



Appeal Decisions

Hearing Held on 7 February 2018

Site visit made on 7 February 2018

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: 16th February 2018

Appeal A Ref: APP/D0840/W/17/3180940

Fraddon Biogas Plant, Penare Farm, Higher Fraddon, St Columb, Cornwall TR9 6NL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application to grant approval to details required by a condition of a planning permission.
 - The appeal is made by Fraddon Biogas Ltd against Cornwall Council.
 - The application Ref 17/03840, dated 21 April 2017 sought approval of details pursuant to part of Condition 14 of a planning permission allowed on appeal, reference APP/D0840/W/16/3147454 and APP/D0840/W/16/3147446 granted on 28 September 2016.
 - The development proposed is for the construction and operation of a biogas plant to produce heat and power involving erection of buildings, installation of plant and machinery including tanks and flare stack, grid connection, heat main and ancillary developments including new access, vehicle parking, landscaping, bunding, tree planting and wetland habitat creation at Penare Farm, Higher Fraddon, Fraddon, St Columb, Cornwall TR9 6NL.
 - The relevant part of Condition 14 states "*The definition of Heavy Goods Vehicles shall be agreed between the applicant and the Local Planning Authority (LPA) by the appellant submitting to the LPA within one month of this decision a list of vehicles types (including dimensions) of this class that will service the plant. Once agreed only these vehicles will be used to import material for the digesters and remove the digestate.*"
 - The details for which approval is sought are:
Table 1: Specific dimensions HGV Models currently being used:
HGV Type Length Width Height:
Lorry and Draw Bar Trailer 16.2m 2.5m 4m
Articulated Lorry-Tanker 16.5m 2.5m 3.75m
Articulated Lorry-Trailer 16.2m 2.5m 4.55m
Articulated Lorry-Duoliner 14.34m 2.53m 3.96m
Rigid Tanker 11m 2.5m 4.3m
Rigid 4 wheeler 8m 2.5m 3.15m
Rigid 6 wheeler 9m 2.5m 3.85m
Rigid 6 wheeler 10m 2.5m 4m
Table 2: Maximum Dimensions for HGV types requested
HGV Type
Dimensions per Type
Max Length Max Width Max Height
Articulated Lorry- Axles (3,5 & 6) 16.5m 2.55m 4.95m
Rigid Lorry- Axles (2,3 & 4) 12m 2.55m 4.95m
Lorry and Draw Bar Trailer-Axles (4,5 & 6) 16.2m 2.55m 4.95m
(and any models with these three categories with smaller dimensions).
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Appeal B Ref: APP/D0840/W/17/3176445

Fraddon Biogas Plant, Penare Farm, Higher Fraddon, St Columb, Cornwall TR9 6NL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for 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 Fraddon Biogas Ltd against Cornwall Council.
 - The application Ref PA17/01086 is dated 6 February 2017.
 - The application sought planning permission for the construction and operation of a biogas plant to produce heat and power involving erection of buildings, installation of plant and machinery including tanks and flare stack, grid connection, heat main and ancillary developments including new access, vehicle parking, landscaping, bunding, tree planting and wetland habitat creation at Penare Farm, Higher Fraddon, Fraddon, St Columb, Cornwall TR9 6NL but modifying a condition attached to planning permission allowed on appeal Planning Inspectorate Conjoined Appeal Ref APP/D0840/W/16/3147454 and APP/D0840/W/16/3147446, dated 28 September 2016.
 - The modification sought relates to part of Condition No 14 which states that: *"The weekly number and types of vehicles visiting the AD Plant site shall not exceed the following: 7 Staff/Other Vehicle Movements (Light Goods Vehicles). Total number of movements per week for the Anaerobic Digester Plant: 42."*
 - The reason given for the condition in part is to minimise vehicle conflict on the narrow access road.
 - The proposal seeks to change the staff/other vehicle movements (Light Goods Vehicles) to 17 per week with a maximum of 24 in any given week (Monday to Sunday) in a 4 week period.
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Decision

Appeal A:

1. The appeal is allowed and approval is granted for the details submitted pursuant to Condition 14 (part), attached to planning permission reference APP/D0840/W/16/3147454 and APP/D0840/W/16/3147446 granted on appeal on 6 September 2016 ('the 2016 appeals'), in accordance with the application Ref 17/03840, dated 21 April 2017.

Appeal B:

2. The appeal is allowed and planning permission is granted for the construction and operation of a biogas plant to produce heat and power involving erection of buildings, installation of plant and machinery including tanks and flare stack, grid connection, heat main and ancillary developments including new access, vehicle parking, landscaping, bunding, tree planting and wetland habitat creation at Penare Farm, Higher Fraddon, Fraddon, St Columb, Cornwall TR9 6NL, subject to the conditions attached in the Schedule to this notice.

Application for costs

3. At the Hearing an application for costs was made by Fraddon Biogas Ltd against Cornwall Council. This application is the subject of a separate Decision.

Procedural matter

4. The address is not that shown on the application form. I have used the same address as the address shown on the decision notice to the 2016 appeals.

Main Issue

5. The main issue in both appeals is whether the dimensions of Heavy Goods Vehicles (HGV) and the increase in numbers of Light Goods Vehicles (LGV) would be likely to cause unacceptable problems of highway and pedestrian safety and amenity on the local highway network.

Reasons

6. The biogas plant is fully operational. A number of conditions imposed in the 2016 appeals have been discharged or are no longer capable of taking effect. The appeal site is accessed by a public highway that varies in width, is devoid of footways and has a 90 degree bend between existing residential properties. Forward visibility is poor in places, which is exacerbated by on-street parking. Pedestrians are particularly at risk and are often compelled to take refuge in driveways of properties or recesses in the existing highway verge, particularly as HGV traffic accessing the plant navigates the lane. There is evidence of vehicles overriding the carriageway and there have been instances of boundary walls to properties being damaged.

Appeal A

7. This appeal relates to the discharge of part of Condition 14 to the 2016 appeals, which required the Council's prior approval of HGV types, including dimensions. No increase in the number of HGVs specified in the 2016 appeals (35 HGVs per week) is proposed. At the latest appeal hearing, both the Council and Councillor Cole that the plant operators presented their case to the 2016 appeal hearing on the basis that the principal HGV that would be employed at the site would be the 'Duoliner', which is some 2m shorter in length than the usual 44 tonne articulated vehicle, is quieter and is more efficient in that it has the ability to transport waste and foodstock to the plant whilst removing digestate within the same vehicle. There is recognition that the Duoliner will not be the only HGV that will be used; however, the appellants maintained that this vehicle will continue to be the primary vehicle used for the operational reasons stated. Presently, the Duoliner is used for up to 98% of trips.
8. The Inspector previously opined that the access road "*is manifestly unsuitable to accommodate any increase in HGV numbers due to its blind bends, narrow width and lack of any footway or ventral white-line*". I share the same concerns. However, there is nothing in the Inspector's decision that limits the HGV to a single vehicle brand. Whilst recognising the advantages of the Duoliner, it is clear to me that along with the reduced numbers of HGVs that would be required to service the plant, he was comparing this vehicle with the previous conditions that prevailed at the site where tractors and trailers also formed part of the complement of vehicles used. In framing the second part of Condition 14, I am satisfied that the primary concern of the Inspector was to limit the use of HGVs to vehicles that could safely navigate this section of public highway. I accept the appellant's arguments that had the Inspector been wedded to the primary use of the Duoliner, he would have sought to condition this. However, he chose not to do this.
9. The appellant's submission provides details of HGV types as set out in the Department of Transport guidelines and, as the previous Inspector required, includes precise dimensions of HGVs under each type as well as the maximum

dimensions that would be used in the future. The Duoliner is included in the list. However, given the operational life of the biogas plant, it is reasonable in my view to adopt a flexible approach as new vehicles come on the market. I accept that the Duoliner might be phased out during the operational life of the plant. Alongside this information, swept path analysis has been undertaken for each vehicle types that could service the site. Apart from the largest UK legal Rigid/Drawbar combination, at 16.2m length, the evidence demonstrates that all other HGV types can safely navigate the unclassified highway at Higher Fraddon. No counter evidence was submitted by either the Council or third parties.

10. From representations received, it is evident that local residents have suffered a significant reduction in the levels of amenity as a result of the plant. Local residents have carefully monitored traffic activity, including through the use of CCTV footage. Problems identified have included the use of HGVs outside the specified hours of operation, driving in convoy and travelling over the 20mph speed limit set by the operators. However, the Council accepted that this was largely an enforcement matter and the parties had agreed a vehicle management plan.
11. However, I am satisfied that the main issue concerns the number of HGVs that is permitted rather than the size of the vehicles, a view that corresponds with my colleague previously when he concluded that *"it is more important that the number of HGV movements on this constrained road is not allowed to increase over that which has been allowed to date."* I am satisfied that the logical interpretation of Condition 14 in respect of HGVs would be to set the largest of each type of vehicle that has been demonstrated to safely negotiate the 90 degree bend. It is acknowledged that the largest UK legal Rigid/Drawbar combination is unlikely to be able to safely navigate the 90 degree bend. This can be controlled through an appropriately worded planning condition.
12. For the above reasons, I conclude in respect of Appeal A that the details submitted in order to discharge Condition 14 (part thereof) with respect to the list of vehicle types of this class (HGV) that will service the plant are satisfactory and accord with Policies 13, 14, 16 and 27 of the Cornwall Local Plan which, amongst other things sets out to avoid unacceptable adverse impacts, particularly cumulative impacts arising from unsafe environments in terms of walking, riding and cycling thereby avoiding significant adverse impacts on the local highway network. The substance of these policies are also echoed in Saved Policy C1 of the Cornwall Waste Local Plan that requires careful evaluation of proposals to avoid pollution risk, prevention of harm to public health and to avoid prejudicial harm to amenity or highway safety.

Appeal B

13. Both the Council and the appellant agreed that an informative note submitted to the Inspector in the 2016 appeals that would have excluded light vehicles associated with regulatory visits, visiting school trips and emergency vehicles was not included in his decision despite agreement between the parties. The Council explains that any breach of Condition 14 in respect of these visits will not be subject to enforcement action.
14. The appellant maintains that the 7 number (two-way) movements of staff/light goods vehicles submitted to the previous Inspector related to the regular movements of staff and was not intended to apply to LGVs associated with

maintenance, servicing and breakdown of the plant or with regulatory and community (school) visits. The appellant argues that some of these additional visits for obvious reasons fall outside the operator's control. In addition, the case presented at the current appeal Hearing was that the condition was set so low that it failed to meet the planning tests¹ of being *relevant to the development* and *reasonable*.

15. For the Council, the main issue involves the cumulative impacts arising from the proposed increase in LGV traffic movements. Given the highway constraints, including the width of the lane, lack of footways, lack of central white lines and the 90 degree bend, it is felt that the additional vehicles proposed would increase the risk for further conflict and be detrimental to the existing occupiers of properties situated along the lane.
16. The appellant states that the operator recognises the community's sensitivities in respect of LGV movements. The approach that the appellant therefore proposes in this appeal would be to set a number that would be sufficient to service the plant. This would equate to a 2.53% increase in traffic movements from an already low base according to the appellant's TRICS² assessment or little more than half a vehicle per hour, on average. The appellant maintains that that it is generally accepted in traffic engineering terms that a 3% increase in traffic flows would be largely imperceptible to existing highway users. Moreover, the appellant at the Hearing stated that there can be no serious argument that the present lane operates at anything approaching its theoretical capacity. The Council did not suggest that Fraddon Lane had reached or was even nearing capacity.
17. Councillor Cole for the Parish Council and local residents, together with the Council believe that the numbers of LGVs proposed would represent a significant increase above the original staff/light goods vehicles numbers and would further increase the potential for conflict between road users on a constrained highway. However, no further counter technical evidence was presented to the Hearing.
18. I acknowledge the concerns of this community. However, I have no substantive evidence that the proposed increase in LGV traffic would materially alter conditions of highway safety or convenience of other road users. Furthermore I am satisfied that the increased number of LGV can be accommodated alongside the restricted numbers of HGVs that are permitted to service the plant.
19. For the above reasons, the proposed increase in LGVs would be within the capacity of this unclassified highway and, in conjunction with the numbers of HGV permitted, would not cause an unacceptable cumulative impact on conditions of road safety for other users of the lane, including pedestrians. The proposed modification of numbers of LGVs would therefore comply with the Council's Local Plan Policies 13, 14, 16 and 27 and with Saved Policy C1 of the Cornwall Waste Local Plan which, amongst other things, require a high standard of highway safety.

¹ As set out in paragraph 206 of the National Planning Policy Framework and Planning Practice Guidance ID21a-018-20140306

² Trip Rate Information System version 7.3.4 <http://www.trics.org>

Conditions

20. In respect of Appeal B, the agreed Statement of Common Ground contains a list of conditions, which I have assessed against the guidance contained in the Government's Planning Practice Guidance. As I am allowing these appeals, I am obliged to issue a new planning permission in respect of Appeal B. There are conditions attached to the 2016 appeal decisions that are either no longer necessary or have already been discharged to the satisfaction of the Council. There are others that require slight modification to reflect the current situation.
21. A condition is necessary to limit the height of the secondary digester in the interests of character and appearance. Condition 2 specifying the extent of the bio-treatment material, identification of built elements is necessary to provide certainty. For the same reason, Condition 3 that specifies approved drawings is included. To protect living conditions, conditions are necessary that limit the operation of the emergency flare stack to specific times (Condition 4), the fitting of suitable beepers on HGVs under the control of the appellant (Condition 5), the appropriate storage of oils etc. (Condition 6), the positioning of lighting to avoid glare (Condition 7) and retention of the operational pipeline from the pig farm to the digester (Condition 14). Condition 8 relating to mud etc. on the road, Condition 9 restricting the numbers of HGVs and LGVs servicing the plant, Condition 10 restricting the hours when HGVs can deliver to the site and Condition 11 requiring compliance with the approved Vehicle Management Policy are necessary in the interests of highway safety and amenity. In the interests of protecting the character and appearance of the area, Condition 12 requiring the implementation of the approved landscaping scheme is necessary alongside Condition 13 that requires removal of structures from the site upon cessation of bio-gas production. Condition 16 that requires prior approval of the local planning authority of a demolition management plan, Condition 15 requiring adherence to the approved odour management plan and Condition 17 requiring implementation of the approved surface water management scheme are also necessary in the interests of protecting residential amenity.

Conclusion

22. For the above reasons and having regard to all other matters raised, I conclude that both appeals should be allowed. In respect of Appeal B, a new planning permission is issued subject to conditions.

Gareth W Thomas

INSPECTOR

SCHEDULE OF CONDITIONS - APP/D0840/W/17/3176445

1. The Secondary Digester permitted under appeal reference APP/D0840/W/16/3147454 shall not exceed the height as indicated on plan number A3/003Rev1 and A3/002.
2. This permission only authorises:
 - (i) The co-treatment of all the pig slurry up to 7000 tonnes a year from the Penare Farm piggeries, supplied only by pipeline or by internal traffic movements from the Penare Farm piggeries (and not imported by road by lorry/tanker) and the imported feedstock/waste as approved by the Environmental Permit.
 - (ii) The following structures:
 - development of 2 x 22.68m diameter Primary Digesters
 - 1 x 18.68m diameter Secondary Digester
 - Storage Clamp
 - Separator
 - Flare
 - Weighbridge
 - Biofilter
 - Reception Building and Tipping Floor
 - Membrane Biogas Upgrading Plant
 - Biomethane Network Entry Kiosk
 - Propane Storage tanks
 - Concrete Yard
 - Attenuation pond
 - Ancillary operational equipment
 - 250kW Combined Heat and Power Unit
 - Pipeline connection to neighbouring pig farm

There shall be no development outside of the areas edged red on Drawing No. PL-02 Rev H.

3. The development hereby permitted shall be carried out in accordance with the following plans and details: Drawing No. PL-02 Rev H Site Location and Site Block Plan; Drawing No. A3-001 Figure 1 As Built Layout; Drawing No. A3-002 Figure 2 Section AA; Drawing No. A3-003 Rev1 Figure 4 Digester Tank Elevations and Sections; Drawing No. A3-004 Figure 6a Reception Building Side Elevations; Drawing No. A3-003 Figure 6b Reception Building

Front and Rear Elevations; Drawing No. A3-001 Figure 6c Reception Building Ground Floor Plan; Drawing No.2184 – Site Section; Drawing No. 20012-01-014 Rev 08 Site and Equipment Layout; Drawing No. 3020 Rev B Surface water outfalls concept; and Drawing No. 1010 Rev B Site survey.

4. The emergency flare stack shall only be used for emergency purposes between the hours of 17.00–09.00 on any day (including Bank/Public Holidays). It shall not be operated for maintenance or testing purposes except between 09.00 and 17.00 hours on any day (and not including Bank/Public Holidays).
5. Heavy and Light Goods Vehicles along with plant under the direct control of the operators which deliver waste, remove digestate or biofertiliser or operate at the site shall only use non-intrusive broadband and/or vehicle noise alarms or reversing cameras. On such vehicles, there shall be no use of single or multi pitch reversing beepers.
6. Any oil, lubricant or other potential pollutant shall be handled and stored on the site so as to prevent pollution to any watercourse.
7. The operators shall ensure that all lights shall be positioned/ screened so as not to cause glare or annoyance to local residents or users of the local highway network.
8. The operators shall take all reasonable measures to prevent mud, stones or other deleterious material being carried out onto the public highway during the operation of the bio-gas plant and during decommissioning phases. This shall include wheel washing where necessary.
9. The weekly number and types of vehicles visiting the AD Plant site shall not exceed the following:
 - 35 Heavy Goods Vehicle movements
 - 17 Light Goods Vehicle movements (with a maximum of 24 in any one week in a four week period where the total movements of light goods vehicles in that four week period shall not exceed 68 movements)
 - The total number of movements per week for the Anaerobic Digester : average number of movements per week in any 4 week period, 52 or maximum total movements per week 59.
 - The operators shall keep contemporaneous records of all vehicles visiting the site and shall provide written details of such vehicle movements at the request of the local planning authority, in order to show compliance with this condition
 - The definition of Heavy Goods Vehicles shall comply with Table 1:

HGV TYPE	DIMENSIONS PER TYPE		
	Max Length	Max Width	Max Height
Articulated Lorry – Axles (3, 5 & 6)	16.5m	2.55m	4.95m
Rigid Lorry – Axles (2, 3 & 4)	12m	2.55m	4.95m
Lorry and Draw Bar Trailer – Axles (4, 5 & 6)	16.2m	2.55m	4.95m

Table 1 – Condition 9

10. During school term times, Heavy Goods Vehicles delivering to and from the site shall operate only between the hours of 9am to 3pm and 4.15pm to 6pm Monday to Friday and between 8am–1pm on Saturday. There shall be no deliveries on Sundays or Bank/Public Holidays. Outside of school term times, Heavy Goods Vehicles delivering to and from the site shall operate only between the hours of 9am to 6pm Monday to Friday and between 8am–1pm on Saturday. There shall be no deliveries on Sundays or Bank/Public Holidays.
11. The site shall be operated in accordance with the Vehicle Management Policy approved under application local planning authority Reference PA16/11310 which shall be adhered to it at all times. A copy of the Vehicle Management Policy will be maintained on site and the operator will keep records of any matters reported by and to residents for inspection by the local planning authority, at its request.
12. The landscaping scheme approved under application local planning authority reference PA16/11310 shall be carried out in the first planting season following the date of this permission and to the satisfaction of the local planning authority. Notice shall be given to the local planning authority when the approved scheme has been completed. Any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species as those originally planted.
13. At the cessation of biogas production at the plant, the site shall be cleared of all buildings and structures, hardstandings and any wastes within a period of six months from the date of cessation. Should the plant not operate for a period of 12 consecutive months, the site shall be cleared of all buildings and structures, hardstandings and any wastes. After removal of the above, the surface of the site shall be regraded, ripped and be covered with topsoil to a depth of 500mm within a period of three months. The site shall then be planted in accordance with details to be agreed in writing by the local planning authority.
14. The existing operational pipeline that carries pig slurry from buildings 1 to 7 of the neighbouring pig farm to feed the anaerobic digester plant shall be retained and maintained for the purpose of transferring pig slurry from the neighbouring pig farm to the anaerobic digestion plant.

15. The Odour Management Plan approved under local planning authority approved application Reference PA16/11310 shall be implemented in full and the recommendations contained within it shall be strictly adhered to throughout the lifetime of the plant operation.
16. Prior to any site clearance works required by condition 13, a detailed Demolition Management Plan shall be submitted to and approved in writing by the local planning authority for the clearance of the site of all buildings and structures. The plan shall include a detailed programme of demolition, vehicles details (number, size and type) with traffic management proposals, delivery/removal arrangements and details of the contents of a written report to be provided every 4 months to St Enoder Parish Council. The works and demolition shall be carried out strictly in accordance with the approved plan and shall set of a timetable for the phasing of demolition works.
17. The surface water management works shall be carried out in accordance with the scheme approved by the local planning authority under approval Reference PA16/11310.

APPEARANCES:

FOR THE APPELLANT:

Mr David Manley of Fraddon Biogas Ltd

Mr Gareth Pinwell, Solicitor – Ashfords Ltd

Mr Tim Jopling – Hydrock Consultants

Mr Mark Rowe – Hydrock Consultants

FOR THE LOCAL PLANNING AUTHORITY:

Mr James Holman – Principal Planning Officer

Mr Dean Mutton, Senior Planning Officer

INTERESTED PERSONS:

Councillor Dick Cole – for St Enoder Parish Council

Ms Sue Melley – Local resident

Ms Arabella McCarthy – Local resident

Ms Anne Woolcock – Local resident

Mr Phil Potter – Local resident

Mr Mel Walker – Local resident

Mr Tony Bullows – Local resident

DOCUMENTS:

1. Statement of Common Ground and list of Planning Conditions
2. Photographs and representation Mr & Mrs Smith, 3 Windy Ridge
3. Full scale plans showing swept path analysis
4. Triannual Report to St Edoder Parish Council and residents of Higher Fraddon
5. Ongoing problems and incidents report from local residents
6. Fraddon Biogas Vehicle Management Report
7. Representation from local resident
8. Representation from Ms Anne Woolcock on behalf of Higher Fraddon Residents Action Group
9. Further log of vehicle movement weeks beginning 4/12/17 , 11/12/17 and 18/12/17