

Mr Robert Murfin
Head of Planning Services
Derbyshire County Council
County Hall
Matlock
Derbyshire
DE4 3AG

Soil Association, South Plaza,
Marlborough Street, Bristol, BS13NX

10 February 2012

Dear Mr Murfin,

We are writing on behalf of Foston Community Forum, Friends of the Earth, Pig Business and the Soil Association, to register a further joint objection to the application for planning permission to Midland Pig Producers for a 25,000 pig unit at Foston, Derbyshire, planning application CW9/0311/174.

Our further objections are based on the new research findings and evidence from The Netherlands on the health and environmental impact of the siting of this pig factory submitted to you at the end of last year. We have also taken leading Counsel's advice on the planning authority's obligations to consider the human rights of interested third parties, including the inmates of HMP Foston Hall.

Environmental and Health Impact

As you know the proposed development will be built within 150m of HMP Foston Hall, as well as within 75m of the nearest properties provided for workers at the development site.

A significant body of recent research indicates that large intensive pig farms such as that proposed in the application are likely to result in a number of emissions and/or effluents that have a significant potential deleterious effect on the health of people in the vicinity. In particular there is a considerable risk of the contamination of the area with pathogens such as *salmonella*, *clostridium difficile*, *camphylobacter* and *E.coli*, and research suggests that within a certain distance of such facilities there are likely to be emissions such as ammonia and bio-aerosols in concentrations that are potentially harmful to human health.

The Health Protection Agency's "Position Statement on Intensive Farming" (published on 15 December 2010) refers to recent research in relation to bio-aerosols showing that "*those*

living up to 150 metres downwind of an intensive swine farming installation could be exposed to multi-drug resistant organisms". It also refers to the Environment Agency policy that only allows composting facilities to be sited in excess of 250m away from "sensitive receptors" (i.e. dwellings or workplaces).

There is, it is submitted, sufficient scientific evidence to suggest that the siting of a facility such as that which is the subject of this application within 150m of HMP Foston Hall, which is inhabited and staffed by a number of inmates and employees, poses a significant risk to the health of those individuals, as well as an interference with their private and home life.

Human Rights law and Obligations

Planning Authorities, as emanations of the state, have an obligation under the Human Rights Act 1998 to consider the effects of their decisions on the human rights of affected third parties. The grant of permission in circumstances where there is "*reasonable and convincing evidence*" that the development in question would have a direct effect on the quality of life of concerned third parties has the potential to engage the Article 8 rights of those third parties, and to confer "victim" status on them under the Human Rights Act in respect of anticipated breaches (*R (Vetterlein) v Hampshire County Council* [2002] Env. LR 8).

Whilst there is no human right to the preservation of the environment, as such, within the European Convention on Human Rights, the right to protection of private and family life under Article 8 can be affected in a situations involving environmental pollution even absent serious damage to health (*Lopez Ostra v Spain* [1995] 20 EHRR 277). The right to private and family life prevents not just physical incursions into the home or residence, but also interference from things such as noise, smell, emissions. Any serious effect of this nature may result in a breach of Article 8 rights if it prevents the person concerned from enjoying the amenities of their home (*Moreno Gomez v Spain* [2005] 41 EHRR 40, a case involving noise pollution resulting from the licensing of nightclubs in the vicinity of the claimant's property).

The case law on the issue emphasizes the obligation on the state to carry out a fair and reasonable balancing exercise between the Article 8 rights of individuals and the legitimate interests contained in Article 8(2).

At this stage of the current planning application there is an even greater obligation on the Council, as the relevant Planning Authority, to consider the rights of the inmates at HMP Foston Hall, since the Council, an emanation of the state, has the chance to prevent the interference with the inmates' rights at the outset rather than merely to take measures to reduce the impact once caused. The steps it is required to take are therefore significantly less onerous than for an existing interference; it could simply refuse permission, or require a revised plan that avoids the environmental and health risks to inmates. In addition, unlike the claimant in *Moreno Gomez*, the inmates of HMP Foston Hall are not living in the area by choice, and do not have the option of moving elsewhere. This should also tip the balance in favour of the rights of the inmates and against allowing the application.

Support for this opinion can be found in the similar case of *Fadeyeva v Russia* [2007] 45 EHRR 10, which involved a claimant living near a steel production plant, who claimed a right to be moved outside of the "buffer zone" established in the vicinity of the plant for the protection of residents' health. On the basis that the state had sufficient ability to take preventative or ameliorative steps, and that the balance required by Article 8 supported the argument that the claimant's rights had been infringed, it was held that the state had breached its positive obligation to protect her right to private and family life.

Again this case involved a privately owned enterprise, and the basis of the claim was that the state should have taken action to lessen the health and/or environmental impact of the site. In the current circumstances, in which the issue is being considered at the planning stage, the balance should tilt all the more in favour of the rights of affected third parties.

Further if the grant of permission would result in a sufficiently serious risk to the health and living conditions of the inmates, of which suggestion it is contended that the scientific evidence is supportive, there is also a risk that the state would be held to be in breach of the inmates' Article 3 rights to be protected from inhumane treatment. The state has a positive obligation to people detained as a result of a criminal proceedings that they be detained under conditions that avoid hardship or distress of an intensity exceeding the unavoidable level of suffering inherent in legitimate detention and that, given the practical demands of imprisonment, their health and wellbeing are adequately secured (*Karalevicius v Lithuania* [7 April 2005] Application Number 53254/99). To allow this application would risk placing the

state in breach of its obligations to the inmates of HMP Foston Hall in respect of their Article 3 rights.

Conclusions

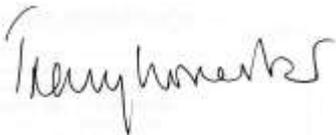
The proposed development would carry serious risks to the health of inmates of HMP Foston, as well as those workers living in the properties planned to be within 75m of the facility. There has been cogent and persuasive evidence adduced to illustrate these risks, notwithstanding the fact that the science surrounding the health risks of such facilities is at a developing stage. Whilst the barrier to any legal challenge based on alleged prospective human rights breaches might be higher than one based on existing breaches, that is not to undermine the point that the Council would be well advised to consider the position of the human rights of those affected, in particular the inmates, since there is at present an opportunity to avoid such risk, by refusing planning permission. If permission is granted, however, and the indicated health risks do in fact come about, as predicted, then the only option for those concerned is litigation that would be time consuming and costly for all concerned.

For the reasons given above, it is requested that the application for planning permission be refused.

Yours sincerely,



Peter Melchett, Policy Director, Soil Association



Tracy Worcester, Pig Business



Helen Rimmer, Food Campaigner, Friends of the Earth

Foston Community Forum