



Appeal Decision

Site visit made on 15 March 2022

by B Davies MSc FGS CGeol

an Inspector appointed by the Secretary of State

Decision date: 23 May 2022

Appeal Ref: APP/A5270/W/21/3269364

Unit 11, Boston Business Park, Trumpers Way, Hanwell, London, W7 2QA

- 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 Mr Roland Ghapantsyan (RG & HAM Properties Limited) against the decision of the Council of the London Borough of Ealing.
 - The application Ref 200330FUL, dated 23 January 2020, was refused by notice dated 8 October 2020.
 - The development proposed is a biomass boiler and associated external silo and flue.
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Decision

1. The appeal is allowed and planning permission is granted for a biomass boiler and associated silo and flue at Unit 11, Boston Business Park, Trumpers Way, Hanwell, London, W7 2QA in accordance with the terms of the application, Ref 200330FUL, dated 23 January 2020, subject to the following condition:
 - 1) The development hereby permitted shall be carried out in accordance with the approved plans:
 - 1901/EX/001 Location Plan 1:1250@ A3 (22 January 2020)
 - 1901/EX/001 Existing Ground Floor - South Elevation (27 January 2020)
 - 1901/EX/002 Existing First Floor - West Elevation (27 January 2020)
 - 1901/EX/003 Existing Second Floor - North Elevation (27 January 2020)
 - 1901/EX/004 Existing Roof Plan - East Elevation (27 January 2020)
 - 1901/EX/001 Rev A Proposed Ground Floor - South Elevation (27 January 2020)
 - 1901/EX/002 Rev A Proposed First Floor - West Elevation (27 January 2020)
 - 1901/EX/003 Rev A Proposed Second Floor - North Elevation (27 January 2020)
 - 1901/EX/004 Rev A Proposed Roof Plan - East Elevation (27 January 2020).

Procedural matters

2. I have taken the description of development from the decision notice and the appeal form rather than from the original application because it more clearly describes the proposal. Although the appeal was made by Mr Ghapantsyan it was associated with a different business to that on the application form. However, the appellant has since confirmed that the name of the company

appealing the decision is the same as that on the planning application form and this is reflected in the banner above.

3. There was a discrepancy between the title of the plans on the decision notice and those submitted to the appeal. I have confirmed with the parties that the plans before me and in the condition above are the same as those referred to by the Council.
4. Both parties have had the opportunity to comment on revisions to the National Planning Policy Framework (2021) (the 'Framework') and any new and emerging policies relevant to the site, including the London Plan (2021).
5. The development was completed in January 2020 and I am therefore considering the appeal on the basis that the proposal is retrospective.

Main issue

6. The main issue is whether or not the development would meet local and national policies in respect of emissions to air.

Reasons

Description

7. The appeal site is on the edge of Boston Business Park, a 'Locally Significant Industrial Site'. The canalised River Brent runs along the site's eastern boundary beyond which is the open space of Brent River Park. The nearest residential housing is on the edge of Hanwell on the other side of the canal, approximately 80 metres to the north-east. My attention has also been drawn to the high school playing fields about 360 metres to the east of the site.
8. The boiler is enclosed within the existing workshop and discharges to an 8 inch flue that runs up the outside of the building to about 11 m in height. The circular silo adjacent to the building is the main external structure at approximately 5 m high and 3 m wide, and there is a shredder at the base of this.
9. Waste wood offcuts and sawdust generated on-site are stored and processed before being automatically fed into the boiler at a maximum rate of 75 kg/hour. The thermal output of the system is quoted as being 199 kW. The energy generated is used to heat the workshop and spray booths.
10. The site was granted permission¹ in June 2020 for a 3 storey side and rear extension, and high, timber slatted fence to screen views of the silo from the canal. By the time of my site visit, the building had been extended towards the canal but the timber screen had not yet been constructed. The location of the silo and flue was consistent with the submitted plans.

Legislative requirements and permitting

11. The focus of the planning system should be on whether development comprises an acceptable use of the land, rather than on potential emissions where these are subject to approval under other regimes. It is therefore necessary for me to determine if potential emissions would be regulated through the pollution control regimes.

¹ 195258FUL (June 2020)

12. Ealing Borough has been designated a Smoke Control Area under the Clean Air Act 1993. It is not in dispute that waste wood is neither an 'authorised' or 'smokeless' fuel, nor is the boiler one of the exempt appliances listed by Defra. It is not for me to decide if the boiler should achieve 'exempt appliance status' for the purpose of this appeal, only that it is possible in principle. Based on the laboratory test results provided, I am satisfied this is the case. In the event that such an exemption is not achieved, the boiler would not be able to operate legally.
13. The boiler may also require regulation under the Environment Permitting (England and Wales) Regulations (2016) ('EPR'). This regime controls waste types, waste storage and output. A copy of an extant permit or registered exemption under the EPR regime have not been provided and both options are referred to in the appellant's submissions. Insufficient information has been provided for me to be certain which route is applicable.
14. The London Borough of Ealing declared the whole borough an Air Quality Management Area (AQMA) in 2000. A permit under the EPR would ensure the emission limits in the AQMA are met. However, if operated under an exemption from the EPR the emissions are limited only to the extent that fuel type and volume are controlled. This may not be sufficient to meet the requirements of the AQMA, even if the boiler ultimately receives exempt appliance status for a Smoke Control Area.
15. If the boiler was operated under an exemption from the EPR, the strict control on emissions in an AQMA would not be subject to approval under the pollution control regimes. It is therefore necessary for me to continue to consider whether the appellant has demonstrated that the emission requirements in the AQMA would be met by the development.

AQMA and the Air Quality Action Plan

16. Paragraph 186 of the Framework states that development in AQMAs should be consistent with the local Air Quality Action Plan and the national objectives. Ealing's Air Quality Action Plan (2017 – 2022) (AQAP) is still in 'draft'², but its validity has not been challenged and I have proceeded to apply it.
17. The AQMA was declared for NO₂³ (against an annual mean objective of 40 ug/m³) and PM₁₀⁴ (24-hour mean objective of 50 ug/m³). There is also a responsibility to work towards reductions of PM_{2.5} based on national objectives. The AQAP indicates that by far the dominant source of all of these pollutants is road transport.
18. The appellant has used the results of emissions testing in the laboratory to underpin a quantitative assessment⁵ of the potential effect on air quality from NO₂ and PM₁₀. This advises that there could be a maximum increase of 0.5 ug/m³ in NO₂ and 0.05 ug/m³ PM₁₀ in the nearest residential areas.
19. There is debate regarding use of NO₂ background data. The Council infers that the highest measured levels in the borough should be used (monitoring point EA06), which already exceed the AQMA objective. The appellant argues that it

² London Borough of Ealing, Air Quality Action Plan 'working draft' (2017-2022)

³ Nitrogen dioxide

⁴ Particulate matter that is less than 10 micrometres in diameter

⁵ Air quality assessment for the biomass boiler at Unit 11, Boston Business Park, London W7, (Aether, August 2020)

is necessary to take a broader view, incorporating closer monitoring sites in similar settings and Defra mapped data, drawing attention to the fact that EA06 is adjacent to a major road. I appreciate that none of these datasets are perfect, but the appellant makes a compelling argument that NO₂ levels are not generally exceeded across the borough. I am satisfied that the marginal increase from the development would not cause the objective in the AQAP to fail.

20. There does not appear to be any background monitoring data for PM₁₀ in the borough. The Council has provided PM₁₀ data from other west London boroughs in lieu of background data for Ealing. Notwithstanding that I do not have context for these from which to draw a safe comparison, the dataset comprises only 2 locations and the changes in measured PM₁₀ since 2017 are very small and not demonstrated to be statistically significant. For these reasons I consider it reasonable that the appellant relies on the Defra mapped data. The modelled increase in PM₁₀ would be negligible in this context and would not cause the AQAP objective to be breached.
21. The air quality assessment does not calculate emissions of PM_{2.5}, but as it is a fraction of PM₁₀ it cannot be more than the PM₁₀ generated. The modelling suggests that the increase in PM₁₀ would be less than 0.05 ug/m³ in the nearest residential areas and the PM_{2.5} generated would therefore be less than this. The modelling also indicates that the particulate matter would largely remain in proximity to the site.
22. It is not in dispute that PM_{2.5} would be generated by the development and the objective in the AQAP is for a reduction. I do not interpret this as requiring that there should be no new sources, but rather than a development should overall reduce the PM_{2.5}. On this basis, I consider it reasonable to also account for any savings that would be made through the development.
23. Although not quantified beyond equating to about 300 tonnes of waste per year, the Council does not dispute that the number of road trips required to take waste wood to landfill would be 'significantly reduced' through the proposal. These HGV movements will generate PM_{2.5} along the route of travel, across the wider borough. A reduction in the number of road trips would therefore offset the PM_{2.5} generated by the boiler to some degree. I do not have the information before me to confirm that this would offset the new emissions entirely.
24. However, I am content that the new emissions of PM_{2.5} from the boiler would be very low and would remain largely within the site. Although unquantified, the reduction in HGV trips would cause a decrease in levels of PM_{2.5} across the wider area. On balance, I am satisfied that there would not be a conflict with the objective in the AQAP.
25. The Council states that 'it is fully aware that emissions can travel much further under easterly/south-easterly downwind conditions' and that in its experience, a separation distance of 300 metres is inadequate. While I do not doubt the expertise and experience of the Council, no evidence or context for this statement is provided, which makes its application to the conclusions above problematic. However, I am persuaded by the air quality modelling that, in the specific circumstances of this case, the low emissions are highly unlikely to travel a significant distance, regardless of wind direction.

26. With these results in mind, I have also reviewed the potential emissions against Actions 3 and 4 of the AQAP, which are those relating to development management, excluding those relating to construction because this has already taken place.
27. Action 3 requires that developers should select plant that meets the standards of emissions in the Mayor of London's Sustainable Design and Construction Supplementary Planning Guidance (2014) ('SPG'). The status of this guidance remains unclear to me despite a request for clarification from both parties. In light of this uncertainty and for the avoidance of doubt, I have continued to apply it.
28. Appendix 7 of the SPG lists the required emission standards as 'equivalent concentrations' dependent on the baseline annual mean. I have not been provided with these figures. However, this appendix also states that the 'likely technique required to meet emission standards' for NOx⁶ and PM is a 'modern boiler with stage combustion, automatic control, cyclone and ceramic filter', which this development fulfils. For this reason, I am satisfied that the requirement in the SPG is likely to be met.
29. Action 3 also requires that smaller developments use ultra-low NOx boilers. No definition of these terms is before me, but as the NOx emissions are minimal and highly mitigated according to the technical details provided by the manufacturer, I am satisfied that this requirement is also met.
30. Action 4 requires that Air Quality Neutral policies are enforced. These are most recently set out in Policy SI 1 of the London Plan (2021) where 'Air Quality Neutral' is defined as development that does not contribute to air pollution beyond the allowable benchmarks set out in the Air Quality Neutral Guidance (2021) (the Guidance). Although still at the 'consultation draft' stage, its status has not been challenged by either party and I see no reason to come to a different conclusion.
31. Section 3.1.5 of the Guidance states that biomass appliances cannot by definition be Air Quality Neutral because they emit fine PM above the benchmark emission rate of zero. In these circumstances the Guidance requires 'mitigation or offsetting', ideally on-site, to meet the requirement in Part E of Policy SI 1. The guidance defines mitigation as measures that reduce local concentrations by at least the equivalent of the excess emissions.
32. Although abatement of particulate emissions would occur on site, an excess would be generated. No on-site offset of the emissions is proposed, nor have equivalent offsetting payments been agreed with the Council. However, the recommendation for on-site offset of the excess is potentially problematic. If there are no other sources on site, a developer cannot achieve this.
33. For this reason, I consider it reasonable to consider offsetting beyond the site. As discussed above, there would be a significant reduction in HGV road trips from the development and consequently a reduction in particulate emissions along the transport routes crossing the wider borough. On balance, I am satisfied that the very low levels of particulate matter generated in proximity to the flue would be offset by the improvements in air quality across the wider

⁶ Nitric oxide and nitrogen dioxide

area from a significant reduction in HGV road trips, and to this extent the development meets the requirements of Action 4 of the SPG.

34. The Air Quality Neutral Guidance also requires that developments do not contribute to air pollution beyond specific benchmarks for NO_x. I have not been provided with the appropriate calculations to make a direct comparison. However, the guidance implies that a detailed air quality impact assessment is a relevant consideration and that where emissions would be unambiguously reduced, discretion can be applied. The air quality assessment and technical details provided demonstrate that propagation of NO_x would be minimal. Although emissions are not 'unambiguously' reduced due to a lack of quantification, the significant reduction in road trips means that on balance I am satisfied the development is highly likely to be air quality neutral in respect of NO_x.
35. The Council has also drawn my attention to Action 42 of the AQAP. However, this is a public health initiative to reduce exposure of residents through provision of alternative walking and cycling routes away from major roads, and I do not consider it relevant to the appeal.
36. The actions in the AQAP are fulfilled by the proposal and there would not be an adverse impact on the AQMA. Policies SI 1 and GG3 of the London Plan (2021) would be satisfied because there would not be a deterioration in air quality or an unacceptable risk from high levels of exposure. I am also satisfied that all reasonable steps to ameliorate emissions have been taken, in line with Policy 7A of the Ealing Development Management Development Plan Document (2013) (DPD).

Other emissions – odour

37. Policy 7A of the DPD states that emissions must not erode amenity. Both parties have provided comment on odour, and I have interpreted this requirement on this basis.
38. The Council states in general terms that odours can be detected over 1 km away and should be abated at source. This is a small, modern boiler, purpose built to burn wood, with abatement for the emissions of particulates and gases, located on a large industrial estate from which some odours would not be unexpected. I have no details before me from either party to explain how significant any additional odours from the development would be on the amenity of the wider area. However, if smells from industrial and business premises become a statutory nuisance under the Environmental Protection Act 1990, the Council can serve an abatement notice.
39. The boiler is small, modern and includes abatement technologies, and I have no evidence before me that a significant odour would be generated such that it would harm amenity. In the unlikely event that this does happen, other pollution control regimes can stop or reduce the odour. For these reasons, I am satisfied that amenity in respect of odour would not be eroded, and there is therefore no conflict with part of Policy 7A of the DPD.

Other emissions – carbon dioxide

40. The Council's Energy Advisor was satisfied that the scheme would represent a substantial CO₂ saving because over 300 tonnes of waste would be diverted from landfill, causing a significant reduction in road trips. There would also be

a reduction in use of fossil fuels through replacement of natural gas as a fuel source with waste. Although these benefits have not been quantified, I see no reason to come to a different overall conclusion.

41. The proposal is therefore consistent with Policy SI 2 of the London Plan, which encourages minimisation of greenhouse gas emissions and, although no reference is provided, with Ealing Council's quoted commitment to reduce CO₂ in light of the climate emergency.

Other matters relating to emissions

42. The Council raises concerns in general terms that the PM_{2.5} would not be adequately filtered. The proposed system includes ceramic filters and multiple cyclones, and the laboratory testing demonstrates that these are sufficient to reduce emissions of PM₁₀ (which includes PM_{2.5}) to a low level. I accept that it is not ideal to generate any fine particulate matter, but this would be offset to some extent with the reduction in road trips and overall, and for the reasons above, I am content that the abatement of PM_{2.5} is sufficient to meet the requirements of the relevant policy and guidance outlined above.
43. Reference is made to the duty on the Local Authorities to reduce PM_{2.5} by 15% in the London Local Air Quality Management (2016) document. Relevant data are not available for Ealing, but the Council has provided data for 2 nearby authorities, which do not show the required decrease, albeit the dataset is very small. Notwithstanding this, in light of the minimal emissions and limited dispersion, in addition to a substantial reduction in road trips, I am satisfied that the development would not meaningfully stymie this objective.
44. The Council argues that introduction of a boiler to burn wood is contrary to the Government's 25 Year Environment Plan. I understand that this is in reference to a legislative drive to cut industrial emissions from medium combustion plants and generators. The development is not a generator and a medium combustion plant would be controlled via the environmental permitting regime. I have therefore not considered this further.
45. I appreciate that the Local Authority has a duty to protect the health of its residents and the potentially serious effects of poor air quality. I also note the reference to the Government's commitment in the Clean Air Strategy (2019) to reducing particulate matter for this reason. However, these duties are fulfilled by the application of planning policies, guidance and the permitting regime, which allow for the necessary balance of competing priorities.
46. The Council raises concerns regarding generation of VOCs and sulphur dioxide when wood treated with preservatives and polish is burnt. The information provided explains that the boiler is designed to use Grade A and B 'clean' wood and, given the provenance of the fuel, I see no reason why this wouldn't be the case.

Other matters

47. The canal adjacent to the site and towpath on the opposite side are both part of the Grand Union Canal Conservation Area (CA). I do not have an appraisal or management plan for the CA before me but the Council has drawn my attention to the requirement to be sympathetic to the form, scale, materials and architectural assets of the area. The Council quotes the Character

Appraisal (2008) that 'unattractive' elevation of inward looking industrial buildings facing the canal is a 'negative factor'.

48. The setting of the CA in the area around the appeal site is dominated by the rear of the industrial estate, which is densely populated with modern industrial buildings and offices displaying numerous pipes and air conditioning units, between which is an infill of car parking and equipment storage. The external part of the proposal, including the silo and flue pipe, would be visible from the tow path, but would not be prominent or unusual in character, form or materials against this established industrial backdrop.
49. The Council is satisfied that the high, timber slatted screen already given planning permission would improve views of the site from the towpath. However, the fence is not part of the scheme before me and has not been constructed yet, so I have not accounted for any contribution from this.
50. I conclude that the development has a neutral effect on the setting of the CA and the CA is therefore preserved. In coming to this conclusion, I have had regard to my duty under Section 72(1) to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA.
51. An interested party objected on the grounds of a detrimental impact on the Green Corridor and nearby Nature Conservation Area, although no details in this respect were provided. For the reasons above, I am satisfied that there would be no harm to the wider area from emissions, or to the character and appearance of the area.
52. I have noted the concerns raised by the appellant regarding the application process. This is a matter between the appellant and Council.
53. The Council alludes to policy support for improving energy efficiency and reducing operational costs to a business within a Locally Significant Industrial Site. However, no policy is before me and I have therefore not been able to take this into account.

Conditions

54. The Council has recommended 6 conditions. The first is that the development shall begin before the expiration of 3 years. As the development has already taken place this is not necessary. I have however, included the condition to specify plans in the interests of certainty and good planning.
55. The Council has requested that, prior to commencement, details should be submitted to demonstrate that the plant would be compliant with the building emissions benchmark and the standards in Appendix 7 of the SPG, and that further mitigation measures must be agreed to significantly reduce the PM_{2.5} emissions. Notwithstanding that these are 'pre-commencement' for a development that has been built, for the reasons above I am satisfied that these requirements have already been met or are adequately controlled via other regimes, and the conditions are therefore not necessary.
56. The Council also requests a condition requiring continuous monitoring of NO_x and particulate matter for 3 years, with further mitigation measures required if the standards in Appendix 7 of the SPG are exceeded. For the reasons above, I am satisfied that these requirements and the condition are unnecessary.

57. I note the concern that if the conditions are not imposed then this could result in legal action by a private individual against the Council. I am the decision maker in the case and for the above reasons am satisfied that the conditions are not necessary.

Conclusion

58. It is not in dispute that the boiler would produce some emissions. However, emissions testing and air quality modelling confirm that emissions would be low and would remain largely within the site. The reduction in HGV road trips would reduce the dispersion of emissions of NO_x and particulate matter across the wider area.

59. The requirements of the local AQAP are met and, for this reason, I am satisfied that the AQMA is protected and no harm would be caused to national objectives as per paragraph 186 of the Framework. I have also not found conflict with Policies SI 1 and GG3 of the London Plan or Policy 7A of the DPD, which protect air quality and amenity.

60. There would be a benefit to the environment from a reduction in CO₂ from road trips to landfill and a reduction in the use of fossil fuels, in line with Policy SI 2 of the London Plan.

61. Consequently, I find that the development complies with the development plan when read as a whole and there are no other material considerations that indicate a determination other than in accordance with this. I conclude that the appeal should be allowed.

B Davies

INSPECTOR