



Appeal Decision

Site visit made on 24 November 2020

by David M H Rose BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 December 2020

Appeal Ref: APP/M2460/W/19/3241616

Green's Lodge Farm, Stygate Lane, Pickwell, Melton Mowbray, LE14 2QN.

- 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.
 - The appeal is made by Mr and Mrs Simon and Sally-Anne Hazard against Leicestershire County Council.
 - The application reference 2019/0419/06 (2019/CM/0066/LCC), is dated 13 March 2019.
 - The development proposed is an anaerobic digestion plant with associated infrastructure and an access road.
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Decision

1. The appeal is dismissed and planning permission for an anaerobic digestion plant with associated infrastructure and an access road is refused.

Applications for costs

2. Applications for costs were made by Mr and Mrs Simon and Sally-Anne Hazard against Leicestershire County Council and by Leicestershire County Council against Mr and Mrs Simon and Sally-Anne Hazard. These applications are the subject of separate Decisions.

Preliminary Matters

3. The appeal arises as a result of the failure of the local planning authority to give notice of its decision on the application within the statutory period. The Council has, however, confirmed its putative reason for refusal as follows:

'The proposed development is in a rural, greenfield location with only limited links to this location. It has not been demonstrated that there is an overriding need for an anaerobic digestion facility or for it to be located in this location and, taking into account the less than substantial harm on designated heritage assets in the locality, harm to users of Footpath D68 and potential impacts from artificial lighting, the proposed development conflicts with Policies W5, W6 and DM8 of the Leicestershire Minerals and Waste Local Plan (2019) and Policies EN3, DM5 and EN13 of the Melton Local Plan (2018).'

4. The Council has also drawn attention to a typographical error in the above, in that the reference to Policy DM5 of the Melton Local Plan (MLP) should read as Policy DM5 of the Leicestershire Minerals and Waste Local Plan (LM&WLP).

5. The revised Transport Statement (Report Ref: 22721/05-17/4771 Rev L), submitted after the appeal was lodged, resolves the County Highway Authority's holding objection subject to recommended planning conditions.
6. The appellants' statement pre-dates, by a few months, the adoption of the LM&WLP and makes reference to policies which were extant at the time of writing and also to those awaiting adoption. The former policies are no longer part of the development plan.
7. The main issues are:
 - i. Whether or not the proposal would have a close link with the land to which it relates, having particular regard to Policies W5 and W6 of the LM&WLP;
 - ii. The impacts on landscape and public rights of way, having particular regard to Policy DM5 of the LM&WLP and Policy EN3 of the MLP; and
 - iii. The effect of the development on the setting of heritage assets, having particular regard to Policy DM8 of the LM&WLP and Policy EN13 of the MLP.

Reasons

Whether or not the proposal would have a close link with the land to which it relates, having particular regard to Policies W5 and W6 of the LM&WLP

8. The proposed site, 'Green's Lodge AD Plant', forms part of the appellants' Leesthorpe Farm which is farmed in conjunction with other land holdings in the wider locality¹. Leesthorpe Farm lies to the south-east of Stygate Lane. The gently sloping and undulating land is in open agricultural use and is devoid of permanent buildings².
9. The proposed facility would be located in the south-western corner of the holding, adjacent to the anaerobic digester, which is at operational capacity, forming part of the adjacent pig farm. It is designed to treat some 49,000 tonnes of feedstock annually comprising: 15,000 tonnes of excess pig slurry, piped from the neighbouring enterprise; 10,000 tonnes of chicken litter; 15,000 tonnes of straw; and 9,000 tonnes of grass.
10. Apart from the closely linked supply of pig slurry from the adjoining farm, the only feedstock for the plant originating from Leesthorpe Farm would be the supply of 4,500 tonnes of grass. The balance of grass, and 2,500 tonnes of straw, would be derived from the appellants' other holdings within 9km of the proposed installation. Thereafter, 12,500 tonnes of straw and the totality of the chicken litter would be imported from third-party suppliers located within 20km of the proposal³.

¹ Browns Lodge Farm, near Whissendine (3 blocks); Yewtree Farm, Ashwell; White House Farm, Ashwell; Glebe Land, Ashwell; Burley Road, Ashwell/Langham; Garthorpe Lodge Farm, Wymondham.

² There is a hard-surfaced area/compound in the north-eastern corner of the holding and two silos.

³ Paragraph 27 of the appellants' supporting statement indicates that chicken litter would be delivered from sites within a '20 mile radius'. The majority of distances in the statement are given in km (where they are not I have converted them to km for consistency) and paragraph 75 of the statement confirms: '.....The remainder of the feedstock would be sourced from farms within 20km of the proposed site'. I have taken the latter to be the basis for my consideration.

11. In terms of outputs, approximately 41,650 tonnes of digestate would be generated annually. Some 6,700 tonnes (16%) would be spread on the land at Leesthorpe Farm through a network of umbilical pipes. Approximately 24,900 tonnes (60%), would be transported to the other blocks of land farmed by the appellants. The balance of 10,000 tonnes of dried digestate (24%) would be sold to the mushroom growing industry with the nearest producer identified as being 29km from the site.
12. The plant would also produce some 4,000,000m³ of biogas which would be transported from the site for injection into the Scotia Gas Networks grid. In addition, 5,000 tonnes of CO₂ would be available to soft drinks manufacturers, with the nearest plant approximately 56km away.
13. The starting point is that at the present time the operations on the adjoining farm and at Leesthorpe Farm create a number of vehicular movements which would be removed from the highway network. The Transport Assessment confirms that the enterprise would, on a worst case, generate an additional 1,832 vehicle movements annually, equivalent to eight additional daily vehicle movements⁴.
14. The extra movements, which are agreed to be not significant in terms of highway safety and capacity, are only part of the equation. It is telling that the overall distances involved have not been quantified in any meaningful or comparative way. Whilst it cannot be denied that some of the feedstock and outputs would arise, or be disposed of, adjacent to the site, and a quantity would travel no more than 9km, a significant proportion of movements would be over longer distances.
15. It is also notable that although it is said that digestate could be provided to mushroom growers, who currently import dry fibre from Holland, there is no certainty, without contractual obligation, that this would be supplied to the nearest grower. Even if it were, it is evident from interpreting tonnage, lorry movements and distance that this alone would amount to over 10,000km (one-way) annually⁵. Similarly, the supply of CO₂ would involve lengthy journeys and no details are given as to where the biogas network would be accessed.
16. The LM&WLP sets a hierarchy of locations to guide the consideration of proposals for waste facilities with a preference for sites with an existing waste management use, employment land, previously developed land and existing mineral working sites. It does however acknowledge that the biological treatment of waste may be acceptable in rural locations subject to overall conformity with the plan.
17. It cannot be denied that the proposal would have some specific transport, operational and environmental benefits, for example removing the need for slurry tankers and the importation of inputs for growing crops, and the production of renewable energy. However, set against these, the facility would be dependent on the importation of a significant proportion of raw materials and the export of some products over considerable distances.

⁴ It is noted that *'In the future the applicant may look to backhaul the digestate on the transport used to bring in the feedstock, reducing the vehicular movements to and from the site.'* (paragraph 34 Supporting Statement).

⁵ 10,000 tonnes ÷ 28.5 tonne loads x 29km = 10,175km.

18. It is inevitable that any similar facility is likely to result in some lengthy journeys associated with source materials and/or outputs. In addition, paragraph 4.35 of the LW&MLP recognises a trade-off between urban and rural locations in that agricultural waste can complement biodegradable waste arising from built-up areas and a more rural location allows the end product to be applied to the land in the vicinity of the waste site.
19. However, from the information before me, I consider that, in overall terms, having regard to the transportation of both raw materials and end products as set out above, and taking account of the overall increase in traffic movements, the links with the land associated with Leesthorpe Farm are not sufficiently close to be in accordance with relevant policies in the development plan.

The impacts on landscape and public rights of way, having particular regard to Policy DM5 of the LM&WLP and Policy EN3 of the MLP

20. In terms of this issue, although the Council's putative reason is a very narrow one, wider consideration is necessary in light of written representations from the local community.
21. It is argued, on behalf of the appellants, that *'in landscape character and visual amenity terms, in combination with the landscape mitigation proposals, the proposed development would be a suitable fit within the context of its immediate surroundings'*
22. The starting point is to note that extensive ground modelling would be undertaken to form a finished yard level of 159.00m OD with cut and fill on a site which falls from approximately 165.00m OD in the north-west corner to 152.00m OD in the south-east corner. That, by itself, would introduce an alien and contrived land-form with steep engineered slopes.
23. The operations building, digesters, tanks, stores, silage clamps and related infrastructure would occupy a significant proportion of the 5.68ha site amounting to a considerable mass of built form in the countryside. The operations building and five digesters, ranging from 10m to 14m in height, and the slightly taller gas injector, would provide added emphasis to the scale and nature of the facility. Moreover, a hard surfaced access road, some 1,300m in length⁶, striking across undulating land, would be a further intrusive element.
24. Landscape mitigation is proposed with tree planting areas, consisting of whips, around the proposed compound, a lengthy strip on the south-eastern side of the public footpath and where the existing access track is shown to turn towards the proposed digester. Hedgerow planting would adjoin the access road and replace an open field boundary along part of Stygate Lane. Nonetheless, the effectiveness of such measures, as a whole, would not be realised until the facility was well into the later years of its anticipated operational life of 20 years.
25. In terms of impacts on the key characteristics of the High Leicestershire Hills Landscape Character Area, the appellants' Landscape and Visual Impact Assessment (LVIA) identifies that significant change would be limited to the immediate locality of the proposed site. Similarly, impacts on walkers on the

⁶ I have taken this to include the track which currently runs from Stygate Lane.

adjacent public footpath (D68) and users of a short section of Stygate Lane would be localised. Whilst the installation would be seen from areas in the wider landscape, I am satisfied that the related effects would be very limited having regard to topography, established planting, other built form and diminishing scale and mass over distance.

26. Focusing on the immediate locality, the proposal would introduce a substantial combination of intrusive elements into the countryside and, by their very nature and scale, extend the already strong influence of built development which is present along a relatively short stretch of Stygate Lane. In my opinion, even with the benefit of the proposed landscaping, and association with existing buildings and their established vegetation, the proposed development would be very damaging to the rural landscape. Moreover, as footpath D68 currently experiences greater separation from the influence of built form, the proposal would, by its immediate proximity, undoubtedly make the use of the public footpath considerably less enjoyable.
27. Drawing together my findings on this issue, I am satisfied that the effects of artificial lighting could be kept to a minimum through a well-designed scheme secured by condition. Nonetheless, I have reached the conclusion that the proposal would have an adverse landscape impact in that it would not contribute positively to the character and quality of the area. It would therefore be in conflict with Policy DM5 of the LM&WLP. Similarly, despite mitigation, I conclude that the proposal would diminish the enjoyment of public footpath D68 and be in conflict with Policy EN3 of the MLP.

The effect of the development on the setting of heritage assets, having particular regard to Policy DM8 of the LM&WLP and Policy EN13 of the MLP

28. The appellants' Heritage Assessment restricts itself, following consultation with Historic England, to four Grade 1 Listed Buildings and one Grade II* Listed Building. No effects are predicted on the setting or the significance of any of these five designated heritage assets and I see no reason to disagree.
29. The Council cites '*..... less than substantial harm on designated heritage assets in the locality*', and the report to the Regulatory Board records that '*there are several listed and non-listed buildings and structures within the theoretical zone of visibility*'.
30. Limited clarification is gleaned by reference to the Council's statement and views of the Heritage Officer in that '*..... no regard has been had to other heritage assets including the Grade II listed Leesthorpe Hall, Grade II listed Manor Farm at Cold Overton and several nearby village conservation areas including Somerby, Cold Overton and Pickwell he is confident that the application site lies within the established wider countryside setting*'.
31. Paragraph 189 of the National Planning Policy Framework (Framework) indicates that '*in determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting*'. The following paragraph requires local planning authorities to identify and assess the particular significance of any heritage asset that may be affected taking account of the available evidence and any necessary expertise. The Council's concerns are not documented in any meaningful manner.

32. Turning to the two Listed Buildings of concern to the Council, there is no doubt that the landscape to the south-east of Leesthorpe Hall, in the direction of the appeal site, contributes to the significance and setting of the building. However, the appellants' LVIA does not predict any degree of inter-visibility with the proposal. For my part, even if it were to be shown that some element of the proposal was visible, it would form a very minor element in the context of more significant development which is visible along the Stygate Lane ridge. The effect on the significance and setting of the Listed Building would be neutral.
33. Manor Farm, at Cold Overton, occupies a commanding edge of village, ridgeline, location. Its setting owes much to the open vista over a panoramic agricultural landscape generally to the south-east. The agricultural landscape to the north-west, containing the appeal site, is more tangential in that foreground tree cover provides distinct separation, even in winter. The extent to which the proposal might be visible as a smaller and subordinate adjunct to existing buildings within a wide landscape, at a distance of some 2.5km, would be immaterial. The effect on the significance and setting of this designated heritage asset would be neutral.
34. From my visit to the Conservation Areas referred to by the Council, Pickwell Conservation Area has a robust belt of trees on its north-eastern side, dividing it from the wider agricultural landscape. In addition, the proposed facility would be located in the lee of the taller buildings at Belmont Farm which themselves have strong foreground screening. The appellants' LVIA also confirms lack of potential inter-visibility. Overall, I consider that those elements of setting which make a positive contribution to the character and appearance of the Conservation Area would be preserved. I reach a similar conclusion on the basis of the evidence before me and my own observations in relation to the Somerby Conservation Area.
35. The Cold Overton Conservation Area, as is apparent from the appellants' Heritage Statement in relation to Cold Overton Hall and the Church of St John the Baptist, has a wealth of mature tree planting fringing the village on its western side. I noted that outward views are very limited with the most apparent being in the vicinity of Court House and from the public footpath which crosses its curtilage. Whilst parts of the digester would be visible from this vantage point, the extent of the vista, adjoining taller buildings, landscape backdrop and overall distance would make the proposal a very minor addition. I am content that those elements of setting which make a positive contribution to the Conservation Area would be preserved.
36. Overall, having regard to the statutory duties contained in the Planning (Listed Buildings and Conservation Areas) Act 1990, and the policies in both the Framework and the development plan, I have reached the conclusion that the proposal would not cause harm to the significance of any designated heritage asset.

Other considerations and planning balance

37. Although national guidance indicates that planning decisions should enable the development and diversification of agricultural and other land-based rural businesses, policies in the Framework have to be read in the round. As a matter of balance, for example, planning decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside.

38. In this case, the weight to be attached to the main claimed benefits, including employment opportunities associated with the development; the enhancements to biodiversity secured through mitigation; and the production of renewable energy and digestate, as part of a 'circular economy', would fall well short of outweighing the harm which I have identified in my consideration of the first two main issues.
39. Further, the lack of harm to other interests identified in reports supporting the application, consistency with related policies, and lack of harm to designated heritage assets, are neutral in the planning balance. Overall, having considered whether the suggested planning conditions would be capable of making the development acceptable, I have reached the conclusion that the proposal would conflict with the development plan when read as a whole and planning permission should be refused.
40. I have considered all other matters raised in relation to the appeal but find nothing to lead me to a different conclusion.

David MH Rose

Inspector