The Planning Inspectorate

Appeal Decision

Site visit made on 5 June 2017

by Gareth W Thomas BSc(Hons) MSc(Dist) PGDip MRTPI

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

Decision date: 19th June 2017

Appeal Ref: APP/U1105/W/17/3167903
Enfield, Oil Mill Lane, Clyst St Mary, Devon EX5 1AF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Greener for Life Energy Ltd against the decision of East Devon District Council.
- The application Ref 15/1512/FUL, dated 25 June 2015, was refused by notice dated 5 August 2016.
- The development proposed is for additional infrastructure for use with anaerobic digester for Enfield Farm, Oil Mill Lane, Clyst St Mary, which is currently under construction.

Decision

1. The appeal is allowed and planning permission is granted for extension to anaerobic digester plant to provide new site entrance, weighbridge, gas upgrade plant, proposed tanks, digestate storage lagoon and underground leachate tank, turning circles, surge wall, drainage channels and chambers with associated landscaping and earth bunds at Enfield, Oil Mill Lane, Clyst St Mary, Devon EX5 1AF in accordance with the terms of the application, Reference 15/1512/FUL, dated 25 June 2015, subject to the conditions set out in the Schedule to this decision.

Main Issue

2. The main issue in this appeal is the effect of the proposed development on the character and appearance of the area.

Procedural matters

3. At the time of my site visit, the development as built was in operation. I am satisfied that the development that has been carried out is the same as was applied for and which is now the subject of this appeal.

4. The description in the application is not the same as that shown in the Council's decision. I have considered the appeal on the basis of the Council's description as it accurately portrays what is before me, which is for extension to anaerobic digester plant to provide new site entrance, weighbridge, gas upgrade plant, proposed tanks, digestate storage lagoon and underground leachate tank, turning circles, surge wall, drainage channels and chambers with associated landscaping and earth bunds.

Reasons

5. An extension to the consented anaerobic digester plant and associated structures at Enfield has seen the provision of a new site entrance, weighbridge, gas upgrade plant, propane tanks, digestate storage lagoon and underground leachate tank, turning circles, surge wall, drainage channels and chambers together with associated earth banks and landscaping. The alterations have involved an additional 0.11 ha of land to the north to accommodate the new site entrance, gas upgrade plant, grid entry mechanism and other infrastructure. An additional 0.17 ha of land to the east now houses propane tanks, a digestate lagoon and underground leachate tank and an extended bunded area for landscaping. Some 0.05 ha of additional land to the south has seen an increase in the turning circle, a surge wall and drainage channels.

6. The active promotion of renewable energy projects, and tackling the effects of climate change, are not only key Government objectives but statutory requirements. The site lies within the countryside as defined by Strategy 7 of the East Devon Local Plan (EDLP). This policy strictly controls new development in order to prevent harm to distinctive landscapes, amenity and environmental qualities within the locality.

7. Strategy 39 of the EDLP allows renewable and low carbon energy projects provided harms in terms of location, scale and design are taken into account and unavoidable harm is reduced or mitigated to ensure a balance between harm and benefit. These strategy approaches are consistent with paragraphs 17 of the National Planning Policy Framework ('the Framework'), which sets out the creation of renewable energy as a core planning principle and with paragraphs 11-16 of the Framework which establishes the presumption in favour of development that is sustainable and gives very strong encouragement to projects that would lead to a reduction in greenhouse gases (paragraph 95).

8. The Council acknowledged at the very outset that the anaerobic digester facility would cause a degree of harm to the prevailing character and appearance of the area but that this would be outweighed by the renewable energy benefits that would be derived. In the case of the revised facility, the officer report sought to identify the degree of additional visual impact that would arise as a result of the increased infrastructure when viewed from public vantage points outside the site. At my site visit, I undertook a similar exercise in order to assess the additional harm that would be caused by the proposed development.

9. From the evidence, the additional plant is necessary in order to increase the efficient operation of the facility. For the most part, the additional infrastructure is either of limited height or at/or below ground level and substantially lower than the digester and digestate tanks or the concrete silage clamps. In terms of the northern part of the site, the additional plant is seen against the backdrop of existing plant and, by comparison do not form the dominant structures at Enfield. I found that this part of the development to be located in the less prominent part of the site when viewed from the north.

10. The proposed additional development on the eastern side of the facility comprises an extended area to facilitate and area of landscaping that was considered necessary by the Council in an earlier planning approval, to accommodate the lagoon and an underground leachate storage tank and for

the siting of relatively low level propane gas tanks. Although the site area is enlarged to accommodate these items, the overall effect on the landscape is minimal. Moreover, proposals have been put forward for additional planting, including a landscaped bund in order to strengthen the screening of the site.

11. Both the Council and a local residents' association point out that there is no justification in policy terms for the extension of the plant beyond the originally permitted area. However, whilst the development may result in a significant increase in the capacity of the plant, I am mindful of paragraph 98 of the Framework that states that applicants should not be required to demonstrate need for renewable or low carbon energy development.

12. Despite the Council's concerns, there would be no additional harm to the character and appearance of the area caused by the extension of the facility to accommodate the additional infrastructure proposed. The landscaping and earth mound where the site extends beyond the approved eastern perimeter of the site would have a beneficial effect and would comprise the mitigation that is considered necessary under Strategy 39 for developments of this type. I do not therefore find any conflict with either Strategy 7 or Strategy 39 of the EDLP.

Other matters

13. Given the poor alignment of the junction of the access onto Oil Lane and the potential for traffic to back-up on the approaches to the junction of Oil Lane with the Sidmouth Road/A3052, local residents are understandably concerned about the impact that vehicle movements associated with the proposed development would have upon the local highway network.

14. The evidence suggests that as there will be no changes to the quantities of feedstock transported, traffic movements associated with this part of the activity will remain at acceptable levels. An estimated two additional movements a day will be necessary in order to transport the additional digestate produced. The Highway Authority has considered the scheme and has raised no objections. The proposals allow for HGVs to be accommodated at the access and within the site in terms of turning and parking. The Council is therefore satisfied, subject to the imposition of the original highway conditions that on the basis of what has been built and what is now intended, the development will not have a significant adverse impact on the local highway network, and I share that view.

15. The local residents' group opine that the cumulative impact arising from other developments in the local area should form an important part of the consideration of the appeal. Similarly, the group suggest that the Council should have made a different screening opinion in terms of environmental impact assessment. However the focus of this appeal is narrow and the additional development that is proposed in this scheme is not of sufficient significance as to warrant an assessment of cumulative impacts.

16. I recognise the concerns expressed by local residents in connection with odour release and the impact that uncontrolled odour release can have on local businesses and residential dwellings alike. However, the anaerobic digestion process must take place in airtight conditions without oxygen, which means that odours cannot escape during digestion. The risk of odour release would be limited to feedstock intake, storage and loading of the digester. On the basis

of the evidence submitted and the advice of the Council's Environmental Health Department, I am satisfied that the matter can be dealt with through the Odour Management Plan. At my site visit, the nature of the odour that was clearly detectable within parts of the site seemed to originate from the adjacent piggery complex.

17. I note references to increases in carbon footprint and the loss of agricultural land for food and livestock production. I have had regard to the Government's response to the Review and Support for Anaerobic Digestion and Micro-Combined Heat and Power under the Feed–in-Tariff Scheme. However, these matters do not alter, override or replace current planning policy, which is what I must apply. Similarly, the developer's track record is not a material planning consideration.

18. Reference is also made to the linkages between this appeal and another appeal that I have also considered at Denbow Farm, Farringdon (APP/U1105/W/17/3167901). However, although I acknowledge that there is a connection, both appeals need to be considered on their own individual merits and the current appeal would not fall on the basis of any lack of storage facilities off-site.

Conditions

19. The Council has suggested a number of conditions that have been considered against the advice contained within the Planning Practice Guidance and Framework. I have altered the wording of some of those conditions that reflects the fact that development has already been carried out and to ensure compliance with the tests in paragraph 206 of the Framework.

20. Given the development has already been carried out, a condition specifying the period for commencement is no longer necessary. A condition is however imposed that specifies the approved drawings in order to provide certainty of what has been permitted.

21. A condition is necessary that requires approval by the local planning authority of any further external lighting that has not been previously approved to protect residential amenity.

22. In order to ensure that the plant is operated without undue odour nuisance, I have required adherence to the approved Odour Management Plan. In addition, a condition requiring separation and drying of the digestate and a maintenance regime for this process to continue thereafter is also necessary for the same reason.

23. To protect character and appearance, conditions are imposed that specify the location of storage of feedstock materials on site and to provide effective landscaping.

24. The Council has suggested a detailed condition that specifies the volume of feedstock throughput and delivery which is necessary in the interests of general and visual amenity and having regard to sustainable development principles. Conditions are imposed to protect the living conditions of nearby residential properties from unacceptable noise levels.

25. A condition is attached that limits the hours of deliveries to protect residential properties from undue noise from traffic. A condition requiring the approval

and provision of systems for surface water drainage is necessary to ensure that there is no pollution of ground and surface water.

26. I have not imposed a condition withdrawing permitted development rights as suggested by the Council as it has not been demonstrated that this would be necessary to make the development overall acceptable. Given that development has now been completed, I have not imposed conditions requiring approval of external materials or to limit activities associated with the construction of the facility.

Conclusion

27. For the reasons set out above and having regard to all other matters raised, I conclude that the appeal should be allowed.

Gareth W Thomas

INSPECTOR

SCHEDULE OF CONDITIONS:

1) The development hereby permitted shall be carried out in accordance with the following approved plans:

    1. WIN01_EN2_SL NEW_005 dated 25.05.16
    2. WIN01_EN2_SP ALL_007 dated 25.05.16
    3. WIN01_EN2_SP NEW_007 dated 25.05.16
    4. WIN01_EN2_ELNEW_W_00 5 dated 17.5.16
    5. WIN01_EN2_EL NEW_E_00 4 dated 17.5.16
    6. WIN01_EN2_EL NEW_S_00 4 dated 17.5.16
    7. WIN01_EN2_EL NEW_N_00 4 dated 17.5.16
    8. WIN01_EN2_CS_004 dated 25.6.15
    9. WIN01_EN2_PS NEW_015 dated 06.07.16
    10. WIN01_EN2_PSnew_05 dated 25.6.16
    11. WIN01_EN2_PSnew_13 dated 8.3.16 (Superseded)

2) There shall be no external lighting associated with the development hereby permitted unless in accordance with details that have previously been submitted to and approved in writing by the local planning authority.

3) The development hereby permitted shall be carried out in full accordance with the Odour Management Plan (Version 3) dated October 2015 and shall be complied with in perpetuity.

4) The storage of feedstock materials at the site in connection with the anaerobic digestion process hereby approved shall not take place other than in the silage clamp which is shown on the approved plans.

5) The feedstock and feedstock delivery for the anaerobic digester shall be as set out in the supporting information submitted with the application and shall comprise slurry, farmyard manure, maize silage and wheat in the proportions listed within Volume 1 of the report prepared by E4environment dated 10th June 2014 approved under 14/0858/MFUL. For the avoidance of doubt the proportions per annum are:

    (i) Pig slurry- 6000 tonnes

    (ii) Farmyard manure- 1000 tonnes

    (iii) Maize silage – 16,537 tonnes

    (iv) Wheat- 3000 tonnes

    The principal uses of the site shall thereafter be restricted to:

    a) The anaerobic digestion process and the associated receipt, handling and storage of agricultural wastes and crop products;

    b) Generation of electricity and heat and other ancillary operations associated with the above activities.

6) The landscaping of the site shall be carried out in accordance with the details shown on drawing no WIN01_EN2_PSnew_015 figures 5 and 5b. The landscaping shall be carried out within the first planting season from the date of this decision unless otherwise agreed in writing by the local planning authority. The landscaping shall thereafter be managed and maintained in accordance with the approved landscape management plan (v6- June 2016) for the lifetime of the development. Any trees or other plants which die during this period shall be replaced during the next planting season with specimens of the same size and species unless otherwise agreed in writing by the local planning authority.

7) The following noise attenuation measures shall be applied during operation of the site:

   (i) All vehicles and mechanical plant employed at the Site shall be fitted with effective exhaust silencers which shall be maintained in good efficient working order.

   (ii) Machines in intermittent use shall be shut down or throttled down in the intervening periods when not in use or throttled down to a minimum.

   (iii) All ancillary plant such as generators, compressors and pumps shall be positioned so as to cause minimum noise disturbance;

   (iv) All fixed and mobile plant based at and operating within the Site shall be fitted with attenuated reversing alarms. Details of the types of reversing alarm proposed to be fitted to vehicles / plant under the terms of this condition shall be submitted for the approval in writing of the Local Planning Authority prior to the Commissioning Date.

8) Notwithstanding the submitted details, any plant (including ventilation, refrigeration and air conditioning units) or ducting system to be used in pursuance of this permission shall be so installed, retained and operated that the noise generated at the boundary of the nearest neighbouring property shall not exceed Noise Rating Curve 25, as defined in BS8233:2014 Sound Insulation and Noise Reduction for Buildings Code of Practice and the Chartered Institute of Building Service Engineers Environmental Design Guide when considered in combination with other equipment on the site. Details of a mitigation scheme shall be submitted to and approved by the local planning authority within 2 months of the installation of any such plant and the development shall thereafter be carried out in accordance with the mitigation measures which shall be maintained thereafter.

9) Deliveries to and from the site shall only take place within the hours of 8am - 6pm on Mondays to Saturdays.

10) Within two months of the date of this planning permission, details of a scheme for the management of the site's surface water shall be submitted to and approved in writing by the Local Planning Authority. The details shall include as a minimum:

- Details of the final drainage scheme, including pathways and flow routes for excess surface water during extreme weather;
- A construction quality control procedure;

- A plan for the future maintenance of the system and of any overland flow routes.

The surface water drainage system shall be completed in accordance with the approved details and timetable and it shall be retained and operated as such thereafter.

11) The separation and drying of the digestate produced by the anaerobic digestion process shall be carried out within 6 months of the date of this permission in accordance with a scheme for such processes that has had the prior written approval by the local planning authority. Unless agreed in writing by the local planning authority the plant shall thereafter carry out this process for the duration of the activity on site.