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## Appeal Decisions

Inquiry held on 7 February 2008, 9-12 & 16-18 November 2010

Site visits made on 10, 17 & 18 November 2010

**by J I McPherson JP BSc CEng CEnv CWEM MICE MCIWEM MCMi**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 9 December 2010**

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### **Appeal A, Ref: APP/W4705/A/07/2042004**

**Erlings Works, Jerusalem Farm, Half Acre Road, Denholme, Bradford West, BD13 3SG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Omega Proteins Limited against the decision of the City of Bradford Metropolitan District Council.
- The application Ref 06/09646/VOC, dated 14 December 2006, was refused by a notice dated 13 February 2007.
- The application sought planning permission for a rendering plant and filter bed without complying with conditions attached to the planning permission Ref 01/02817/VOC allowed on 18 April 2002 under appeal Ref APP/W4705/A/01/1075978.
- The conditions in dispute are Nos 2, 3 & 10 which state that:
  - *2. Heavy goods vehicles in connection with the development hereby permitted may only enter and exit the site between the hours of 0800 to 1900 Mondays to Saturdays and not at all on Sundays, Bank Holidays or Public Holidays.*
  - *3. The number of heavy goods vehicle movements generated by the development hereby permitted shall be no more than 30 per day (15 in and 15 out) averaged over a two week period, and in any one day shall not exceed 40 (20 in and 20 out). Records of all heavy goods vehicle movements shall be kept for a minimum period of three years in a form to be agreed with the local planning authority, and shall be made available to the authority on request.*
  - *10. Vehicles entering the site outside the hours specified in Condition 2 are restricted to seven vehicles per week for emergency purposes only. The operators shall maintain records of all emergency vehicle movements and details shall contain the number of emergency vehicles entering the site each day, the volume of emergency material and the origins of emergency material. Records shall be kept for a minimum period of three years and made available to the local planning authority on request.*

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### **Appeal B, Ref: APP/W4705/A/07/2056431**

**Erlings Works, Jerusalem Farm, Half Acre Road, Denholme, Bradford West, BD13 3SG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Omega Proteins Limited against the decision of the City of Bradford Metropolitan District Council.
- The application Ref 07/04911/VOC, dated 1 June 2007, was refused by a notice dated 1

October 2007.

- The application sought planning permission for a rendering plant and filter bed without complying with conditions attached to the planning permission Ref 01/02817/VOC allowed on 18 April 2002 under appeal Ref APP/W4705/A/01/1075978.
  - The conditions in dispute are Nos 2, 3, 8 & 10 which state that:
    - *2. Heavy goods vehicles in connection with the development hereby permitted may only enter and exit the site between the hours of 0800 to 1900 Mondays to Saturdays and not at all on Sundays, Bank Holidays or Public Holidays.*
    - *3. The number of heavy goods vehicle movements generated by the development hereby permitted shall be no more than 30 per day (15 in and 15 out) averaged over a two week period, and in any one day shall not exceed 40 (20 in and 20 out). Records of all heavy goods vehicle movements shall be kept for a minimum period of three years in a form to be agreed with the local planning authority, and shall be made available to the authority on request.*
    - *8. Rendering and incineration operations may be carried out on a twenty four hour basis Mondays to Saturdays inclusive, but no operations shall take place at any time on Sundays, Bank Holidays and Public Holidays.*
    - *10. Vehicles entering the site outside the hours specified in Condition 2 are restricted to seven vehicles per week for emergency purposes only. The operators shall maintain records of all emergency vehicle movements and details shall contain the number of emergency vehicles entering the site each day, the volume of emergency material and the origins of emergency material. Records shall be kept for a minimum period of three years and made available to the local planning authority on request.*
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### **Appeal C, Ref: APP/W4705/A/10/2135239**

#### **Erlings Works, Jerusalem Farm, Half Acre Road, Denholme, Bradford West, BD13 3SG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
  - The appeal is made by Omega Proteins Limited against the decision of the City of Bradford Metropolitan District Council.
  - The application Ref 10/03003/FUL, dated 15 June 2010, was approved on 5 August 2010 and planning permission was granted subject to conditions.
  - The development permitted is described as improvements to the site access to Erlings Works.
  - The condition in dispute is No 3 which states that:
    - *No works shall take place until all diversion procedures and the confirmation of the diversion of footpath Denholme 55 have been completed.*
  - The reason given for the condition is:
    - *To protect existing pedestrian links, and in the interests of safety and amenity, in accordance with policies D6(4) and UR2 of the Replacement Unitary Development Plan.*
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### **Appeal D, Ref: APP/W4705/A/10/2136050**

#### **Erlings Works, Jerusalem Farm, Half Acre Road, Denholme, Bradford West, BD13 3SG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
  - The appeal is made by Omega Proteins Limited against the decision of the City of Bradford Metropolitan District Council.
  - The application Ref 10/03571/FUL, dated 13 July 2010, was approved on 1 September 2010 and planning permission was granted subject to conditions.
  - The development permitted is described as acoustic attenuation measures along and adjoining the access road, consisting of a 2.0m high screen fence and heightened walls
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to the garden of Heather View Cottage, earth bunding to the access road and associated landscaping.

- The condition in dispute is No 3 which states that:
    - *No works in connection with the construction of the proposed bund running from Half Acre Road to the north east of Jerusalem Farm, shown on drawing 361C01F, shall take place until all diversion procedures and the confirmation of the diversion of footpath Denholme 55 have been completed.*
  - The reason given for the condition is:
    - *To protect existing pedestrian links, and in the interests of safety and amenity, in accordance with policies D6(4) and UR2 of the Replacement Unitary Development Plan.*
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## **Decisions**

1. Appeal A is allowed with different conditions.
2. Appeal B is dismissed.
3. Appeals C and D are both allowed with a different condition.

## **Applications for costs**

4. At the Inquiry an application for a partial award of costs was made by the City of Bradford Metropolitan District Council against Omega Proteins Limited, and a similar application was made by Omega Proteins Limited against the City of Bradford Metropolitan District Council. These applications are the subject of a separate Decision.

## **Appeal Proposals**

5. In summary the appeal proposals are as follows:-

### **Appeal A**

- To increase the number of HGV movements allowed on appeal in 2002 to 60 (30 in and 30 out) when averaged over a two week period with a maximum of 70 per day,
- To permit HGVs to enter and exit between 07.00 and 22.00 hrs on Mondays to Saturdays, with none on Sundays, and
- To permit seven emergency vehicles to enter and exit per week.

### **Appeal B**

- All as per Appeal A except:-
- To permit HGVs to enter and exit until 23.00 hrs on Mondays to Saturdays, and
- To permit twenty four hour operation of the plant from 06.00 hrs on Monday to 06.00 hrs on Sunday (this element of the appeal was withdrawn by a letter of 30 June 2009).

### **Appeal C**

- To delete Condition 3 of the access permission.

### **Appeal D**

- To delete Condition 3 of the permission for acoustic measures.

## **Background**

6. Planning permission was granted in 1999 for the demolition of the buildings associated with the former maggot breeding, knackers yard and incinerator at Erlings Works and for the erection of a rendering plant and filter bed on the site.
7. An appeal against some of the conditions of the 1999 permission was allowed in 2002, and the current Appeals A and B were made in 2006 and 2007 against various conditions attached to the 2002 appeal permission.
8. A Section 106 unilateral planning obligation was submitted at the time of the 2002 appeal which requires all heavy goods vehicles to access and egress the site via Half Acre Road, Well Heads and Brighthouse Road. Where the vehicles are not operated by the Appellants there is a requirement that the contract will include this route. This undertaking remains in force.
9. The Inquiry into Appeals A and B was opened on 7 February 2008 by Mr J Yellowley, who adjourned the Inquiry in order to consider an application that Environmental Impact Assessment was required. The Council was also unable to proceed that day because of the late submission of substantial new noise evidence.
10. After consideration of written submissions from the parties, the Planning Inspectorate determined that Environmental Impact Assessment was required and, despite maintaining their position that it was not, the Appellants submitted an Environmental Statement in June 2009. Following a request for further information under Regulation 19 of the EIA Regulations, an addendum was submitted, and the Environmental Statement was accepted as adequate by the Planning Inspectorate in January 2010.
11. Thereafter, I was appointed to determine the appeals and I held a Procedural Meeting on 19 May 2010 to consider the arrangements for the resumption of the Inquiry. At that meeting, there was discussion about possible/probable planning applications for improvements to the site access and for acoustic attenuation measures in the vicinity of the access.
12. Both of these applications were subsequently made, and both were permitted by the Council, subject to conditions. In each case, Condition 3 of the permission effectively requires the diversion of public footpath Denholme 55 before the permitted works are carried out, and the current Appeals C and D seek the removal of this condition in each case. The Appellants had made an application under the Town and Country Planning Act 1990 for this footpath diversion before the resumption of the Inquiry, but no decision had been made.
13. By way of a letter dated 30 June 2009, the Appellants withdrew that part of Appeal B relating to Condition 8.

## **On-site Processes and their Regulation**

14. Erlings Works is operated by Omega Proteins Ltd, which is part of the Leo Group of Companies. The site is licensed by Defra under the Animal By-Products Regulations 2005 to process Category 1 material. Category 1 material is defined in Article 4 of the regulations and comes principally from abattoirs, knackers' yards or as fallen stock from farms. It can include animals killed for disease eradication purposes, such as in a BSE outbreak. Some

Category 2 and 3 materials can also be sent for rendering with Category 1 material, though there are financial drawbacks for the abattoirs in not separating out particularly Category 3 material. Deliveries to the site are either by the fleet of vehicles owned by Alba, another company within the Leo Group, or by independently operated skip lorries or, occasionally, in the back of much smaller vehicles bringing perhaps just one dead animal from a farm. The Alba vehicles may have over-nighted, or been bulked-up, at the Company's Swalesmoor site some 10 km away by road. The Appellants' Category 3 material is processed for pet food at Swalesmoor where some of the planning conditions are currently disputed by the Appellants.

15. Within Erlings Works, vehicles tip the raw material into a large hopper, from which it is mechanically transferred to the rest of the plant for rendering by means of heat and pressure to produce meat and bone meal (MBM) and tallow. The MBM is taken off-site in HGVs, much of it to the Swalesmoor site, and it is sold for its calorific value in such processes as power generation or cement manufacture. The tallow is tankered off-site and has a number of beneficial uses such as in the oleochemical and pharmaceutical industries, in animal feedstuffs, bio-diesel and other fuels.
16. The rendering, or 'cooking', process produces a strongly pungent liquid effluent known as condensate, which is generally 'burnt off' in a thermal oxidiser, but may also need to be tankered off-site at times when the secondary cooker is in use, and when there are plant breakdowns or maintenance is being carried out. The wash water used to clean down the vehicles and the plant is also tankered off site.
17. The process building is maintained under negative air pressure to prevent odours escaping, and odorous emissions from within the plant itself are either incinerated in the plant's steam raising boiler, or passed to a woodchip biofilter for treatment.
18. The thermal oxidiser is fuelled by a recently installed mains gas supply, rather than by tallow or fuel oil, and there is also a recently installed mains electricity supply that replaces the on-site diesel generator which is now retained as an emergency back-up.
19. Although the planning conditions attached to the 2002 permission restrict the times at which HGVs may deliver and collect, the on-site rendering operations are permitted 24 hours a day for six days a week under Condition No 8.
20. The handling and processing of animal by-products is a prescribed process requiring a permit under the Environmental Permitting Regulations 2010 which implement the Integrated Pollution Prevention and Control (IPPC) regime. These regulations seek the use of the Best Available Techniques (BAT) and the Defra Secretary of State's Sector Guidance Note SG8 lists what is considered to be 'indicative BAT' for rendering plants. A number of the major operators are regulated by the Environment Agency but in this case, enforcement is the responsibility of the Local Authority. The plant is currently subject to an authorisation under the former Environmental Protection (Prescribed Substances) Regulations 1991, and a draft environmental permit under the new regulations has been issued for discussion, but has yet to be confirmed.
21. In order to bring the large thermal oxidiser onto the site in 2008, the Appellants carried out works to the site access. They moved it a little further

to the north east along the Half Acre Road frontage to a position which has now been approved by the grant of planning permission subject to conditions, one of which is the subject of Appeal C. This access permission also includes landscaping and other works.

22. The access to Erlings Works is also the access to the cluster of buildings at Jerusalem Farm which includes a non-operational slaughter house and pet food business as well as a non-operational stone crushing business. There are no restrictions on the number of vehicular movements, or their times, from these activities, but there is no evidence that they are likely to restart.

### **Planning Policy**

23. The Development Plan for the area includes the Regional Spatial Strategy (RSS) and the saved policies of the Bradford Replacement Unitary Development Plan (RUDP) adopted in 2005. It was agreed by the main parties at the Inquiry that there are no relevant policies in the RSS that need to be taken into account in connection with these appeals.
24. Within the RUDP, the relevant saved policies are:-
- Policy UR2 (Sustainable development and appropriate mitigation),
  - Policy UR3 (Effects on the environment and adjoining occupants),
  - Policy TM1 (Transport Assessment),
  - Policy TM2 (Impacts on the transport infrastructure and improvements),
  - Policy TM9 (Impacts on public rights of way),
  - Policy TM19A (Impacts on road safety),
  - Policies NE3 & NE3a (Protection of identified landscape character areas), and
  - Policy D6(4) (Maintaining the safety and amenity of pedestrian links).
- There is some dispute whether the Erlings Works operation is a waste facility or not, but if so the following policy would also be relevant:-
- Policy P8(4) & (5) (Waste facilities to have safe access and not cause unacceptable adverse impacts from, among other things, noise or odour).

### **Appeals A & B**

25. With the withdrawal of that part of Appeal B that referred to Condition 8, Appeals A & B both relate to Conditions Nos 2, 3 and 10 of the 2002 permission which are intended to control the numbers and times of heavy goods vehicles entering and leaving the site. The only difference is the time until which HGVs should be permitted to enter and leave the site, namely 22.00 hrs in Appeal A and 23.00 hrs in Appeal B.
26. At the Inquiry, the Appellants accepted that the conditions in question had been breached and I will therefore consider these appeals under Section 73A(2)(c) of the T&CPA 1990. For appeals under Section 73, I am precluded from considering the principle of the development; in this case, animal by-product rendering operations on the site. I shall of course consider the effects of the heavy goods vehicle movements to and from the plant which are the subject of the disputed conditions.
27. Whilst widely used, the definition of a heavy goods vehicle in the conditions is not entirely straightforward. At the Inquiry, reference was made to the vehicle categories used in the Department for Transport's Design Manual for Roads and Bridges (DMRB) where goods vehicles are categorised as Light Goods or Other

Goods 1 or 2, as shown in the table attached as Appendix SCG1 to the statement of common ground on highway matters. Another approach would be to consider the weight of the vehicle, for instance HGVs being more than 7.5 tonnes. Like the Council's highways witness however, I will consider a HGV to be an 'Other Goods Vehicle Classes 1 or 2' (ie including rigid and articulated lorries), but excluding the tractor units of articulated lorries on their own.

28. As noted above, Appeals A and B have been the subject of Environmental Impact Assessment and I will take the resulting Environmental Statement and all the environmental information into account in determining the appeals.

### **Main Issues**

29. Whilst the appeal site is within the Green Belt and within a Landscape Character Area, I do not consider the numbers and timing of vehicle movements would have any material effect upon these considerations.
30. The main issues in these two appeals therefore relate to, residential amenity in terms of noise and odour, highway safety and public rights of way and the need for, and sustainability of, the proposed increased vehicle movements and time periods.

### **Reasons**

#### **Noise**

31. Erlings Works are situated in the shallow depression of a former quarry on a gently sloping hillside above Doe Park Reservoir. Whilst this is a predominantly agricultural area there are a number of farms and residential properties in the vicinity. In particular, the ribbed concrete site access road descends north-westwards from Half Acre Lane about 22m to the east of Heather View Cottage, before turning southwest, and then northwest again, round the buildings of Jerusalem Farm. It then runs another approximately 500m down the slope to the works, with an earth bund along much of its eastern side. The dwellings of Slippershaw Barn and Slippershaw Farm are some 73 and 93m away from the access road; the nearest point being where it turns the first right angled corner by the Jerusalem Farm buildings.
32. There are complaints from local residents about noise from the works itself but, as indicated above, these works are the subject of separate environmental controls. I do not therefore consider noise from this source to be a matter for consideration under these appeals, unless affected by the number and timing of HGV movements.
33. At the time of the 2002 Appeal, the Inspector noted the generally quiet rural environment and assessed the noise and disturbance from heavy goods vehicles passing up and down the access road primarily with reference to the advice in BS4142 1990. He concluded that outside the times of 08.00 to 19.00 hours on Mondays to Saturdays this would unduly disturb the occupants of Heather View Cottage and the Slippershaw properties.
34. Since the 2002 appeal, the Appellants have purchased both Heather View Cottage and Slippershaw Barn, but not Slippershaw Farm. The occupants of the latter property still maintain their complaints about the noise and disturbance caused by the HGV movements, which it is accepted have intensified in numbers, as well as taking place at night, since the 2002

- decision. Whilst open to a degree of interpretation, the third party CCTV survey does generally confirm both the numbers and times of these vehicular movements.
35. BS 4142 deals primarily with industrial noise sources, and paragraph 1 of Annex 3 to PPG24 advocates use of the Department of Transport's Calculation of Road Traffic Noise (CRTN) approach in the assessment of road traffic noise, but only if there are more than 50 vehicle movements per hour. On the site access, that is not the case.
  36. The Appellants carried out an assessment of the noise from vehicles using the access and acknowledged the need for acoustic attenuation measures to protect the occupants of Heather View Cottage and the two Slippershaw properties. As a result, they now have planning permission for a scheme which includes partial triple glazing to Heather View Cottage, an acoustic fence to the north west boundary of its garden, a raised stone wall on its road frontage, the extension of the existing earth bund to the south west of the Jerusalem Farm buildings and the formation of a new bund along the north-eastern side of the access road; much of the latter being 3.8m high.
  37. Without these attenuation measures, I agree with the previous Inspector that the occupants of Heather View Cottage and the Slippershaw properties would be unacceptably disturbed, particularly by the noise of HGVs coming up the access to Half Acre Road before about 08.00 hrs and after say 19.00 hrs on weekdays, Sundays and Bank Holidays, when people could reasonably expect to be able to relax in peace and quiet in their own homes.
  38. With these acoustic works in place however, the noise and disturbance would be significantly reduced. The Appellants' figures show that with this scheme, there would be virtually no increase in the 06.00 to 24.00 hrs <sup>16 hour free field</sup> sound levels at the noise sensitive properties, as a result of their proposed number of HGV movements compared with the baseline case of those that are currently permitted. That does not mean however that the passage of individual vehicles would be unnoticeable to the affected residents. There would still be some level of disturbance, but it would be generally comparable to that accepted in 2002. Even so, there would be proportionately more HGV movements in the evening hours than during the rest of the day because of the need to bring in material removed from abattoirs at the end of the working day.
  39. PPG24 considers 23.00 to 07.00hrs to be a period when people should be able to sleep in peace. The World Health Organisation (WHO) also recognises these times and, based on WHO guidelines, Annex 2 of PPG24 recommends a maximum sound level of 45dB(A) free field outside bedroom windows 'to preserve the restorative process of sleep'.
  40. The Appellants did not aim to demonstrate that sound levels would be conducive to the restorative process of sleep after 23.00 hours because they did not seek HGV movements beyond that time. Indeed, on the basis of the evidence before me, I am far from convinced that this would be the case.
  41. Seven emergency vehicles per week are currently permitted outside the specified hours by Condition 10. There is no clear definition of what an emergency is, but the Appellants take it to allow for such things as delays to vehicles on the highway. Indeed, whilst in any case failing to comply with the numbers condition, they seem to consider it generally as an additional weekly



allowance of HGV movements. I do not see the 'emergency provision' as one for such regular operational matters, which could well be overcome by other means, for instance by taking the vehicle(s) to Swalesmoor. Bearing in mind the disturbance I have identified to nearby residents during the 'quiet hours', I consider the only justification for emergency vehicles to be the need for vehicles to enter and leave the site in truly exceptional circumstances.

42. Residents living alongside roads can be disturbed by road traffic and a number of local residents, particularly those on Well Heads, complained about the noise of HGVs driving along Brighthouse Road, Wellheads and Half Acre Road in the evenings and at night on their way to and from Erlings Works. Not only are they concerned about engine noise, but also about the rattling, clattering and banging of the bodywork of the vehicles, particularly empty trailers.
43. The highways evidence includes traffic counts for each of these roads until the early evening. These show traffic flows well above the 50 movements per hour needed to use the Department of Transport's Calculation of Road Traffic Noise (CRTN) procedure. Although they are likely to reduce later in the evening, it is unlikely that they would fall below the critical value.
44. The maximum sound level of any individual HGV passing the doors of residents living along these particular roads may well be clearly noticeable, as indicated in the local residents' noise survey, but using the CRTN assessment technique, the Appellants' proposed increase in HGV movements over the currently permitted number would result in an increase of less than 1 dBL<sub>A10 18 hr</sub>; which would be insignificant. This CRTN assessment relates to the 18 hour period from 06.00 to 24.00 hrs and therefore mainly excludes the WHO's 'good sleep period', but the Appellants do not seek any HGV movements during this time.
45. I conclude that, although limited, there would still be some harm to the noise environment for the local residents as a result of the proposed average number of 60 HGV movements per day, contrary to RUDP Policy UR3.

### **Odour**

46. In 2008, the Council's Environmental Health Department received 19 complaints about offensive odours from Erlings Works. In 2009 there were 39, and 78 were received between 1 January and 24 September 2010. Of the 2010 reports, Officers investigated complaints on 23 of the 56 days involved, and detected offensive odours beyond the site boundary on 11 occasions.
47. Odour is controlled on the site through the application of Horizontal Guidance Note H4 published by the Environment Agency, BAT and the environmental permit. There is an odour boundary condition to the permit, though it seems that compliance with BAT may provide a defence. Nevertheless, odours that may escape the plant itself are not generally a matter for consideration under these appeals.
48. If the number of HGV movements were to mean that more material was brought onto the site than could be efficiently handled by the installed plant, that is a matter which should be dealt with under the environmental regime; although there might also be a requirement for separate planning permissions. On that topic, I note the current permit does not limit the number of queuing vehicles on the site, though the draft of the new one would. Bearing in mind the possibility of odours from this source, the Appellants have been considering

- submitting a planning application for a building to contain HGVs that are waiting to deliver their loads.
49. Regardless of the plant's emissions, an increase in the permitted number of HGV movements could increase the exposure of roadside residents to offensive odours from the vehicles; a general amenity matter. Whilst relatively small in number, and possibly somewhat under-recorded, two complaints about odours from vehicles were recorded by the Council's Environmental Health Department in 2009, and five in 2010, up to 24 September. There were also strong representations from the governors, staff and pupils at Keelham Primary School on the subject, and letters from a significant number of residents, particularly on, and near to, the route between Erlings Works and the Swalesmoor site.
  50. Some 40% of the material brought to Erlings Works comes from within about one hour's drive time, but the rest could come from as far away as Scotland or Cornwall. Ideally, it would be taken directly to the rendering plant, though the number and time restrictions on HGVs entering and leaving the site can mean that it is taken to Swalesmoor either to wait overnight or, if a partial load, to be 'bulked up' into a full load.
  51. Even the relatively fresh material from abattoirs can be quite odorous. However material from knackers' yards may have been stored for a while, and fallen stock may not have been collected from the farms for some days. This kind of material can be very malodorous. Some of the particularly odorous material from Keith should shortly be diverted to the Appellants' plant at Kintore, thereby reducing the effects around the Erlings Works.
  52. BAT does not apply to vehicles transporting animal by-products. The Appellants' transport is however in accordance with the requirements in Chapter II of the Animal By-products Regulations 1774/2002 that 'animal by-products and processed products must be collected and transported in '... covered leak-proof containers or vehicles'. The Appellants accepted that odours do escape from their vehicles, as they do from the vehicles operated by their competitors.
  53. About 90% of the material is transported in the Company's own fleet of vehicles which are cleaned after every use and, although tightly sheeted, they are not airtight because of the pressures that could build up from the gases of decomposition. Even if this objection could be overcome, there would also be a need for additional health and safety requirements associated with working in confined spaces.
  54. Similarly, it is not feasible to freeze the material for transportation because that would require major redesigns at abattoirs and rendering plants, with the use of considerably more energy. It would require the redesign of the vehicles which would probably have to be smaller in order to ensure effective heat transfer, and they would be more difficult to clean. Smaller vehicles would of course lead to more vehicle movements, which is another issue in this case. Furthermore any material changes from the industry standard would put the Appellants at a commercial disadvantage.
  55. The Appellants submitted a Unilateral Planning Obligation designed to prevent vehicles under their control from passing Keelham Primary School for the period fifteen minutes before and fifteen minutes after both the start and finish

- of the school day. This would be enforceable against their own staff and against other carriers where they are under a contract. With vehicles coming from considerable distances however, this could mean that they would have to park and wait somewhere in order to avoid these times. If they were giving off offensive odours this could be detrimental to the amenities of people in the vicinity. On the longer, more unpredictable journeys, drivers would anyhow have to stop from time to time and they would no doubt try to avoid reaching this part of their journey at the banned times. Even if they did not achieve this, no likely parking spot was identified, whether close to habitation or not.
56. Some of the other approximately 10% of material is delivered in skips which should also be tightly sheeted, but there is probably less control over them and at least as much chance of odours escaping.
57. In addition to odours escaping from the vehicles, local residents pointed to the most unpleasant sights and odours that can arise from spillages of the material itself, or the associated liquids, onto the highway. The local residents provided clear photographs of such spillages, though some were probably not Category 1 animal by-products, and there was an absence of sound evidence in all cases that the vehicles concerned were on their way to Erlings Works. They might have been going to another renderer, for instance the one in the centre of Bradford. The Appellants keep a register of complaints about spillages. They accepted that up to five of those listed by the local residents were from their vehicles and they had cleaned and sanded the road in such cases. If left without treatment, these spillages could affect road safety and possibly public health.
58. The Appellants' vehicles have a sealed back door to the trailer which can be a weakness if the seal is damaged. To overcome this, they now provide a 'spill guard' in the emergency kit carried on the vehicles which the driver can fit in the event of any leakage. They have also started to fit metal 'lips' to the top of the insides of the front and back of the trailers in order to prevent mobile material being forced up between the vehicle body and the sheeting when accelerating or decelerating. Both these actions should help to reduce spillages onto the highway.
59. Whilst the Appellants' innovations should considerably help in preventing spillages from their own vehicles, there remains a risk of spillages from the much smaller percentage of other vehicles accessing the site, and there is still the matter of offensive odours from the vehicles themselves. All of these aspects adversely affect the amenities of the people living and working along the route taken by these vehicles, contrary to RUDP Policy UR3. I do not however consider this amounts to an interference with the local residents' rights under the terms of the Human Rights Act 1998, as claimed by the Swalesmoor Action Group.

## **Highways**

### **Highway Safety**

60. At the time that the Appeal A and B applications were refused (December 2006 and October 2007), the Council was concerned about HGVs having to swing across the opposing traffic lane on Half Acre Road in order to turn in and out of the site access. Since then however, the access has been widened and moved further to the east, thereby avoiding the need to cross onto the opposing side

of the carriageway (part of the Appeal C development). As the Highway Authority, the Council is no longer concerned about highway safety at this junction; and nor am I.

61. The planning obligation submitted at the time of the 2002 appeal set the route that all of the Appellants' HGVs should follow, as well as those that are under contract to them. Although some local residents have suggested that they do not do so, the evidence before me seems to indicate that the vehicles complained of may well have been on legitimate business for other companies. Some of the complaints may also relate back to the time when roadworks on Well Heads caused its closure to through traffic and an alternative route had to be followed. Accordingly, I am satisfied that at least the great majority of HGVs travelling to and from Erlings Works do follow the prescribed route; namely Half Acre Road to Well Heads and then via Brighouse and Denholme Road (A644). Those travelling to or from Swalesmoor follow the A644 via Mountain to Queensbury and then turn westwards on the A647 to Swalesmoor. HGVs are prohibited by a traffic regulation order from using the more direct Roper Lane.
62. There are no capacity constraints on the highway links, but the Well Heads and Brighouse Road junction by the Keelham Primary School raises concerns about highway safety.
63. At this junction, the tight kerb radii and limited lane widths require both articulated and rigid body HGVs to swing across the opposing traffic lanes in order to turn in or out of Well Heads. As shown by the Council's swept path diagrams and the third party photographs, this occurs even without the frequent presence of parked vehicles in Well Heads or Brighouse Road, which further aggravate the situation. I observed HGVs making these turns myself. Furthermore, there are also clear signs of tyre marks where vehicles from time to time overrun the narrow footway on the corner by Keelham Primary School.
64. The HGV movements to and from the site have been at generally the level sought for the last two or more years and there has been no personal injury accident record at this junction for at least three years, though an accident record of five years would be more desirable. Even though the road geometry causes traffic speeds to be low and there is reasonable forward visibility, blocking the free flow of traffic is most undesirable in highway safety terms with a considerable potential to cause accidents.
65. There are no proposals for road improvements or traffic regulation orders that would ameliorate the situation, which is worst when parents are dropping their children off at, and collecting them from, the school. The Appellants unilateral planning obligation to prohibit the passage of HGVs at the beginning and the end of the school day would help to limit the potential for accidents to school children and their parents; and such an undertaking was not offered in connection with the previous 'Black Dyke Quarry Appeal'. I note also that the traffic assessment of this junction in the 2002 appeal was limited to the 30 HGVs per day already established by reference to amenity considerations at the site access.
66. Nevertheless, the need for HGVs to swing out across the opposing traffic lane at this junction still represents a significant adverse effect upon the highway infrastructure and demonstrates continuing potential for road safety hazards, contrary to RUDP Policies TM2 and TM19A. Indeed, the Appellants revised site

access was required to overcome just such a situation on the less busy Half Acre Road.

***Public Rights of Way***

67. On the definitive map, public footpath Denholme 55 runs from Half Acre Road down the line of the original access road to Erlings Works and then turns east beyond the Jerusalem Farm buildings to the Slippershaw properties and then on to Spring Hall Farm on Ten Yards Lane. Despite the position of the sign on Half Acre Road there is little doubt that, with the access in the position now authorised by the recent planning permission, the path would effectively pass through the proposed landscaping on the west side of the Half Acre Road junction and cross to the east side of the access where the new line sweeps back onto the original route. As such there would be conflict between pedestrians on the footpath and vehicles using the access. That would be contrary to RUDP Policies TM9 and D6 which seek to protect existing footpaths and pedestrian links.
68. If the recently permitted acoustic bund were in place, the section of footpath that runs along the access road would also be less pleasant to walk along because of the 3.8m high bund immediately to the northeast. In addition, there would be steep steps up and over the bund close to the Jerusalem Farm buildings.
69. There is some evidence of walkers having tried to walk this footpath, but the Council accepted that there are a significant number of obstructions along its route, some of which have been present for nearly 60 years. Accordingly, I do not anticipate there would be many occasions when there would be conflicts between pedestrians and vehicles, but if they did occur that would be contrary to RUDP Policies TM9 and D6(4).
70. Recognising these conflicts, the Appellants have applied for a footpath diversion on land under their control on the opposite side of the proposed bund. They have already provided a permissive footpath along this line, and this would be maintained as a result of the submitted unilateral obligation, unless the footpath diversion fails to be confirmed. If, and when, this diversion is approved and implemented, any conflict between pedestrians and vehicles would be removed. The conditions that are the subject of Appeals C & D relate to this matter and are considered separately below. However any permitted increase in HGV movements and times under Appeals A and B could be the subject of a comparable condition to avoid any increased pedestrian / vehicular conflicts.

***Need and Sustainability***

71. Erlings Works takes Category 1 animal by-products and there are only six other currently operational Category 1 rendering plants in England and Scotland. There are none in Wales, the South/Southeast or the Northeast of England. In July 2010, a fire closed the A J Hughes and Son plant at Skellingthorpe in Lincolnshire and that plant may or may not come back on stream, but the currently non-operational Scots Proteins plant at Kintore near Aberdeen (part of the Leo Group) is expected to be licensed and operational soon. Practically all the other UK Category 1 renderers are in the Food and Biomass Renewables Association which is a breakaway group from the UK Renderers' Association, of which the Leo Group is a member.

72. The Leo Group has contracts with various major abattoirs to remove all their animal by-products, be they Category 1, 2 or 3 materials, the latter being processed for pet foods. They are one of only two operators in the industry who can provide this 'full service' because they have other plants in the group that take the materials. At present, all of the Appellants' Category 1 material goes to Erlings Works, even from as far away as the West Country and Scotland, though the latter should shortly be directed to the Kintore site near Aberdeen.
73. The rendering business in the United Kingdom is highly secretive and there are no sound statistics for the quantities of material handled each year. What is known is that fallen stock can no longer be buried on farms, more waste food is now rendered, Category 2 material is still processed with Category 1 in some cases and there has been a significant decline in the export of live animals. There is a trend towards larger abattoirs, though whether they are now working later into the evening is debatable. What is clear however is that, once a trailer is filled, it becomes an intermediate storage facility which Food Standards Officers at the abattoirs are very keen to see removed from the site the same day.
74. The representative of the Association of Independent Meat Suppliers who attended the Inquiry considered there to be a critical shortage of capacity for the processing of animal by-products in the UK. He also said that payments for their removal could be a large proportion of the abattoirs' operating costs. Several renderers are now developing anaerobic plants, but the digestate still needs further processing; and traditional rendering is still the principal process for the treatment of animal by-products in the UK.
75. Even so, in the absence of firm data, it is a little difficult to be sure how much spare capacity there may, or may not, be in the industry. The significant price increase for the removal of Category 1 materials after the A J Hughes fire and the transfer of material for processing in Northern Ireland after the Fats and Proteins Ltd fire in 2005 might tend to indicate a shortage of capacity. But, producers of this material have established contracts with individual renderers and they are unlikely to be in a strong position to get the best price if they have to go cap in hand to another company in an emergency. Prices charged to remove Category 1 material have in any case fallen recently, perhaps an indication of healthy competition. This certainly seemed to be the thrust of the evidence from the abattoir operator who gave evidence at the Inquiry.
76. I note that there is only one other Category 1 plant with HGV restrictions and it should be free of them shortly when a new access is in place. In addition, all other operational Category 1 plants operate seven days a week and many for 24 hours a day, but it was said at the Inquiry that this is the most efficient mode of operation. The fact of 24 hour or seven day a week operation may therefore have little relationship to their operational capacity.
77. There is a national public interest in the rendering industry. In its 1993 report the then Monopolies and Mergers Commission (MMC) required certain actions by Prosper de Mulder (PDM), the dominant company in the business, in order to reduce anti-competitive monopolistic practices. Those actions were taken and, after release from some of their undertakings by the Office of Fair Trading (OFT) in 2007, PDM bought up and closed down a number of their competitor's rendering plants. Of these, the Torrington and Canterbury plants are currently

mothballed, and the cookers have been removed from the latter. Despite a declared intention to continue monitoring the industry, the OFT has taken no further action. If there were a significant 'squeeze' on the normal operational capacity in the industry, it would seem reasonable that there would be at least some moves to reopen these mothballed plants. Clearly the industry would not normally expect to provide capacity for a major peak event such as an outbreak of BSE, foot and mouth disease or for the Over Thirty Months Scheme (OTMS).

78. I do not therefore see any sound reason to conclude that there is a particular shortage of capacity in the industry, nor that, if the appeals are dismissed, the estimated additional 11 or 12 loads of raw material per day could not be processed elsewhere in the UK. I also doubt very much if there would be any lasting price effect. Furthermore, there is no financial evidence at all to support a claim that Omega Proteins would be unable to continue its Erlings Works operation if the numbers of HGV movements and their hours are not increased.
79. Since the appeals were made, the installation of a thermal oxidiser and a mains gas supply have materially reduced the number of condensate and fuel tanker collections and deliveries, yet it is accepted that for the last two or more years the number of HGV movements has risen to about the 60 a day (30 in and 30 out) sought by the appeals. Added to this, some of the loads have been bulked up at Swalesmoor. With more than £8m investment in the site over about the last six years, I have no doubt that Erlings Works is currently taking a greater throughput of material than in the past. But, that is in line with the aims of national and local policies set out in PPS4 and Policy UR2 of the RUDP which encourage economic growth, providing it is also sustainable and otherwise acceptable in planning terms.
80. If, in the near future, the Appellants' Category 1 material from Scotland is to be re-directed to their Kintore plant, that would no doubt result in a reduction of the total miles travelled. That would occur whether or not these appeals are allowed, but it would release a, currently unidentified, number of HGV movements for other deliveries to Erlings Works.
81. Despite the reduced number of HGV movements in connection with condensate and fuel oil, and without an increase in the permitted number of HGV movements, it seems that it could be necessary for some 11 or 12 loads per day to be processed elsewhere. If that were the case, there is no way of knowing what the source or destination of this material would be, and whether the miles travelled would be increased or decreased.
82. The trend is for abattoirs to become larger and to require a commercial arrangement for their animal by-products to be removed the same day. Later permitted HGV movements would allow for more material to be taken directly from the source to the appeal site without overnight storage at Swalesmoor and/or double handling. This would be more efficient, and somewhat reduce the total distance travelled, whilst at the same time the material would also be rather fresher and therefore a little less odorous. Less vehicles carrying less odorous material through the Queensbury area would at least be of some benefit to the significant number of local residents who have complained about odours and spills in that area.

83. Allowing more HGV movements over a longer period should help maintain competition between the limited number of operators in the industry, which in turn should lead to lower prices and possible benefits to the economy as a whole.

### **Other Matters**

84. In coming to my conclusions, I have taken into account all the evidence before me, including the planning history of the site and the written representations from Denholme Town Council, Swalesmoor Action Group, The Black Dyke Quarry Action Group and numerous local residents.

### **Conclusions on Appeals A & B**

#### **The Development Plan**

85. I have concluded above that the noise and odour from the proposed average of 60 HGV movements per day would cause some harm to local residents contrary to RUDP Policy UR3. There would also be a continuing potential for road safety hazards contrary to RUDP Policies TM2 and TM19A and, unless the public footpath is formally diverted, there would be some prospect of conflict with RUDP Policies TM9 and D6(4). At the same time, to allow more HGV movements over a longer period would permit a greater throughput of material at the site which should encourage economic growth, as sought in RUDP Policy UR2. There could also be some benefits in promoting competition in the rendering industry and not having to double handle and/or transport so much material to and from Swalesmoor.

86. Even if the activities carried out at Erlings Works were to be considered against the waste policies of the RUDP, Policy P8 would not add any new considerations.

#### **Hours of HGV Access**

87. The 2002 decision to restrict access to the hours of 08.00 to 19.00 from Monday to Saturday inclusive was primarily based on the effects upon the amenity of the residents close to the access. Once the Appellants', now approved, acoustic measures have been implemented, the effects of the proposed numbers of vehicles travelling up and down the access should not be materially greater than previously permitted, though the passage of individual vehicles would still be quite noticeable and would very likely disturb sleep. The WHO considers people should be able to sleep in peace between 23.00 and 07.00 hrs and, except in emergencies, no HGV movements should therefore be permitted during that period. However, in order to achieve an acceptable level of residential amenity, I also consider there should be a period of an hour before, and an hour after, the 'good sleep period' when residents could wake up and relax without undue disturbance. The same peace and quiet should apply at weekends and Bank Holidays. Accordingly, I will allow HGV movements from 08.00 hrs to 22.00 hrs on Mondays to Saturdays only, once the acoustic scheme has been completed. Providing the condition is effectively enforced, this should also help to limit the impact upon the amenities of the residents living alongside the roads used for access.



## **HGV Numbers**

88. In highway safety terms, the Well Heads/Brighouse Road junction is clearly unsatisfactory because HGVs have to swing out into the opposing traffic lanes, thereby obstructing the free flow of traffic even at the best of times. This is made worse by the frequent presence of parked vehicles, and vehicles also overrun the kerb immediately outside Keelham Primary School. The vehicle numbers have been at or about the level sought for two years or more and there have been no recorded personal injury accidents, which does give some level of assurance that the proposed HGV numbers would not be too hazardous. The prevention of HGVs under the Appellants' control from using this junction for fifteen minutes before and after the start and finish of the school day should improve the situation. It would however be essential that the Appellants' vehicles are clearly marked so that violations could be accurately reported and, despite the previous lack of enforcement, that should be achievable through a suitably worded planning condition.
89. With the Appellants acceptance that unpleasant odours escape from the material carried in their vehicles, an increased number of vehicle movements must expose people along the route to more odour incidents. Whilst the number of recorded complaints may not be very great, some are persuasive. Bearing in mind the current HGV numbers, there would be no further increase in incidents and allowing more vehicles to access the site later in the day should make the material a little less odorous. The prospective re-direction of the very odorous Scottish material would also be of some benefit. Spillages onto the highway can also be very odorous and the installation of lips inside the trailers to reduce spillages should again be of benefit, and could be required by a planning condition.
90. I conclude that, providing HGVs are defined, to permit an average of 60 such movements per day (30 in and 30 out) would not unduly harm highway safety or the amenities of the local residents and should make provision for reasonable commercial activity at the plant.
91. I am however concerned that the Local Planning Authority should be able to effectively monitor these movements. I understand that the numbers can vary from day to day during a week, but I see no justification for averaging them over two weeks; a period that simply compounds the difficulty of enforcement. I therefore intend to set the 60 movements as a weekly average. Because of the daily fluctuations though I will permit a maximum of 70 movements per day.
92. There seems to have been virtually no enforcement of the emergency vehicle provision in Condition 10. I see no justification for what amounts to another allocation of seven emergency vehicles per week and I do not consider normal operational problems such as delayed vehicles to be genuine emergencies. In my view, they must be truly exceptional circumstances. I will therefore attach a condition without any reference to numbers but requiring notification of the circumstances of each emergency to the Local Planning Authority.

## **Other Planning Conditions**

93. As I will be allowing Appeal A in part, I will be creating a new planning permission which should have a time limit for implementation.

94. Conditions 7 and 8 of the 2002 planning permission limit the development to rendering and pet incineration and 24 hour working from Mondays to Saturdays only. Condition 9 requires all operations to be within the buildings and Condition 10 withdraws permitted development rights. These are all still relevant conditions and should apply to the new permission.
95. Because the approved acoustic measures are required in order to reduce the harm from the additional HGV numbers over longer hours, I will not authorise the increases until the measures are in place. With the removal of Condition 3 on the acoustic scheme (see Appeals C & D below), the Appellants would be in a position to carry out the necessary works, rather than be constrained by the need for a decision from the Local Planning Authority.
96. The Council suggested a condition that would prohibit outside storage of raw materials, whether in vessels or trailers in order to prevent odorous emissions. As noted elsewhere, odour from the site is a matter for the environmental permit and, in practice, any vehicle waiting to unload, a regular event, would be breaching such a condition.
97. The Council also suggested a condition relating to the hours of construction, but there would be no construction work in connection with Appeals A and B and such a condition is already attached to the permissions for Appeals C & D.

### **Summary**

98. Accordingly, I will allow Appeal A in part and create a new permission and dismiss Appeal B.

### **Appeals C & D**

99. In essence, both Appeals C & D relate to the same matter; whether it is necessary to attach a condition that no further work shall be carried out on the access or the acoustic scheme until the public footpath has been formally diverted.
100. There is a sound planning reason for such a condition in that it would avoid conflicts between pedestrians and vehicles using the access. But, given the substantial obstructions along the footpath, which the Local Authority has taken no action to remove for many years, it is clear that the prospect of such conflicts is very low.
101. If not diverted, the definitive footpath would have to run across part of the landscaping associated with the access improvements, alongside the bund and over it at the northern end. Whilst this would not be ideal, at least this part of the route could be walked, providing the route were maintained through the landscaping and the proposed steps were incorporated in the bund. This is a matter that could be covered by a condition on Appeal A.
102. The Appellants have made an application for the footpath diversion and have provided a permissive footpath which would become the definitive route if the diversion is approved. The matter is in the hands of the Local Planning Authority and the Appellants no longer have any control over if, or when, the diversion may be approved.
103. Whatever the exact number of HGV movements per day might be, there will be disturbance to the nearby residents which would be significantly reduced

by the acoustic measures. I therefore consider there would be significant benefit from the scheme, as compared with some very limited harm to pedestrian safety.

104. Accordingly I will allow both Appeals C & D and remove Condition 3 from both planning permissions. With the interrelationship of the two permissions, a new condition is however required in both cases in order to ensure that the footpath can pass over the bund and through the corner landscaping.

## **Formal Decisions**

### **Appeal A**

105. I allow this appeal and grant planning permission for a rendering plant and filter bed at Erlings Works, Jerusalem Farm, Half Acre Road, Denholme, Bradford West, BD13 3SG in accordance with the application Ref 06/09646/VOC made on the 14 December 2006 without complying with conditions Nos 2, 3 and 10 set out in the planning permission granted under appeal reference APP/W4705/A/01/1075978 on 18 April 2002, but otherwise subject to the following conditions:-
- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
  - 2) No activities shall be carried out in the buildings other than rendering and the incineration of pets. The maximum throughput of the pet incinerator shall not exceed 45 kg per hour.
  - 3) No loading or off-loading of Heavy Goods Vehicles (HGVs) shall be carried out except within the confines of the buildings.
  - 4) Rendering or incineration operations (as distinct from maintenance operations) may be carried out on a 24 hour basis from Monday to Saturdays, but not at any time on Sundays or Bank and Public Holidays.
  - 5) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking, re-enacting or modifying that Order), no further plant or machinery shall be placed or erected on the site without the prior written permission of the Local Planning Authority.
  - 6) Until the acoustic attenuation measures approved under planning permission 10/03571/FUL dated 13 July 2010 have been implemented in full, no more than 30 movements per day (15 in and 15 out of the site) shall be permitted by HGVs (as defined as Other Goods Vehicles Classes 1 and 2 in DoT's Design Manual for Roads and Bridges). This number shall be averaged over a two week period and the maximum number in any one day shall not exceed 40 (20 in and 20 out). Records of all heavy goods vehicle movements shall be kept for a minimum period of three years in a form to be agreed with the Local Planning Authority, and shall be made available to the Authority on request.
  - 7) Once the acoustic attenuation measures approved under planning permission 10/03571/FUL dated 13 July 2010 have been implemented in full, no more than 60 movements per day (30 in and 30 out of the site) shall be permitted by HGVs (as defined as Other Goods Vehicles Classes 1 and 2 in DoT's Design Manual for Roads and Bridges). This number shall be averaged over a one week period and the maximum number in any one day

shall not exceed 70 (35 in and 35 out). Records of all heavy goods vehicle movements shall be kept for a minimum period of three years in a form to be agreed with the Local Planning Authority, and shall be made available to the Authority on request.

- 8) Until the acoustic attenuation measures approved under planning permission 10/03571/FUL dated 13 July 2010 have been implemented in full, no HGVs (as defined as Other Goods Vehicles Classes 1 and 2 in DoT's Design Manual for Roads and Bridges) shall enter or leave the site except between the hours of 08.00 and 19.00 Mondays to Saturdays and not at any time on Sundays or Bank or Public Holidays.
- 9) Once the acoustic attenuation measures approved under planning permission 10/03571/FUL dated 13 July 2010 have been implemented in full no HGVs (as defined as Other Goods Vehicles Classes 1 and 2 in DoT's Design Manual for Roads and Bridges) shall enter or leave the site except between the hours of 08.00 and 22.00 Mondays to Saturdays and not at any time on Sundays or Bank or Public Holidays.
- 10) If, in exceptional emergency circumstances, HGVs have to enter or leave the site outside the hours permitted by Conditions 8 and 9 above or would exceed the numbers permitted in Conditions 6 and 7 above, the site operator shall notify the Local Planning Authority in writing within three working days, giving the reason for the emergency. The operator of the site shall maintain records of all emergency vehicle numbers and movements including the numbers and reasons for the emergency. These records shall be retained for a minimum period of three years and shall be made available to the Local Planning Authority on request.
- 11) Within 4 weeks of the date of this decision, a scheme for the clear identification of all HGVs under the control of the operator of Erlings Works, or any associated company, shall be submitted in writing to the Local Planning Authority for approval. That scheme shall be based upon the one previously submitted on 8 January 2003 and approved by the Local Planning Authority on 20 January 2003. It shall include for signs on both sides of the trailer units, or equivalent positions for rigid body vehicles. The approved scheme shall be implemented in full, in accordance with a timetable to be agreed as part of the scheme.
- 12) Within 4 weeks of the date of this decision, a scheme for the provision of 'top lips' inside the front and back of all trailer units and their equivalents in rigid body vehicles under the control of the operator of Erlings Works or any associated company shall be submitted in writing to the Local Planning Authority for approval. The approved scheme shall be implemented in full in accordance with a timetable to be agreed as part of the scheme.

### **Appeal B**

106. I dismiss the appeal.

### **Appeal C**

107. I allow the appeal, and vary the planning permission Ref 10/03003/FUL for improvements to the site access to Erlings Works, Jerusalem Farm, Half Acre Road, Denholme, Bradford West, BD13 3SG granted on 15 June 2010 by the City of Bradford Metropolitan District Council by deleting Condition No 3 and substituting for it the following condition:-

- 3) Until the route of public footpath Denholme 55 has been formally diverted, no works shall be carried out unless a scheme to maintain the route of this footpath through the proposed landscaping and over the acoustic bund has been submitted to, and approved in writing by, the Local Planning Authority, and that scheme has been completed as approved.

#### **Appeal D**

108. I allow the appeal, and vary the planning permission Ref 10/03571/FUL for acoustic attenuation measures along the access road, consisting of a 2.0m high screen fence and heightened walls to the garden of Heather View Cottage, earth bunding to the access road and associated landscaping at Erlings Works, Jerusalem Farm, Half Acre Road, Denholme, Bradford West, BD13 3SG granted on 13 July 2010 by the City of Bradford Metropolitan District Council by deleting Condition No 3 and substituting for it the following condition:-

- 3) Until the route of public footpath Denholme 55 has been formally diverted, no works shall be carried out unless a scheme to maintain the route of this footpath through the proposed landscaping and over the acoustic bund has been submitted to, and approved in writing by, the Local Planning Authority, and that scheme has been completed as approved.

*J I McPherson*  
INSPECTOR

## APPEARANCES

### FOR THE APPELLANT:

Mr David Manley QC

Instructed by Mr Graham Bolton Managing Director of the Graham Bolton Planning Partnership Ltd

He called:-

Mr S Fraser BSc, M Phil, Dip EH, C Env, MIA, MIWM.

Environmental Consultant and Principal of The Airshed Ltd, 5 Lauder Place, East Linton, EH40 3DB

Mr D Roberts IEng, FIHIE, FCIHT

Director of Singleton Clamp & Partners Ltd, Consulting Engineers & Transportation Planners in Manchester and London

Mr D Green MA, C Eng, FICHEM

Managing Director of Engreen Environmental Consultants Ltd, Committee Member of the Environmental Protection Subject Group of the Institution of Chemical Engineers and Technical Director for the United Kingdom Renderers' Association.

Mr M Singh  
Mr G J Bolton BA(Hons), MRTPI

Finance Director of the Leo Group of Companies  
Managing Director of The Graham Bolton Planning Partnership, Chartered Town Planners, Development and Environmental Consultants based in Manchester

Mrs M Brichard DipTP, MRTPI

Of Philip S Ryley & Co Ltd, Wards End Chambers, Wards End, Halifax, HX1 1BX

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Ian Ponter of Counsel

Instructed by Ms C Barrott of the Legal Department for the City of Bradford MDC

He called:-

Miss C Howarth BSc, MSc, CEnv, MRTPI, MRICS, MIWM

Planning Manager (Minerals and Waste) in the Department of Regeneration for the City of Bradford MDC.

Mr D J Quantick BSc (Hons), IADip (Acoustic and Noise Control)

An Environmental Health Officer in the Environmental Health, Scientific and Technical Services Team of the City of Bradford MDC

Mr G Marsh CEng, MICE

Part time Principal Engineer in the Highways Development Control Team of the City of Bradford MDC

Mr P J Best BSc(Hons)

Environmental Health Officer employed by the City of Bradford MDC and with responsibility for permitting industrial processes under the Environmental Permitting (England and Wales) Regs 2010.

Mr T Brooks BSc, MIPRWM

Rights of Way Officer for the City of Bradford MDC

INTERESTED PARTIES:

Mr G Fawthrop	of Tanglewood, Cragg Lane, Thornton, Bradford, BD13 3SP, representing:- Smellywaggon.co.uk, The Governors of Keelham Primary School, Swalesmoor Action Group and Mr & Mrs Wilson of Slippershaw Farm.
He called:- Cllr V Binney	Bradford MDC Ward Member for Thornton and Ollerton and representing the school governors of Keelham Primary School, Flat 2, 2 Scarborough Road, Shipley, BD18 3DR
Mrs S Wilson	Slippershaw Farm, Half Acre Road, Thornton BD13 3SG.
Mr Barker	Union Cottage, 18 Ambler Thorn, Queensbury, Bradford, BD13 2DL, representing the Swalesmoor Action Group
Mr S Winteridge	The Croft, Cragg Lane, Thornton, Bradford, BD13 3SW, Local Resident and Governor of Keelham Primary School

OTHER INTERESTED PERSONS:

Mr S Lomax	Vet and non-practicing barrister, representing the Association of Independent Meat Suppliers, PO Box 125, Northallerton, DL6 2YG
Mr M Seals	Executive Chairman of the National Fallen Stock Company, The Hall Farm, Sutton on the Hill, Ashbourne, Derbyshire, DE6 5JA
Mr J Penny	Farmer and abattoir operator of Penny & Sons, Low Green Farm, 40 Leeds Road, Rawdon, LS19 6NU

## DOCUMENTS

### 2008 Documents

Documents	08/01	Letter of Notification and distribution List
Submitted	08/02	Supplementary Proof by Steve Fraser
during the	08/03	Environmental Noise Assessment - Plant
Inquiry in	08/04	Environmental Noise Assessment – Access
2008	08/05	Letter of 01/02/2008 from BMDC to PINS
Documents	08/06	Appellants’ Noise Proof
submitted	08/07	Appellants’ Highways Proof & Statement
before the	08/08	Appellants’ Planning Proof
Inquiry	08/09	Bundle of Council’s Proofs
Opened	08/10	Statement of Common Ground on Highways
EIA	08/11	Submissions regarding the need for EIA
	08/12	Environmental Statement Vols 1 & 2

### 2010 Documents

Procedural Meeting	10/01	Notes of the Procedural Meeting, 19 May 2001
Statements of Common Ground	10/02	<ul style="list-style-type: none"> <li>a. SOC on Planning and Other Matters</li> <li>b. SOC on Highway Matters</li> <li>c. SOC on Footpaths</li> </ul>
Statements of Case	10/03	<ul style="list-style-type: none"> <li>a. Appellants</li> <li>b. Bradford MDC</li> <li>c. Rule 6 Party</li> </ul>
	10/04	Number not used
Appellants’ Proofs of Evidence	10/05	Fraser - Noise
	10/06	Roberts - Highways
	10/07	Green - Odour
	10/08	Singh – Finance & Operations
	10/09	Bolton – Need and Planning
	10/10	Brichard – Swalesmoor Site
Council’s Proofs of Evidence	10/11	Howarth - Planning
	10/12	Quantick - Noise
	10/13	Marsh - Highways
	10/14	Best - Odour
	10/15	Brooks – Public Rights of Way
Third Party Proofs of Evidence	10/16	<ul style="list-style-type: none"> <li>a. Fawthrop – Proof</li> <li>b. Fawthrop – Photos</li> <li>c. Fawthrop – Residents’ Statements</li> <li>d. Fawthrop – Noise Statement</li> <li>e. Fawthrop – CCTV Analysis</li> <li>f. Fawthrop – Bundle 1 Docs</li> <li>g. Fawthrop – Bundle 2 Docs</li> </ul>



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	10/17	Cllr V Binney
	10/18	Mrs Wilson
	10/19	Mr Barker
	10/20	NFSCo collection from Mr Seals
Resumed Inquiry	10/21	Notice of Resumed Inquiry and Distribution List
General Documents	10/22	Attendance Lists 9-12 7 16-18 November 2010
	10/23	Bundle of Third Party Letters
	10/24	Written Submission on behalf of PDM Ltd
Appellants' Additional Documents during the Inquiry	10/OPL1	Leo Group Investigation Forms
	10/OPL2	Letter from A Hughes & Son
	10/OPL3	SEPA Report re Dundas Plant
	10/OPL4	Address Locations for third party letters
	10/OPL5	November 2006 Planning Statement
	10/OPL6	May 2007 Planning Statement
	10/OPL7	Daily Removal of ABP from Slaughterhouses
	10/OPL8	Signed Planning Obligations (Appeals A & B)
	10/OPL9	Extract from Manual for Streets 2
	10/OPL10	2002 Planning Obligation
	10/OPL11	Written Statement by Danny Sawrij
	10/OPL12	Letter from C & S Murphy
	10/OPL13	Extract from Defra Core Guidance on Environmental Permitting
	10/OPL14	Condensate & Washwater vehicle movements at Erlings Works
	10/OPL15	Competition Commission Decisions
	10/OPL16	Closing Submissions by D Manley QC
	10/OPL17	Written Costs application against the Council
	10/OPL18	Location of third Party Letter addresses
Council's Additional Documents during the Inquiry	10/BDC1	The Council's Opening Submissions
	10/BDC2	Appellants' Planning Statement for the Access Works
	10/BDC3	Complaints received by the Environmental Health Department
	10/BDC4	Approval of 2002 condition to identify Omega Proteins vehicles
	10/BDC5	Extracts from the Defra consultation on the transposition of the Waste Framework Directive into English law
	10/BDC6	Closing Submissions by Mr I Ponter of Counsel
	10/BDC7	Application for partial costs against the Appellants
Mr Fawthrop's Additional Documents during the Inquiry	10/GF1	Number not used
	10/GF2	Number not used
	10/GF3	Letter dated 9 November 2010 from Prosper De Mulder to Mr Fawthrop
	10/GF4	Quote from the Scotsman about meat

Inquiry		production
	10/GF5	EBLEX quote about declining global beef production
	10/GF6	Undated letter from Dundas Chemical Co
	10/GF7	Letter dated 23 August from Mr Fawthrop to P Waddington & Co Ltd
	10/GF8	Schedule of Swalesmoor Planning Conditions relating to vehicle movements
	10/GF9	Letter dated 15 November 2010 to the Inspector from Asa Nicholson & Sons
	10/GF10	Letter to the Inspector from Mr & Mrs Powell
	10/GF11	Closing Submissions by Mr Fawthrop

## **APPLICATION PLANS**

### **Appeal A**

- A/1 Location Plan at 1:50,000 Scale
- A/2 Location Plan at 1:2,500 Scale

### **Appeal B**

- B/1 Location Plan at 1:50,000 Scale
- B/2 Location Plan at 1:2,500 Scale
- B/3 Not to Scale Location Plan

### **Appeal C**

- C/1 Location Plan at 1:50,000 Scale
- C/2 Location Plan at 1:2,500 Scale
- C/3 Proposed Access Improvements Drawing No 361C02A
- C/4 Proposed Access Improvements for Omega Proteins Drawing No SCP/10084/F002B

### **Appeal D**

- D/1 Location Plan at 1:2,500 Scale
- D/2 Erlings Works Noise Attenuation Landscape Proposals Drawing No 361C01 Rev E
- D/3 Erlings Works Noise Attenuation Landscape Proposals Drawing No 361C01 Rev F
- D/4 Acoustic Attenuation Typical composition of the bund Drawing No 361C03 Rev A