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## Appeal Decision

Site visit made on 18 June 2019

by **A McCormack BSc (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 9<sup>th</sup> July 2019

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### Appeal Ref: APP/E2001/W/19/3223211

### Park Farm, Market Weighton Road, Holme-upon-Spalding Moor YO43 4AG

- 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 Holme BioEnergy Limited against the decision of East Riding of Yorkshire Council.
- The application Ref 18/01443/CM, dated 2 May 2018, was refused by notice dated 14 September 2018.
- The application sought planning permission for: '*Erection of an anaerobic digestion plant and associated infrastructure following demolition of two existing buildings (Revised scheme of 15/02993/STPLF)*' without complying with conditions attached to planning permission Ref 16/03709/CM, dated 28 November 2017.
- The conditions in dispute are Nos 2 and 11 which state: (2) *This planning permission has been granted in accordance with the following plans and drawings: SJSS-0001-0002 D – 'Location Plan (1:1250)'; SJSS-0001-0003 D – 'Location Plan (1:2500)'; SJSS-0001-0004 B – 'Existing Site Plan'; SJSS-0001-0006 B – 'Proposed Site Plan'; SJSS-0001-0007 C – 'Proposed Grid Entry Unit'; SJSS-0001-0008 C – Proposed Pressure Reduction Skid'; SJSS-0001-0009 C – 'Proposed Site Office'; SJSS-0001-0010 B – 'Proposed Biodisc'; SJSS-0001-0011 C – 'Proposed Gas Upgrade'; SJSS-0001-0012 C – 'Proposed Pre Gas Treatment'; SJSS-0001-0013 C – 'Proposed Gas Flare'; SJSS-0001-0014 C – 'Proposed Propane Tanks'; SJSS-0001-0015 C – 'Proposed Storage Buildings'; SJSS-0001-0016 C – 'Proposed Separator'; SJSS-0001-0017 C – 'Proposed Pumping Station'; SJSS-0001-0018 C – 'Proposed CHP'; SJSS-0001-0019 A – 'Proposed Switch Room Container'; SJSS-0001-0020 A – 'Proposed Pre-Tank'; SJSS-0001-0022 A – 'Proposed Digester Tank 1'; SJSS-0001-0023 A – 'Proposed Digester Tank 2'; SJSS-0001-0024 A – 'Proposed Digestate Tanks'; SJSS-0001-0025 A – 'Proposed Site Bund Sections'; SJSS-0001-0026 A – 'Proposed Air Biofilter' (all received by the Council on 07.02.2017). The development shall take place only in accordance with these drawings. If you are working to drawings which have different numbers or different revisions, then you are advised to contact the Planning Department before starting work to check what further action may be required. If the drawings are significantly different from the approved drawings it is possible that a further planning permission may be required.'* (11) *Only poultry manure, straw and water shall be used as feedstock for the anaerobic digester unless otherwise agreed in writing by the Local Planning Authority.'*
- The reasons given for the conditions are: (2) *This condition is imposed because the plans and supporting statement proposes a form of development that is acceptable and departures from that programme of works could give rise to unacceptable effects that have not been considered by this application. (11) This condition is imposed in order to limit the fuel used to those feedstock types only as per the details in the planning application and in order that the Local Planning Authority has to approve any future changes to the fuel supply in the interests of the amenity of the area.*

## **Decision**

1. The appeal is allowed and planning permission is granted for erection of an anaerobic digestion plant and associated infrastructure following demolition of two buildings (revised scheme of 15/02293/STPLF) at Park Farm, Market Weighton Road, Holme-upon-Spalding Moor YO43 4AG in accordance with the terms of application Ref 18/01443/CM, dated 2 May 2018, without compliance with the conditions previously imposed on the planning permission Ref 16/03709/CM, dated 28 November 2017, and subject to the conditions set out in the schedule attached to this Decision.
2. For clarity, in allowing this appeal, this planning approval does not remove the extant planning permission Ref 16/03709/CM. The planning permission granted by this Decision is separate and stands apart from the existing permission.

## **Application for Costs**

3. An application for costs was made by Holme BioEnergy Limited against East Riding of Yorkshire Council. However, due to its late submission after the identified deadline, this application will be the subject of a separate Decision and will be determined by the Planning Inspectorate's Costs Decisions Team.

## **Procedural Matters**

4. Since the original application Ref 16/03709/CM was approved, a non-material amendment to Condition 2 (Ref: 18/40229/NONMAT/STRAT) was on 21 December 2018. As a result, a further approved plan 'PF-SK-001 REV.P1 – Proposed Site Layout Plan and Cross Sections') was added to the list of approved plans in Condition 2 of 16/03709/CM. This represents the appellant's fall-back position in respect of the anaerobic digester (AD) development at Park Farm. Accordingly, I have taken this into account in determining this appeal.
5. In addition, I note a separate application to vary Condition 11 (feedstock types) of planning approval 16/03709/CM to allow the use of liquid food waste as a feedstock was submitted to the Council on 24 January 2019. However, based on the submissions to this appeal, I am led to understand that this application is yet to be determined. Nonetheless, the full details of that application are not before me and, in any event, it is a matter for the Council to assess. Accordingly, I have not considered that application any further in this appeal.

## **Background and Main Issue**

6. This appeal follows the refusal of planning application Ref 18/01443/CM, dated 2 May 2018, which sought to remove or vary Conditions 2 and 11 attached to planning permission Ref 16/03709/CM and which relate to approved plans and the type of feedstock for the AD plant.
7. The Council says that the proposed alterations to the disputed conditions would be unacceptable due to the adverse visual impact and harm to visual amenity which would be contrary to local and national planning policy. This principally relate to the proposed alterations regarding Condition 2 (approved plans). However, the alterations to site layout would also result from the processes involved in the feedstock changes relating to Condition 11 with additional tanks and infrastructure required on site.
8. The appellant says that the principle of the development is established on the site and the proposed alterations would remain within the footprint of the approved scheme. Moreover, the alterations would not result in any additional

visual impact as they would not substantively exceed the height of the approved scheme and the mitigation measures proposed by conditions would minimise any such impact.

9. Taking account of the context of the proposal, this appeal focuses on the Council's sole reason for refusing to vary the disputed conditions being that approving the alterations would result in the development of an uncharacteristic large-scale industrial plant in the open countryside that would not be agricultural in appearance. As such, it would harm the character and visual amenity of the wider landscape and not comply with Policies ENV1, ENV2 and EC5 of the East Riding Local Plan (ERLP) and the National Planning Policy Framework (the Framework).
10. Therefore, having regard to the above matters, I consider the main to be the effect of varying the disputed Conditions 2 and 11, as proposed, on the character, appearance and visual amenity of the surrounding area.

### **Reasons**

11. The appeal relates to an area of land at Park Farm which is in the open countryside and about 350 metres north of the A614 Market Weighton Road close to Holme-upon-Spalding Moor. The site is surrounded by agricultural land to the north, east and south and by agricultural and industrial buildings to the west which form part of the existing farm complex. The site is occupied by two agricultural buildings and a field and is accessed by a hard-surfaced private lane from the A614. In addition to the farm house and office building, Park Farm consists of agricultural buildings and buildings used for the fabrication of steel-framed buildings. It is noted there is a Scheduled Ancient Monument about 60 metres south of the site and two listed buildings nearby.
12. The Council states that the proposed alterations to the approved AD plant would include several tall structures and additional tanks. The layout and design of these would be unsightly, poor and not agricultural in appearance. As a result of the scale of the proposed alterations, it is argued that the complex would appear overbearing and be an uncharacteristic feature in the landscape which would have an adverse visual impact and harm to the visual amenity of the local area. The proposed changes to the disputed conditions are therefore considered as contrary to local and national policy.
13. The site is in an area where it is claimed that the proposal would be visible from several public viewpoints, including some residential properties on the edge of the nearby settlement and by road users travelling along the A614 Market Weighton Road and other minor roads. In addition, it is argued that the scheme would be visible from the public right of way (PRoW) to the north of the site and the Grade I Listed Church of All Saints located on elevated land about 600 metres to the south east.
14. The Landscape Character Assessment 2005 (LCA), updated in November 2018, describes the local landscape as rural and relatively remote with a reasonably strong sense of place offering extensive views from higher ground to the east. The Council draws attention to the LCAs consideration that the area is sensitive to any change and argues that the proposal would have a significant negative impact on landscape character. This would be due to the appearance of the proposal resulting in an over-industrialisation of the rural landscape. Moreover, the Council says that the additional, incongruous structures proposed in such a sensitive open, rural landscape would fail to respect its intrinsic character. As a result, it is argued that the need to protect this intrinsic character outweighs the limited green energy potential and benefits of the AD plant.

15. Notwithstanding this, the LCA indicates that there is capacity for small-scale industrial and commercial development within development limits in the locality and that the landscape quality of the area is assessed as 'ordinary' to 'good' overall. From the evidence, the overall layout of the proposed scheme would be similar to that originally approved. Whilst the number of tanks associated with the AD process would be greater, they would not extend beyond the site already approved for such use. Moreover, it is noted that the tallest element of the approved development, at 12.8 metres high, does not form part of the proposed alterations to the scheme.
16. I have had regard to Drawing No: 252519-AG-002 which compares the approved scheme elevation with the proposed alterations. Although it is indicated that the AD process elements of the proposed scheme would be slightly taller than those already permitted, I note that ground levels on the site are to be lowered. In my view, this would assist in the mitigation of any increased visual impact. Moreover, in comparing the approved and proposed schemes, I find both would be similar in scale and height to the two existing farm buildings to be demolished and also the buildings to the west which are to be retained. I also note that substantial screening is already in place to the north of the site and that this will be retained.
17. The submitted Landscape and Visual Impact Assessment (LVIA) which supported the approved scheme indicates that the proposed landscape mitigation measures which consist of a landscaped bund to the northern, eastern and southern site boundaries would result in the approved scheme having only a 'slight adverse' impact on the surrounding landscape. Given that the proposed alterations would be of a similar scale and height to the approved scheme, the ground level is to be lowered and the mitigation measures identified in the LVIA are to be retained, I find that the proposed alterations would result in no material harm to the character or visual amenity of the local landscape and area.
18. The proposed AD plant would be visible from a small number of distant viewpoints, such as points along the A614 to the south east, Harswell Lane to the east and parts of the parking area adjacent to the elevated Grade I Listed Church of All Saints and Church Cottage. However, from what I have seen, I find that the character and visual amenity of these distant views would not be materially affected by the proposed alterations. Due to the similar scale and size of the approved and proposed schemes and noting both would be confined within the same site extent, I find the additional visual impact of the proposed alterations over and above the approved scheme would be very limited.
19. The proposed alterations would result in the AD plant having a slightly more industrial rather than agricultural appearance. Nonetheless, it would still appear as a visually appropriate development in the countryside. Its impact would be reasonably managed through the mitigation measures already approved. As such, the scheme would not likely be visible from the PRoW to the north of the site due to existing screening and the proposed landscaped bund which is to be a height of at least three metres. Therefore, taking account of the evidence before me, the similar nature and scale of the approved and proposed schemes and the retention of the substantial mitigation measures, I conclude that the proposed alterations to the disputed conditions would have no substantive detrimental effect on the visual amenity, character or appearance of the local landscape and surroundings.
20. Moreover, this view is supported by the considerations and recommendation of officers set out in the Report to the Council's Planning Committee. It is also noted that the Council's Landscape Officer raised no objection to the proposed alterations subject to suitable planning conditions being imposed. I have seen nothing before me which would lead me to differ from that view.

21. Consequently, I conclude that the proposed alterations to the disputed conditions would not result in any significant harm to the intrinsic character, appearance and visual amenity of the surrounding area. Therefore, I conclude that the proposal would comply with Policies ENV1, ENV2 and EC5 of the ERLP and the relevant sections of the Framework.

### **Other Matters**

22. Concerns have been raised regarding other matters not addressed in the main issue above. These relate to highway impact, noise and odour and the impact on the significance of designated heritage assets. I have had due regard to these matters as material considerations in assessing and determining this appeal.
23. The proposed addition of liquid food waste as a feedstock for the AD plant would likely result in increased traffic movements to and from the site. Nonetheless, taking account of the Transport Statement supporting the application which is the subject of this appeal, it is indicated that the proposed alterations would have little or no adverse impact on the local highway network and that proposed access arrangements are safe and comply with good practice. The appellant refers to an updated Transport Statement which supports planning application ref 19/00261/CM and is set out in Appendix 3 of their Appeal Statement. This confirms that traffic movements to and from the site are likely to be less than 34 two-way movements per day outside peak hours and can be safely managed by proposed arrangements.
24. The highway authority is supportive of the proposed alterations, subject to suitably worded conditions being imposed. From what I have seen and read, there is no substantive reason to lead me to differ from the view of the highway authority.
25. In relation to noise and odour, I note the appellant says that the Noise Impact Assessment (Dynamic Response, 2016) supporting the original approved scheme would be followed to ensure noise impact is negligible. Nonetheless, it is argued that the proposed alterations would not generate any additional noise over and above that indicated in the Noise Impact Assessment. In any event, Condition 13 attached to this Decision is considered necessary and reasonable to control noise levels. In terms of odour, I note that the proposed alterations to feedstock would result in liquid waste arriving in sealed tankers and fed directly into the digester tanks which are also completely sealed. Therefore, the AD process should eliminate odour release. Nevertheless, I have imposed a condition requiring an Odour Management Plan to ensure that the amenity of the local area is protected.
26. With regard to heritage assets, the site is close to two listed buildings and a Scheduled Ancient Monument. The Heritage Statement submitted with the original approved scheme concluded that the impact of the AD plant on heritage assets would be negligible. Moreover, the Council's delegated report to the Planning Committee regarding the application the subject of this appeal states that the Conservation Officer has no objection to the proposal. However, there are concerns that the proposed alterations may be visible from the listed buildings.
27. Whilst this harm is noted, on balance, the Council's Conservation Officer considers the impact of the proposal would be less than substantial to the significance of the designated heritage assets. Furthermore, this less than significant harm would be outweighed by the public benefits of the proposal which include renewable energy, natural fertiliser and an annual community fund. In the absence of substantive evidence to the contrary, I concur with the view of the Conservation Officer. As such, I consider the proposal to be acceptable when taking account of the significance of designated heritage assets in accordance with Section 66 of the



Planning (Listed Buildings and Conservation Areas) Act 1990, Policy ENV3 of the ERLP and relevant guidance within the Framework.

### **The Planning Balance**

28. The proposed development would have public benefit in providing a source of renewable energy and this is supported in national and local policy. Furthermore, it would provide economic and environmental benefits consistent with sustainable development objectives set out in the Framework. These are significant material considerations to which I give substantial weight. However, the Framework is clear that all renewable energy and low carbon schemes are not to be supported regardless of any harm that they may cause. Therefore, it is necessary to ensure that the impact of the proposal is acceptable in all respects.
29. From the evidence, I find that the proposal's contribution to reducing climate change would be reasonable. It would increase the supply of 'green' energy into the national grid whilst reducing the consumption of fossil fuels. I note concerns raised about the potential harmful impact of the proposed alterations. However, I find these matters to have limited support in the evidence provided. As such, in my view, the proposed alterations would not be substantively detrimental to the character and visual amenity of the surrounding area in terms of location, scale and appearance. Therefore, having carefully considered all relevant matters before me, I find that the public benefits of the proposal outweigh the harm identified.

### **Conditions**

30. I have had regard to the conditions suggested by the Council in its Statement and those attached to the original planning permission Ref: 16/03709/CM as well as subsequently approved non-material amendments. Where necessary, and in the interests of conciseness and enforceability, I have altered the conditions to better reflect the relevant parts of the Planning Practice Guidance (PPG).
31. The PPG makes clear that decision notices for the grant of planning permission under Section 73 of the Town and Country Planning Act 1990 (the Act) should also repeat the relevant conditions from the original planning permission unless they have already been discharged. As I have no substantive information before me about the status of the other conditions imposed on the original planning permission, I have imposed all conditions which I consider remain relevant. If any conditions have been discharged, it is a matter to be addressed by the parties.
32. The Act<sup>1</sup> states that planning permission must not be granted under Section 73 to the extent that it has effect to change a condition subject to which a previous planning permission was granted by extending the time within which a scheme must be started. This is confirmed by the PPG. As such, the time condition imposed for this proposed scheme reflects the remaining implementation period relating to the original planning permission Ref: 16/03709/CM.
33. Condition 2 reflects the updated plans submitted by the appellant with regard to the proposed amendments to the approved scheme and Condition 11 includes the amendment from 'water' to 'liquid waste' with regard to feedstock for the anaerobic digester. Having carefully considered all other conditions attached to the original planning permission, I find the reasons provided to remain reasonable and justified and that each condition passes the relevant tests. Accordingly, these conditions have been attached to this Decision. I have also imposed two conditions relating to odour management and the provision of more detail for traffic movements. These are reasonable and necessary for reasons of amenity and highway safety

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<sup>1</sup> Section 73(5) Town and Country Planning Act 1990

34. It is necessary that the requirements of Conditions 3 and 14 are agreed prior to the development hereby permitted starting to ensure an acceptable development for reasons of enabling initial archaeological evaluation, conserving and protecting heritage assets and for highway safety. Accordingly, I note that these conditions are agreed between the Council and the appellant

**Conclusion**

35. For the above reasons, and having had regard to all other matters raised, I conclude that the appeal should succeed.

*A McCormack*

INSPECTOR

### **SCHEDULE OF CONDITIONS**

- 1) The development hereby permitted shall begin not later than three years from the date of the original planning permission Ref: 16/03709/CM.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans and drawings: Drawing No: ST16826-001 – 'Location Plan (1:1250)' as received on 2 May 2018; Drawing No: SJSS-0001-0004 B – 'Existing Site Plan' as received on 7 February 2017; Drawing No: 251519-AG-000 REV-A1 – 'Proposed Site Plan (1:500)' as received on 2 May 2018; Drawing No: 252519-AG-001 REV-A1 – 'Proposed Site Plan (1:2500)' as received on 2 May 2018; Drawing No: 251519-AG-002 REV-A1 – 'Proposed Site Elevation Plan' as received on 24 May 2018; Drawing No: ST16828-002 Rev A – 'Comparison Site Elevation Plan' as received on 30 August 2018; and Drawing No: ST16826-PM1-VP25 – 'Verified Visualisations' as received on 4 September 2018.

The development shall take place only in accordance with these plans and drawings. If you are working to plans and drawings which have different numbers or different revisions, then you are advised to contact the Planning Department before starting work to check what further action may be required. If the plans and drawings are significantly different from those which are approved, it is possible that a further planning permission may be required.

- 3) Unless otherwise agreed in writing with the Local Planning Authority, the development shall proceed in accordance with the Archaeology details agreed by application reference 18/30030/CONDET.
- 4) Unless otherwise agreed in writing with the Local Planning Authority, the development shall proceed in accordance with the Liaison Group details agreed by application reference 17/30626/CONDET.
- 5) The owners or developer shall provide the Council with written notice of the commencement of development within 7 (seven) days. Within 12 (twelve) weeks of commencement of development a detailed Ecological Enhancement and Management Plan (EEMP) shall be submitted to, and approved in writing by, the Local Planning Authority. The submitted scheme shall be based on the recommendations for habitat and wildlife and enhancements detailed on pages 27 and 28 of the Preliminary Ecological Assessment Survey (Hazelwood Conservation, July 2015). The EEMP shall be compiled by a suitably qualified ecologist, include a timetable for implementation, and a detailed plan. The scheme shall be implemented as approved in writing by the Local Planning Authority.
- 6) Within 12 (twelve) weeks of the commencement of development, a 'Landscaping Scheme', based on the submitted 'Draft Landscaping Scheme' (Appendix 1 of the Environmental Review and Supporting Statement (Park Farm), dated November 2016) shall be submitted to, and approved in writing by, the Local Planning Authority. The plan shall be prepared by a suitably qualified specialist and include a timetable for implementation. This shall include details of:
  - bund construction;
  - planting plans;
  - specifications of the planting to be undertaken including details of the species, size, number/density of plants, shrubs and trees; and
  - a programme of implementation, maintenance and aftercare.

The approved landscaping scheme shall be carried out no later than during the first planting season following the date when the development hereby permitted is completed or in accordance with a programme agreed in writing with the Local Planning Authority. All planted materials shall be maintained for 5 (five) years and any plants removed, dying, being severely damaged or becoming seriously diseased within 5 (five) years of planting shall be replaced with others of similar size and species to those originally required to be planted.

- 7) The Anaerobic Digestion plant shall not be brought into use until the existing vehicular access has been improved by widening in accordance with the submitted details, Drawing No: J595/Jct Mitigation/Fig2 within the Transport Statement.



- 8) The Anaerobic Digestion plant shall not be brought into use until the passing bays, as indicated on Drawing No: J595/Access Strategy/Fig1, have been constructed and positioned in the locations as shown within the Transport Statement.
- 9) No development shall take place unless in strict accordance with all of the recommendations for mitigation set out in the Requirements and Recommendations Chapter (pages 23-26) of the Preliminary Ecological Assessment Survey (Hazelwood Conservation, July 2015) as submitted with the application in all respects. Any variation thereto shall be agreed in writing by the Local Planning Authority before such change is made.
- 10) No development above foundation level shall take place until details of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to, and approved in writing by, the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 11) Only liquid waste, poultry manure and straw shall be used as feedstock for the anaerobic digester unless otherwise agreed in writing by the Local Planning Authority.
- 12) Details of external lighting, including details of measures to reduce light pollution, prepared in accordance with the Institute of Professional's 'Guidance Note for the Reduction of Obtrusive Light' (GN01:2011) and associated British Standards, shall be submitted to, and approved in writing by, the Local Planning Authority prior to the installation of such external lighting. The external lighting shall be installed only in accordance with these agreed details.
- 13) The predicted maximum noise emission target limit, as referred to in the noise assessment (Table 8 on page 11 of Report No: DYN200815A/3), shall not exceed the following levels:
  - Location: The Boundary of the Nearest Existing Residential Dwelling to Park Farm, adjacent to 'Market Weighton Road (A614)'.
  - Lowest Background Noise Level: 28dB LA90(15min).
  - Maximum Rating Level\*: 28dB

\*Maximum Rating Level to include any tonal or impulsive corrections, measured in accordance with 'BS4142: - Methods for rating and assessing industrial and commercial sound'.
- 14) Development shall not commence until a Traffic Management Plan (TMP) incorporating details of deflectograph and or visual/video surveys of the haul and delivery route to the site, including a programme and methodology for improvements and repairs and the funding provision for improvements/repairs have been submitted to, and approved in writing by, the Local Planning Authority.

In addition, during the construction period any improvement or repair works on the approved routes shall be completed in accordance with the approved programme and methodology and the TMP shall be updated in consultation with the Local Planning Authority.
- 15) The Anaerobic Digestion plant shall not be brought into use until the TMP incorporates a means of controlling the arrival and departure of articulated vehicles to and from the site, a routing strategy and a programme prescribing hours for the arrival and departure of articulated vehicles associated with the Anaerobic Digestion plant, and has been submitted to, and approved in writing by, the Local Planning Authority.
- 16) The Anaerobic Digestion plant shall not be brought into use until an Odour Management Plan has been submitted to, and approved in writing by, the Local Planning Authority.

**END OF SCHEDULE**