

In addition, the current report from planning authorities fails to conform to Environmental Agency Guidance (2012) Paragraph 2.3.

"Local planning authorities are responsible for determining planning applications. The Planning Inspectorate is responsible for making recommendations to Secretaries of State who decide applications for Development Consent Orders for Nationally Significant Infrastructure Projects.

When deciding on a planning application, planning authorities should:

- ***Be confident the development will not result in unacceptable risks from pollution when considering if the development is an appropriate use of the land."***

It is clear that City of Lincoln Council Environmental Health consultee is not confident. Their 22/12/16 submission states:

*“it is therefore essential that the views of the Permitting Team at the Environment Agency are sought to establish whether they are of the opinion that the controls available to them through the environmental permitting regime **will be sufficient to protect the local amenity from activities at the proposed waste transfer site.**”*

Residents contend that the planning authorities have neither expressed confidence or acquired the required information to allow a rigorous assessment to establish such confidence on the impact of odour on nearby residents.

As the applicant’s proposed site does not form part of any local plan for waste there also appears to have been a failure to

“work collaboratively in groups with other waste planning authorities, and in two-tier areas with district authorities, through the statutory duty to cooperate, to provide a suitable network of facilities to deliver sustainable waste management;” as required by the National Planning Policy for Waste (NPPW 2014) Paragraph 3.

2. Odour is a wellbeing and public health concern

As DEFRA (2010) explains:

The human sense of smell is an important early warning mechanism as well as a means for us to assess our environment, food and each other. Unpleasant odours are difficult to ignore particularly where these are strong or evoke a negative or harmful view of our surroundings.

*Our reactions to odour can be short-term or prolonged, and intense or mild in the same way as the exposure and unpleasantness of the sensation. Studies of communities exposed to unwanted odours show that exposure can lead to evidence of stress induced symptoms such as sleep disorders, headaches, respiratory problems, nausea and anxiety as well as less extreme but equally prolonged complaints, but learned responses may play a role in the impairment of mood. **If exposure to odours with negative appraisal occurs repeatedly, this can affect our well being and cause stress related symptoms, i.e. a public health concern.***

This stress in the case of the Long Leys community is compounded by the inadequacy of both the applicants proposed development and the lack of rigorous assessment by planning authorities, as subsequent content will demonstrate

3. Key Concerns

There are six specific concerns which should lead planning authorities towards a refusal recommendation (paragraph reference in brackets):

- Lack of detail on waste types (P3)
- High odour potential of processed materials (P4)
- Failure of application to meet DEFRA’s Odour Guidance (P5)
- Failure of application to adequately assess odour impact (P6)
- Failure of Odour Assessment report to assess odour impact (P7)
- New evidence of odour risk from Kirkby in Ashfield RDF facility (P8)

4. Lack of Detail on Waste Types

The applicant has failed to state which Environmental Permit is being applied for (bespoke or standard rules) and to clearly define which waste codes will be accepted onto the site including tonnages. The applicant has also not responded to residents for requests for this information.

Acceptance of a broad range of waste materials would not be appropriate due to the highly odorous potential of materials allowed under an Environmental Permit. Without the applicant supplying actual waste codes and likely tonnages the application cannot be adequately assessed for odour potential and should be rejected on these grounds. Planning authorities should have required the applicant to provide such details as part of their risk assessment.

Residents contend that the applicant should be requested to parallel track the Environmental Permit and planning appeal. This will provide full transparency in the appeal process, allow full consideration by the Planning Inspectorate and protect residents' interests and the public purse. Residents have already approached the applicant to request they adopt this parallel track approach.

This is in line with Environment Agency Guidance (2012) 2.3 which states:

“Where any significant issues are identified, we recommend that other consents needed, such as environmental permits, are processed at the same time as the planning application to resolve any issues as early as possible.”

Residents are concerned that if a standard rules Environment Agency permit were applied for, then the closest to the applicant's operations would be SR2015 No4_75kte. This could permit extension to 75,000 tons of waste from 46,500 tons without any further requirement for planning permission or consultation with residents or the imposition of planning conditions. Without certainty on permit type it is impossible for planning authorities to objectively assess the impact on amenity.

5. High odour potential of processed materials

The site will accept commercial and industrial general/residual waste. Commercial waste of this type typically contains a significant proportion of packaging waste which can be extremely odorous; by definition it is contaminated as non-contaminated packaging and other materials should be re-used or recycled under EU Waste Framework Directive (2008). General wastes can include materials such as nappies, food and animal wastes all of which have the potential to be highly odorous given that their state of degradation will be unknown.

Image 1 below shows bins/bags containing materials that would be permissible under waste code, EWC 20 03 01 general waste (Environment Agency 2015) which the site could potentially process. It shows general waste containing chicken and other food wastes combined with packaging which has the potential to be extremely odorous. The KFC (Kentucky Fried Chicken) contract, currently operated by Biffa, is typical of national general waste contracts that the applicant could target. The applicant has not specified the waste codes that will be processed by the RDF facility so it is therefore reasonable for residents and planning authorities to assume that this type of material could be present when assessing the potential for impact on amenity.



Image 1: An example of waste with high odour potential that could be processed by applicant's RDF facility: Kentucky Fried Chicken general commercial waste

6. Failure of application to meet DEFRA's Odour Guidance

DEFRA's Odour Guidance for Local Authorities states:

*"It might be reasoned that control of emissions would subsequently be controlled by the pollution control regimes (the EA and the environmental health service of the local authority), **but in practice there should be a coordinated approach between planners and environmental regulators at the planning application stage.***

Pollution controls need to be considered as an integral part of planning applications, not added as an afterthought.

*In all cases where the generation of odours from the development can be readily anticipated, **the local authority should expect to be provided with objective evidence that demonstrates that odour emissions will be adequately controlled to prevent any significant loss of amenity to neighbouring sensitive land users.** This is important not least because possible odour mitigation measures could in themselves have land use and amenity implications."*

From DEFRA's guidance, it is clearly not sufficient to rely on retrospective Environmental Permits to protect the amenity of residents. Environmental permits are primarily designed to address statutory nuisance, not impact on amenity. Even with effectual operation in place there can remain some residual environmental emissions which may impact negatively upon the local amenity of the area. The Environment Agency "**strongly advise applicants to consult us for pre-application advice before submitting either their planning or permit applications**". There is no evidence this advice has been followed by the applicant.

DEFRA continue:

"It is important for odour issues to be satisfactorily addressed proactively by a local authority through the land use planning or environmental permitting regimes, since the adage "prevention is better than cure" is particularly apposite in this context.

It is important to emphasise that where applicants have not adequately addressed odour concerns and where there is significant risk of unacceptable odour exposure to neighbouring properties, the local authority has the discretion to refuse any application for a permit or planning consent."

This guidance has not been followed. The applicant has failed to demonstrate that their RDF facility will not process highly odorous materials (as demonstrated in paragraphs 3 & 4) close to neighbouring properties so planning authorities have the discretion to refuse the application.

7. Failure of application to adequately assess odour impact

Under DEFRA Guidance

“The human response to recognisable odours in the environment is essentially subjective, and can be influenced by emotion and perception as well as, or as much as, by real and obvious sensory responses. Unlike noise, there are no “simple” instruments which can be used to objectively measure odours in the field. However, environmental health practitioners (EHPs) should try to evaluate actual and potential odour impacts in an impartial and objective way that will be fair and reasonable to both site operators and odour sensitive receptors.

The following Guidance sets out some methods that can be used by EHPs to help improve the objectivity of odour assessments, both in terms of consideration of planning/permitting applications and compliance.

Useful tools available to an EHP assessing the possible impact of a new, potentially odorous process at the planning application stage may be quantitative dispersion modelling techniques or industry specific risk assessment methods.”

There has been no objective assessment of the potential for odour impact on residents' amenity by planning authorities who have relied on the applicant's qualitative assurances on the efficacy of odour suppressants. A robust assessment of the impact and resulting effect of odour upon the local community is required.

The applicant's Supporting Statement and Odour Report provide insufficient detail on proposed techniques to evaluate their potential effectiveness. There has been no use of dispersion modelling techniques.

There is no air filtration on air released to the atmosphere from the proposed RDF production facility. The building is not sealed to operate at lower pressure to avoid fugitive emissions. Fugitive emissions, along with flies and potentially vermin attracted by waste, are highly likely to reach nearby housing.

The applicant refers to odour suppression sprays without any reference to specific UK/EU COSHH or performance data on their effectiveness. Odour sprays of this type have a masking effect on odour rather than removing the original odours. As a result, assessment of their effectiveness and their impact on resident health is not possible. There is evidence that excessive use of odour suppressants at Veolia's Hollingdean site contributed to odour problems as waste got wetter, speeding decomposition (Chris Parkin 2014).

The application makes no reference to the local climate, unusual topographical features of the site or prevailing wind direction. It ignores the findings of the Lincolnshire Council report (LCC 2012) which suggest that summer, temperatures could increase by between 0.4 °C and 2.5 °C in the East Midlands by the 2020s.

The temperature consideration is particularly relevant with reference to the problems at the Veolia Kirkby in Ashfield RDF facility (see later) which were first apparent during high summer temperatures. The Long Leys site has higher average temperatures and windspeeds than the Kirkby site even without the further potential 2.5 °C rise predicted.

8. Failure of Odour Assessment report to assess odour impact

The Veolia Odour Assessment (Veolia 2016) is lacking in terms of specific waste codes and tonnages to be processed at the RDF facility. The report does not identify the writer or their professional competence to undertake such an assessment. Hence the reliance placed on this report by planning authorities should be low.

Section 1.2 accepts that:

“The acceptance of general/residual waste materials onsite and the shredding of these waste materials can have odour potential”.

and claims in section 2.4 that:

*“The general/residual waste materials will be tipped into a section of the proposed building that will be fully enclosed with a roller shutter door, which will **significantly reduce** the potential for odour release as a result.”*

However, the assessment fails to demonstrate:

- how the potential for fugitive odour release will be reduced when the RDF plant’s roller shutter door is opened to allow vehicle access
- the maximum time duration during a typical day when the roller shutter doors will be open
- the anticipated level of fugitive odours that will escape through the fabric of the un-sealed and un-pressurised building when the roller shutter door is closed
- that any fugitive odour release will be below a level that does not impact on residents’ amenity

There is no detail on holding times for waste prior to shredding. The assessment is vague and unspecific, stating in section 2.8 that:

“the holding times of all waste delivered to the proposed facility will be carefully controlled to minimise the potential for decomposition prior to processing. The holding times in all cases will be limited in order to minimise the potential for odour generation”.

If careful control is required to minimise the potential for decomposition, then the odour assessment should provide proposed holding times to allow independent verification of the claims. The applicant has not demonstrated that “odour minimisation” will achieve a level that does not impact on residents’ amenity.

There is no construction detail on the opening between the shredding area and the output bay and whether this opening is permanently open or there is any method of closing. Once waste material has been shredded it is dropped into the output bay which is in open-sided area of the building and hence creating the likelihood of odour, the risk of wind-blown litter and the opportunity for flies and vermin to access the waste material.

The assessment states in section 2.10:

“The loose RDF will then be stored in the output bay for a short period of time, (in accordance with the provisions of the Environmental Permit)

before being taken off-site for further recovery after being loaded into an articulated trailer vehicle in the proposed loading bay.”

There is no definition of storage time for shredded waste in the output bay which makes it impossible to assess the odour impact. Provisions in the Environmental Permit will be related primarily to statutory nuisance rather than the harsher criteria of impact on residents’ amenity that is required at planning stage under NPP Framework paragraph 17. The applicant has not demonstrated that there is no impact on residents’ amenity.

Section 4.3 of the Odour Assessment states:

“the following page contains a matrix, Table 1.1, which shows potential odour sources, their characteristics and potential impacts, and the appropriate measures for mitigating them”

Whilst Table 1.1 lists the primary odour sources and their mitigation it does not demonstrate that there will be no impact on residents’ amenity.

Section 5 of the assessment on control measures to minimise odour release provides no detail or specifics on key actions:

- *“Site management will seek to transfer loose Refuse Derived Fuel off-site **as quickly as possible** after acceptance onsite”.*
- *“Good site housekeeping (**regular** cleaning of the operational areas)”.*
- *“Regular daily cleaning of the mobile plant and operational areas including the waste reception areas of the building and drainage channels will be adopted onsite, which will **discourage odour generation from old degrading materials.**”*

There are no specified targets (or even bare minimum standards) on the above statements. The applicant’s claim that

“strict site management measures will be adopted onsite”
is not substantiated by the assessment.

9. New evidence of odour risk from Kirkby in Ashfield RDF facility

Residents contend that Veolia's ability to assess the impact of odour on residents' amenity at a RDF production site has not been demonstrated with reference to Kirkby In Ashfield. Veolia were granted planning permission for the development of a waste transfer station (WTS) for the bulking, transfer of recyclable and residual wastes and also the potential treatment of residual wastes to create a fuel for export offsite on land located off Welshcroft Close, Kirkby in Ashfield, Nottinghamshire (Application F/3393 4/V/2015/0711)

Veolia's supporting statement states that

*"given the site location, the regular throughput of material and the measures to be put in place **it is highly unlikely that odour or dust emissions will be an issue.**"*

The site, applying best practice in the industry, opened in March 2017.

In June 2017 after the Environment Agency had been alerted by residents to problems, Gloria De Piero MP for Ashfield commented to residents (GDP website 2017):

"It is unacceptable for residents in the Summit area of Kirkby to have to put up with this foul smell: I have been up there myself and know how awful it is."

*"It must be hell to be living with it day in, day out, **especially during hot summer days**, and I understand the anger and frustration they are feeling."*

On 14th July 2017 Gloria De Piero MP made the following comment on her Facebook page (GDP Facebook 2017)

*"**Veolia stink update:** I will be keeping an eye on this and ask residents to get back in touch if the problem does not go away. Nottinghamshire County Council has replied after I wrote to them highlighting residents' concerns about the awful smell and other problems associated with the Veolia waste site at Kirkby."*

***The county council and Environment Agency have visited the site and identified a problem.** They have now put an action plan in place to address the problem, which includes a range of measures. Some of these have been put in place already and others will be carried out as soon as possible. The situation remains under investigation until it is resolved."*



Article from Mansfield & Ashfield Chad

At a July 2017 meeting Veolia advised the Long Leys Residents Association that Kirkby was their newest facility and acknowledged that it was experiencing some challenges.

The problems at Kirkby call into question whether, even with best practice in the waste handling industry, an RDF production facility shredding odorous materials so close to residential homes can ever be appropriate.

The Kirkby in Ashfield Environmental Permit is for RDF that is in fully wrapped bales that prevent the ingress of water, odour release and access by pests. The Long Leys site does not include a wrapping operation which increases the risks of impact on residents' amenity as it leaves loose shredded waste open to access by flies and vermin as well as allowing fugitive odour emissions.

Councillor John Knight, who represents the Summit ward in Kirkby and was involved in the decision to bring in the waste site to the area stated in July 2017: *"If I had that time again, there are things I would do differently. I apologise if I've let you down. The site is not what I expected. I am as angry as you are."*

Planning authorities should investigate the Environment Agency's experience of the Kirkby in Ashfield site. It does not need to be pointed out that a statutory nuisance that is occurring at Kirkby is worse than mere impact on amenity.

Reference Documents

CLLP (2017). Central Lincolnshire Local Plan [online] Available at <https://www.n-kesteven.gov.uk/central-lincolnshire/planning-policy-library/> [Accessed 18 Aug 17]

DEFRA (2010) DEFRA's Odour Guidance for Local Authorities [online] Available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69305/pb13554-local-auth-guidance-100326.pdf [Accessed 18 Aug 17]

DEFRA (2014) Refuse derived fuel market in England: Defra response to the call for evidence. [online] Available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/381626/rdf-market-defra-response-201412.pdf [Accessed 18 Aug 17]

Environment Agency (2012): Guidance for developments requiring planning permission and environmental permits [online] Available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/297009/LIT_7260_bba627.pdf [Accessed 18 Aug 17]

Environment Agency (2015). Waste Classification: Technical Guidance WM3. Guidance on the classification and assessment of waste [online] Available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/427077/LIT_10121.pdf [Accessed 18 Aug 17]

EU Waste Frameworks Directive (2008). Directive 2008/98/EC on waste [online] Available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008L0098&from=EN> [Accessed 18 Aug 17]

GDP Facebook (2017). 14 July Veolia Stink Update [online] Available at https://www.facebook.com/pg/gloriadepieroforashfield/posts/?ref=page_internal [Accessed 18 Aug 17]

GDP Website (2017). MP and councillor act on residents' pleas over smelly waste site [online] Available at <http://www.gloria-de-piero.co.uk/news/mp-councillor-act-residents-pleas-smelly-waste-site/> [Accessed 18 Aug 17]

LCC (2012) Lincolnshire County Council: Climate Change and Greater Lincolnshire [online] Available at <http://www.research-lincs.org.uk/UI/Documents/Climate%20Change%20and%20Greater%20Lincolnshire.pdf> [Accessed 18 Aug. 17]

NPP Framework (2012). Department for Communities and Local Government: National Planning Policy Framework. [online] Available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6077/2116950.pdf [Accessed 18 Aug 17]

NPPW (2014). National Planning Policy for Waste. Department of Communities & Local Government. [online] Available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/364759/141015_National_Planning_Policy_for_Waste.pdf [Accessed 18 Aug. 17]

Veolia (2016) Veolia Odour Assessment. [online] Available at <http://eplanning.lincolnshire.gov.uk/ePlanning/loadFullDetails.do?apllid=53455> [Accessed 18 Aug 17]

Veolia Permit (2017): Permit EPR/LP3839DK with introductory note for Veolia ES Nottinghamshire Limited, Welshcroft Close RDF, Kirkby in Ashfield, Nottinghamshire, NG17 8EP online] Available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/598809/Application_Bespoke_Permit_Issued_PDF_.pdf [Accessed 18 Aug 17]

Other Sources

Chris Parkin (2014). Email comments from Environment Officer - Waste, Sussex Environment Agency) Monday 15th September 2014