



Appeal Decision

Site visit made on 1 November 2022

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 November 2022

Appeal Ref: APP/G2713/W/22/3301152

New Mill Farm, Thormanby, York YO61 4NN

- 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 New Mill Biogas Ltd against Hambleton District Council.
- The application Ref 21/02915/MRC is dated 29 November 2021.
- The application sought planning permission for construction of an anaerobic digestion and combined heat and power facility without complying with conditions attached to planning permission Ref 14/01736/FUL, dated 12 November 2014.
- The conditions in dispute are Nos 3 and 4 which state that:
 - 3 - No feedstock shall be used in the anaerobic digestion and combined heat and power plant facility hereby approved other than farm manure and maize silage from: Mill Farm, Thormanby and New Manor Farm, Carlton Husthwaite unless otherwise approved in writing by the Local Planning Authority;
 - 4 - No waste or digestate associated with the anaerobic digester and combined heat and power plant shall be stored on site except in the silage clamps, manure clamp, digestate tanks and the digestate storage lagoon as shown on drawing number 14T708-100.
- The reason given for the conditions is: To enable the Local Planning Authority to assess the impact of any other such means of operation, in accordance with the relevant policies of the Local Plan.

Decision

1. The appeal is allowed and planning permission is granted for construction of an anaerobic digestion and combined heat and power facility at New Mill Farm, Thormanby, York, YO61 4NN in accordance with the application Ref 21/02915/MRC made on the 29 November 2021 without complying with conditions Nos 3 and 4 set out in planning permission Ref 14/01736/FUL granted on 12 November 2014 by Hambleton District Council, but otherwise subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was made by New Mill Biogas Ltd against the Council. This application is the subject of a separate decision.

Background and Main Issue

3. Planning permission was granted in 2014 for an anaerobic digestion and combined heat and power facility (the AD facility) at New Mill Farm. Through conditions 3 and 4 of this permission, feedstock is limited to farm manure and

maize silage¹ from two specific farms and no waste or digestate can be stored other than in the silage clamps, manure clamp, digestate tanks and the digestate storage lagoon as shown on the associated approved plan.

4. In November 2020, permission² was granted for the installation of a new liquid feedstock/additive tank within the site. The purpose of this facility was stated as being to enable the use of supplementary feedstocks to improve the efficiency of the main digester tanks already installed at the site. An informative was attached to this permission stating that it is necessary to submit an application to vary conditions 3 and 4 of permission reference 14/01736/FUL to enable use of the liquid feedstock in the facility and its onsite storage.
5. The appellant now wants to be able to source material free from the constraints of the two named farms, highlighting that since the granting of permission the industry has moved on considerably in a number of key aspects. This includes an increased availability of feedstocks suitable for anaerobic digestion and the development of specialised feedstock lending operations to provide pumpable feedstock. The appellant therefore wishes to remove conditions 3 and 4 from the original permission, considering that they are unnecessary.
6. The Council is concerned that removing the conditions in dispute would allow any feedstock to be used, changing the nature of the development to an independent facility that does not require the farms to which it is currently tied. The Council's view is that there is a lack of information to assess the acceptability of this change.
7. Against this background, the main issue is the effect that removing the conditions would have on the development strategy for the area.

Reasons

8. When considering the original proposal, the Council seems to have envisaged a symbiotic circular relationship between the AD facility and the farms. This is seen to an extent in the officer's report for the original application. Some positive weight appears to have been given to what the Council saw as the farm diversification benefit of the proposal.
9. The Council is concerned that the removal of the disputed conditions would mean that any feedstock could be used. This would change the nature of the operation from that envisaged at the time of granting the original permission, from one that formed part of the agricultural business at the site to one that would be completely independent from the farms to which it is currently tied and would undermine the symbiotic circular relationship between the farm units and the AD facility.
10. The appellant states that the AD facility was not presented as a farm-based diversification project, rather such plants are renewable energy projects in their own right that require the active support of a farmer. However, it does appear that condition 3 reflects what was proposed by the applicant for the AD facility,

¹ Subsequently amended from maize silage to arable crops by permission reference 15/00493/MRC

² Permission reference 20/02203/FUL

with the supporting statement for that original application (the 2014 supporting statement) stating that the feedstocks would come from the farms³.

11. There was a tie to the two named farms with the original proposal and therefore an inference that it would provide some farm diversification benefits. The development plan has changed since the original permission was granted, with the adoption of the Hambleton Local Plan (the Local Plan) in 2022. The Council's appeal statement has identified a number of Local Plan policies. However, these do not specifically preclude what is now being proposed, that is, a renewable energy scheme and an employment generating development that does not have a specific tie to a particular farming enterprise.
12. I appreciate that in 2014, the anaerobic digestion industry in the UK was in its relative infancy. Knowledge about the process has no doubt developed since then, including about the optimal type and mix of feedstock to produce the most efficient energy and digestate yields. I am also aware that the permission granted by the Council in 2020 for the liquid feedstock/additive tank has an implied acceptance that feedstock from sources other than the two named farms would be used in the AD facility.
13. The Council is concerned that it would lose control of the nature and intensity of the AD facility without some level of control. Given that the AD facility was developed on the basis of farmyard manure and arable crops as the feedstock, it would be unlikely that other types of material such as food waste could be used without changes or additions to the plant, such as shredders and a pasteurisation component which are not required with the current type of feedstock. It would also potentially require changes to the site's environmental permit, including for the digestate if food waste was to be used as a feedstock. However, I accept that these would not be an insurmountable barrier.
14. Furthermore, the intensity of site operations and feedstock requirements will be limited by the scale of the existing plant and the nature of the anaerobic digestion process.
15. No change is proposed to the throughput of the AD facility or the nature of the feedstock. The proposal would mean that the feedstock could come from further afield. This would change to an extent the nature of the development envisaged by the Council when granting the original permission. Nevertheless, it has the potential to provide benefits in terms of a more efficient plant given that it would provide greater flexibility in the feedstock to help keep the digestion process balanced and productive. In this regard, I am mindful of the support that the National Planning Policy Framework (the Framework) gives to renewable energy proposals, with paragraph 158 stating that applications should be approved if its impacts are (or can be made) acceptable. This is echoed in Policy RM6 of the Local Plan.
16. The main impacts from the proposal relate to transport matters and the living conditions of residents.
17. The acceptability of the original scheme was assessed on the basis of the feedstock coming from specific sources. The 2014 supporting statement noted that the scheme would be for the most part traffic neutral, due in part to the

³ Paragraphs 2.4 and 2.5 of the Planning Statement Proposed Farm Scale Anaerobic Digestion, Combined Heat and Power Plant Facility and drying store. Land at New Mill Farm, Thormanby, Thirsk, YO61 4NN For JFS New Mill Biogas Ltd, Prism Planning, August 2014

source of the feedstock. While the appellant states that the majority of material would likely still come from the named farms, there would be no guarantee of this if condition 3 is removed in its entirety.

18. Some limited information on the traffic movements that may result from the removal of condition 3 has been submitted. The appellant states that as the proposal relates to the use of the liquid feedstock tank and such other opportunities as may come forward from time to time, it is envisaged that less than two additional HGV movements per day would be involved. This would be in addition to the approximate six to seven farm and AD facility HGV vehicle movements that already take place at the site on a daily basis. The Council has not specifically disputed these figures although does seem to consider that further information or clarification on traffic numbers and movements is required.
19. I appreciate the Council's concern that removing condition 3 would mean that feedstock could be transported from anywhere in the country. However, given the nature of the feedstock and the transport costs, I find that the economics would mean in reality that it would be unlikely that feedstock would be transported significant distances.
20. I note the appellant's contention that there was no objection from the Highway Authority or National Highways. The original scheme was found to be acceptable in relation to highways considerations. However, the current proposal would involve additional transport movements on the highway that were not considered as part of the original proposal. Based on the submitted information, it appears that the Highway Authority did not provide a response to the Council's consultation on the current proposal and there is no indication that National Highways was consulted. This is not therefore the same as having no objection from such consultees.
21. The site has a direct access from the A19, a road which the appellant's information identifies as one which carries a relatively high volume of traffic including HGVs. In addition, the site is located in a rural location where HGVs and tractors are not unusual. Based on the appellant's information, I consider that the likely increase in traffic as a result of the proposal would be modest. Paragraph 111 of the Framework states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. Policies IC2 and EG7 of the Local Plan also seek to ensure that traffic from development can be accommodated safely and satisfactorily. There is no evidence to indicate that there would be unacceptable impacts on highway safety or a severe residual cumulative impact.
22. There are two residential properties relatively close to the site, with the village of Thormanby around 900 metres away. The proposal would not change the operation or appearance of the AD facility. Consequently, there would be no material change to the living conditions of residents with regard to noise or odour from the plant, or outlook.
23. The proposal would result in only a modest number of additional vehicle movements to the surrounding highway network. One of the nearby properties does sit quite close to the site access road. However, vehicles from the farms named in condition 3 will be travelling along this road already. The proposal would displace some of the existing vehicles using the site access road rather

than creating a significant increase in vehicle numbers. The traffic arising from the proposal would not therefore lead to an unacceptably harmful impact on the living conditions of the nearest residents from a noise or disturbance point of view.

24. Part of the reason why the original proposal was found to be acceptable in this location was that it would support traditional land-based activities. To ensure that this remains the case, and to accord with the Council's strategy for development in the countryside as set out in Policies S5 and EG7 of the Local Plan, it would be appropriate to retain that part of condition 3 that specifies the nature of the feedstock. This would need to be amended to include liquid feedstock. However, for the reasons given, and in accordance with Policy RM6 of the Local Plan, the overall impact arising from widening the feedstock sources would not be unacceptable when weighed against the benefits of a more efficient renewable energy operation.
25. In terms of condition 4, the Council accepts that its use of the word 'waste' is unclear. It does appear that it has caused some confusion, especially given that 'waste' has particular connotations when considering the environmental permitting process. The Council has clarified that what was meant was feedstock. This makes sense when considering the condition as a whole. The condition was clearly meant to apply not just to the outputs from the AD facility but also the feedstock.
26. It would therefore be necessary to retain condition 4 as it provides control over where material is stored, in particular in the interests of living conditions of nearby residents and in line with Policy E2 of the Local Plan. However, it would need to be varied to avoid any potential conflict with the separate permission granted for the liquid feedstock/additive tank within the red line planning application boundary of the AD facility.
27. I therefore conclude that condition 4 should be varied in line with the wording suggested by the Council. This condition would not prevent the ability to inject feedstock directly into the digester tanks if required.

Conditions

28. The Planning Practice Guidance makes clear that decision notices for the grant of permission under Section 73 should also restate the conditions imposed on earlier permissions that continue to have effect.
29. The Council has provided a suggested list of conditions in the event that the appeal is allowed. I have considered these, having regard to the six tests set out in the Framework, and have amended the wording of certain conditions in that light (without altering their fundamental aims).
30. The Council's list of conditions includes a number that require the submission of further details for approval relating to landscaping and materials. As I have no information before me about the status of these conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties. Based on the submitted information and my own observations, the original development has been started. In this case, as the operative part of the permission would be the same, I do not need to re-impose the time limit condition.

Conclusion

31. For the reasons given, I conclude that conditions 3 and 4 are necessary but should be varied in the manner set out above. Accordingly, the appeal is allowed.

F Wilkinson

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The permission hereby granted shall not be undertaken other than in complete accordance with the drawings and details received by Hambleton District Council on 12 August 2014, 14 August 2014, 11 March 2015 and 5 May 2015.
- 2) No feedstock shall be used in the anaerobic digestion and combined heat and power facility hereby permitted other than farm manure, arable crops and liquid feedstock.
- 3) No feedstock or digestate associated with the anaerobic digestion and combined heat and power facility shall be stored on site except in the silage clamps, manure clamp, digestate tanks and the digestate storage lagoon as shown on drawing number 14T708-100 and in the liquid feedstock/additive tank approved under application 20/02203/FUL as shown on drawing number P101 Rev A.
- 4) The development shall be formed within a minimum 750mm freeboard to the digestate storage lagoon and the buildings shall be formed with slab level no more than 200mm above the existing ground levels the details of which shall be recorded relative to Ordnance Datum upon the commencement of development.
- 5) The development shall not be occupied until a detailed landscaping scheme indicating the type, height, species and location of all new trees and shrubs has been submitted to and approved in writing by the Local Planning Authority. No part of the development shall be used after the end of the first planting and seeding seasons following the approval of the landscaping scheme, unless the approved scheme has been completed. Any trees or plants which, within a period of 5 years of planting die, are removed, or become seriously damaged or diseased, shall be replaced with others of similar size and species.
- 6) Prior to the construction of any building or structure, details of the colour of the materials to be used in the construction of the external surfaces of the development shall be made available and samples provided on the application site for inspection if requested, and if requested the Local Planning Authority shall be advised that the materials are on site. Once approved the development shall be constructed of the materials in the approved colour and be thereafter retained in accordance with the approved details.