

**Case Name:** *BW Farms Ltd, R (On the Application Of) v West Lindsey District Council & Anor* [2024] EWHC 217 (Admin) (05 February 2024)

**Full case:** [Click Here](#)

**Commentary:** This was an unsuccessful judicial review claim by BW Farms Limited (“the Claimant”), who sought to quash the decision of the Secretary of State for Levelling Up, Housing and Communities (“the Defendant”) to make a screening direction that an application for planning permission for internal alterations to livestock buildings is EIA development.

### Facts

An application for planning permission was lodged with the Council. This sought internal alternations to two existing livestock buildings through excavation inside each building, to allow for pig rearing (“the Application”). The buildings had previously been used for poultry.

As part of the Application, the Claimant relied upon a “fall back” position. The “fall back” position was that the existing buildings could accommodate the same number of pigs proposed by the Application within the existing conditions of the buildings (being solid floors and natural ventilation). An odour report and ammonia report prepared by the Claimant concluded that the Application was a more favourable environmental outcome to the “fall back”, although the deliverability of the “fall back” was contested by expert reports commissioned by a local resident (“the Second Interested Party”).

The Council adopted a screening opinion that the development was not EIA development, and the Second Interested Party requested the Defendant to make a screening direction.

The Defendant made a screening direction that the development proposed in the Application is EIA development. Overall, the Defendant concluded in its letter that it was not possible to rule out conclusively the possibility of significant effects on the environment from the development, in terms of odour and ammonia issues. The Defendant also made comment in its statement that the buildings had been unoccupied for several years, and there was not a reliable baseline to inform the assessment of impacts.

### Grounds & Judgment

The Claimant relied on three grounds of challenge, all of which were dismissed.

#### *Ground 1*

It was argued by the Claimant that the Defendant misdirected himself on Schedule 2 of the EIA Regulations (“the Regulations”) and was wrong to consider the change in the agricultural use of the livestock (from poultry to piggery) buildings as the Application was only for operational development.

Neil Cameron KC sitting as Deputy High Court Judge found that the appropriate part of the Regulations was selected by the Defendant. Schedule 2 of the Regulations includes a table of descriptions of development and any change or extension to a development for “intensive livestock installations” already authorised and executed is caught by paragraph 13(b) of the table. Paragraph 13(b)(i) then requires consideration of whether the change or extension may have significant adverse effects on the environment.

Therefore, on the reading of the Regulations, it was open for the Defendant to consider whether the development “as changed or extended may have significant adverse effects on the environment”.

The decision of the Defendant was found not to be unreasonable as on the material before him, who found there was uncertainty as to the cumulative effects of the change of development, and it was not possible to reasonably conclude there was no likelihood of significant effects. This approach was consistent with the precautionary principle (see Pill LJ in *Loader R (on the application of Loader) v. The Secretary of State for Communities and Local Government* [2012] EWCA Civ 869).

### *Ground 2*

It was argued by the Claimant that when making the screening direction, the Defendant failed to consider a material consideration in its assessment, being the baseline use of the existing buildings. The Claimant argued that the baseline use was the “fall back” position described above.

It was argued by the Defendant, and the Court agreed, that a baseline use does not have to be established in a screening direction.

It was noted that Schedule 3 of the Regulations, relating to the screening criteria, contains no reference to a baseline. This is in contrast with the provisions applying to the preparation of an environmental statement (see Paragraph 3 of Schedule 4 of the Regulations) where a baseline scenario is mentioned.

Nevertheless, the Defendant did turn his mind to the baseline use and concluded there was no reliable baseline given: (1) the buildings had been unoccupied for approximately five years; and (2) there was conflicting evidence on whether the existing buildings could be used for pig rearing.

### *Ground 3*

The third ground was that inadequate reasons were given by the Defendant for how the Application fell within paragraph 13(b) of Schedule 2 of the Regulations, and no explanation was given of how the baseline might evolve having assessed it as a “zero” baseline.

The Court held that it had been agreed between the parties that the Application was a change to a development of an “intensive livestock installation” for the purposes of Schedule 2 of the EIA Regulations, and no substantial prejudice arose by the failure to give any further explanation.

On the second element, the Defendant did not conclude that the baseline was zero and did consider potential evolution of the use of the Site. The approach taken was then explained, namely the lack of reliable information on any environmental baseline.

### Conclusion

On the basis of the above, the judicial review failed on all three grounds and was dismissed.

*Case summary prepared by Jack Curnow*