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# Appeal Decision

Hearing held on 4 April 2023

Site visit made on 4 April 2023

**by Mr M Brooker DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 22 June 2023**

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## **Appeal Ref: APP/H0520/W/21/3288486**

### **Wansford Station Yard, Great North Road, Stibbington PE8 6LR**

- 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 Pure Fuels (North) Ltd against Huntingdonshire District Council.
  - The application Ref 20/00786/FUL, is dated 29 April 2020.
  - The development proposed is the change of use of buildings to accommodate a biofuel production unit (B2 use) and a haulage and distribution use within surrounding yard.
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### **Decision**

1. The appeal is dismissed and planning permission for the change of use of buildings to accommodate a biofuel production unit (B2 use) and retention of existing haulage and distribution use within surrounding yard is refused.

### **Applications for costs**

2. Applications for costs against both the Appellant and the Council have been submitted by Mr Steve Rattle, representing various local residents. These applications are subject of separate decisions.

### **Preliminary Matters**

3. The description of development detailed on the application and appeal forms referred to the "...retention of existing haulage and distribution use within surrounding yard". It was confirmed at the hearing that the appellant is specifically seeking planning permission for the haulage and distribution use in addition to the biofuel production unit.
4. I have therefore amended the description detail in the banner above in the interests of clarity. All parties at the hearing confirmed that they were satisfied that they were consulted on and not prejudiced by the inclusion of the haulage and distribution use and I have no substantive reason to conclude otherwise.
5. I saw at the site visit that the biofuel production unit and haulage and distribution use are already operating from the site, and I have determined the appeal on that basis.
6. There is some dispute between the parties with regards the lawful use of the appeal site. Reference was made to old planning permissions and Lawful Development Certificates. It is not my role, in the determination of this appeal, to establish the lawful use of the site. The planning system provides, under section 192 of the Town and Country Planning Act 1990, the opportunity to an

applicant to apply to a local planning authority for a certificate confirming an existing use of land, or some operational development, or some activity being carried out in breach of a planning condition, is lawful for planning purposes.

7. The appeal follows the failure of the Council to determine the application within the prescribed period. The Council have since resolved that, were they the determining authority, they would have resolved to grant planning permission<sup>1</sup>.

## **Main Issues**

8. The main issues are the effect of the proposed development on:
  - i. living conditions of neighbours to the site with particular regards to odour
  - ii. living conditions of neighbours to the site with particular regards to noise and disturbance
  - iii. human health and well-being of neighbours to the site
  - iv. the setting of the adjacent Grade II listed properties.

## **Reasons**

### *Odour*

9. Policy LP14 of the Huntingdonshire Local Plan (adopted May 2019) refers to maintaining a high standard of 'amenity' and specifically refers to the effects of odour and the protection of users and occupiers of neighbouring land and buildings. Policy LP10 refers to development in the Countryside, which includes the appeal site, and requires that new development recognises the intrinsic character of the countryside and not give rise to noise and odour amongst other matters.
10. The local residents and appellant appear to be diametrically opposed on the matter of odour. At the hearing, the local residents described a situation where they have had to undertake extreme measures, including the sealing of windows, against what they describe as a 'pervasive odour' from the biofuel production unit.
11. While the appellant has not submitted an assessment of the odour effects of the appeal scheme an Odour Management Plan has been included and the appellant also points to a Permit issued by the Environment Agency (EA) for the biofuel production operation at the site, including standing rules that amongst other matters refer to odour.
12. The operation at the site has been the subject of numerous complaints by local residents and investigations by the EA. A letter from the EA dated 3 April 2023, submitted at the hearing, details that while there had been substantiated odours off site, failures in housekeeping and the building fabric that amounted to breaches in permit conditions, the site "was back in compliance" with the permit by mid-September 2021. Subsequently, the letter states, a further 119 complaints regarding Pure Fuels' permitted activities are referred to in the letter but none of which were "substantiated as directly relating to Pure Fuels' permitted activities".

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<sup>1</sup> Paragraph 1.5 'LPA response to Grounds of Appeal'

13. Further comments from the EA, summarised in the Officers report to committee<sup>2</sup> details that "Residents living in close proximity to Pure Fuels will always be exposed to some occasional odour from the operations" and the EA consider that the 'low level odours' detected are not likely to cause pollution.
14. Local residents commissioned consultants to produce two Odour Assessments<sup>3</sup>. While now somewhat dated, the assessments do identify an odour effect from the appeal scheme outside of the site boundaries including near to the residential properties.
15. At the site visit I noted a distinct odour similar to that usually associated with used cooking oil between the rear boundary wall of railway cottages and the boundary of the appeal site. On site, I also noted an odour and within the building it was apparent that while the operation may well be sophisticated it was not a sealed process, as evidenced by the oil like substance that covered many of the Intermediate Bulk Carriers, the slippery floor and indeed the operatives working in the building, with a resulting odour.
16. The appellants detailed at the hearing that the fabric of the building played an important role in preventing the escape of odour. At the site visit I saw that some apertures in the building have been patched in a somewhat rudimentary fashion and that the building did not appear to provide a comprehensive and robust seal to the outside environment.
17. While it is undoubtable that the operation of the Nene Valley Railway Museum (NVRM) adjacent to the appeal site generates odours of its own, these would generally be distinctly different from those likely to have been generated by the uses on the appeal site.
18. Therefore, on the basis of the evidence before me, in particular the detailed evidence from local residents as to the level of odour from the appeal site and in the absence of persuasive evidence from the appellants to the contrary, I find that on balance that the odour generated by the biofuel production unit does harm the living conditions of the neighbouring residents in that regard. Thus, the appeal scheme is contrary to the provisions of Policy PL14 and Policy PL10 of the Huntingdonshire Local Plan in so far as they relate to odour.

#### *Noise and Disturbance*

19. The existing noise environment around the appeal site includes of the ongoing operations on the appeal site, the operations at the NVRM and the adjacent road network, including an elevated section of the A1 Road.
20. The submitted plans show, and I saw at the site visit, that the access to the appeal site is located in particularly close proximity to the neighbouring residential properties, passing directly in front of the front door of one of the properties. The appeal site thereafter stretches away from the residential properties but adjacent to the NVRM.
21. It was discussed at the hearing that there is a Noise Abatement Notice in place at the site. The Notice prohibits Heavy Goods Vehicle (HGV) activity overnight between 11pm and 7am. I note that residents complained at the hearing that

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<sup>2</sup> Officer report and updates for Development Management Committee 25<sup>th</sup> April 2022

<sup>3</sup> Odour sniffing assessment of the Pure Fuels facility in Stibbington - June 2017 dated 18 July 2017 & Odour sniffing assessment of the Pure Fuels facility in Stibbington dated 29th June 2017

the Notice has been 'repeatedly' breached and that they have continued to experience noise impacts from the operations on the appeal site.

22. The appellant has submitted a Noise Assessment<sup>4</sup> that focuses upon the biofuel production facility referencing an application to the EA for a low impact license and a Noise Management Plan. The report concludes, amongst other matters, that "the risk of reasonable cause for annoyance to residents at Railway Cottages to be low during daytime (07:00-23:00hrs) periods".
23. However, as a result of the absence of detailed assessment of the appeal scheme as a whole, the appellant's noise assessment is of limited assistance in determining the effect of the appeal scheme on the living conditions of the occupiers of neighbouring properties.
24. The neighbours to the appeal site have submitted their own Noise Assessment<sup>5</sup>, that is also somewhat dated but nonetheless identifies "High noise levels have been measured on three consecutive days in the garden of 10 Great North Road". Though these measurements were unattended and thus the source(s) have not been identified. Without clear identification of the noise source, whether HGV, NVRM, biofield process or some other source, the usefulness of this Assessment in determining the acceptability or otherwise of the appeal scheme is limited.
25. On the basis of evidence before me and my observations at the site visit, I am satisfied that as result of close proximity of residential properties to appeal site, in particular access and the need to have served Noise Abatement Notice in the past, and the nature of the operations taking place at the site, there is a noise impact from the appeal scheme on the occupiers of the neighbouring properties.
26. Furthermore, the substantive evidence before me does not satisfactorily demonstrate that the appeal scheme as proposed can operate without unacceptably impacting on living conditions of residents, with particular regards to noise. I therefore find that in this regard the appeal scheme is contrary to Policies Policy LP10 and LP14 of the Huntingdonshire Local Plan in so far as they relate to noise and disturbance.

#### *Health and Well-being*

27. Local residents have referred to a number of incidents and issues at the site that they feel has affected their health and well-being beyond the odour and noise effects referred to previously.
28. These incidents are referred to in the local resident's Appeal Statement<sup>6</sup> as including a "'fire' in late 2017; an 'explosion' at 17:04 on the 17th April 2019 which resulted in life changing injuries to 1 person; and another 'fire' on the 28th November 2018." Local residents have provided<sup>7</sup> a copy of what is described as "Fire Service Post Fire Audit" which details a number of deficiencies to be addressed in order to comply with the relevant legislation.

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<sup>4</sup> Sharps Redmore Noise Management Plan-Supplementary Information – SUPPORTING STATEMENT Appendix 3

<sup>5</sup> Environmental Noise Monitoring at 10 Great North Road, Stibbington, ACOUSTIC ASSOCIATES (PETERBOROUGH). June 2017

<sup>6</sup> APPEAL STATEMENT OF LOCAL RESIDENTS AS A THIRD PARTY

<sup>7</sup> APPEAL STATEMENT OF LOCAL RESIDENTS AS A THIRD PARTY – Appendix 22

29. Furthermore, residents have also referred to vehicle movements and damage to the stone pillar that was attached to the residential property adjacent to the access.
30. The local resident's Appeal Statement details, at paragraph 161, that "these incidents have generated genuine and real fear and apprehension amongst local residents for their public safety." Furthermore, representations have been made by local residents to the effect that their rights under Article 1 of the Human Rights Act 1998 would be violated if the appeal were to be allowed. However, as I have decided to dismiss the appeal, my decision would not lead to any violation.
31. The appellant refers<sup>8</sup> to a fire safety audit of the site by Cambridgeshire Fire and Rescue Service and assessments by the Health and Safety Executive. These are in addition to the visits by the Environment Agency and the requirements of the EA issued Permit that is in place. Two incidents are acknowledged as relating to the operation of the site with the third being unrelated.
32. Correspondence<sup>9</sup> between appellant and the Health and Safety Executive details that a number of improvements were required. At the hearing, the appellants confirmed that the operation of the site was now fully compliant.
33. As a result of the above, I find that the local resident's concerns do not appear as being without foundation and as such, I afford them some weight. Nonetheless, there does not appear to have been a repeat of the incidents recently and a number of public agencies have been involved with the site and operation to ensure compliance with the relevant legislation.
34. I saw at the site visit that the stone pillar referred to previously has now been removed from the site, but it was discussed at the hearing that both the Council and appellant are taking appropriate steps to reintroduce it. Residents clearly have some ongoing concern as to the safe operation of the access to the appeal site. However, I have no substantive evidence before me to suggest that the access is unsafe such that would justify the dismissal of the appeal on that ground.
35. I have no substantive evidence before me to demonstrate that the appeal proposal results in such a risk or harm to public health as to justify the dismissal of the appeal on that ground. I am therefore satisfied that in this respect the appeal scheme is not contrary to the provisions of Policy PL14 and Policy PL10 of the Huntingdonshire Local Plan with regards Health and Well-being.

### *Heritage*

36. At the hearing it was noted that there are a number of Grade II listed properties within the local area around the appeal site, including 6, 10, 12, 18 and 20, Old Great North Road; the 1846 Station Building at Wansford Station; Wansford Railway Tunnel circa 500 metres West of Wansford Station; and the Signal box to the east of Wansford Railway Station. Hereafter referred to as the Designated Heritage Assets (DHA).

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<sup>8</sup> Appellant's Statement of Case

<sup>9</sup> Appellant's Statement of Case – Appendix K

37. The significance of these DHA is derived primarily from their architectural and historic qualities and from their association with the railway, now a heritage railway operation. The appeal site is located in close proximity to these properties, in particular almost enveloping the entire of the front elevation of the 1846 station building that forms a boundary with the appeal site. Given the above, I find that the appeal site forms part of the setting of these DHA.
38. Paragraph 199 of the National Planning Policy Framework (the Framework) advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to their conservation
39. It was discussed that the hearing that it was the Council's opinion that the exposure of what was described as 'non-railway odours', specifically from the biofuel production unit, harmed the setting of the listed buildings. Furthermore, I saw that vehicle trailers were parked in close proximity to the 1846 station building significantly obscuring the building.
40. At the hearing the main parties agreed that the appeal scheme would result in less than significant harm to the designated heritage assets and on the basis of the evidence before me I find no substantive reason to conclude otherwise. As discussed at the Hearing, if there is a sliding scale within the category of less than substantial harm, the proposal would be somewhere between the lower end, though third parties suggested the harm was somewhat higher.
41. This does not equate to a less than substantial planning objection. Even if the proposal is at the lower end of any sliding scale of less than substantial harm to the significance of a listed building, this is nevertheless of considerable importance and weight.
42. Paragraph 200 of the Framework advise that significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting and that this should have a clear and convincing justification.
43. The appellant is of the opinion, as presented at the hearing, that the proposal would be beneficial because the biofuel production unit produces low carbon fuel, sufficient for 2 million kilometres a year. Furthermore, it was discussed at the hearing that the existing operation served as a research and development facility that is proving the effectiveness of the process and use of the fuel in a 'real world setting'. As such, the appeal scheme could lead to greater use of such fuel in the wider transport sector where 'decarbonising' is widely acknowledged to be challenging. This is a material consideration that weighs in favour of the appeal scheme, and I afford it moderate weight.
44. When the public benefits of the proposals are weighed with the less than substantial harm to the significance of the DHA, I find that the balance tips against granting permission on the basis of the effect of the proposed development on the adjacent DHA.
45. In reaching this finding, I have considered the planning history of the site including the Certificate of Lawful Existing Use or Development (CLEUD) which is referred to under other matters, but the appellant is nonetheless expressly seeking planning permission for the haulage and distribution use in addition to the biofuel production unit.

46. The appeal scheme is therefore contrary to the provisions of Policy LP34 of the LP that, amongst other matters, seeks to protect the conservation of heritage assets and their settings and the guidance set out in the Framework.

### **Other Matters**

47. The appellant details<sup>10</sup> that the site benefits from a CLEUD. I understand the CLEUD refers to the "retention of use as haulage contractor's storage and distribution yard, painting, repair and reconditioning of commercial vehicles (workshop and paint store) and ancillary office accommodation".
48. The appellant acknowledges that following the granting of the CLEUD the site has been occupied by a number of commercial uses including "haulage, storage and distribution; spray painting and repair of HGVs and other vehicles; the storage of vehicles for scrapping and breaking including the sale of spare car parts and scrap metal and the collection storage and processing of waste engine oil; office uses; the tuning and manufacture of go karts and the manufacture and repair of roller shutter doors and associated metal Works".
49. On the basis of the evidence before me I am not satisfied that it has been demonstrated that the CLEUD renders the appeal scheme lawful. Furthermore, it has not been demonstrated that the lawful use detailed in the CLEUD would result in greater or more harmful impacts than the appeal scheme and as such does not form a valid fallback position.
50. In any event the appellant has sought planning permission for the appeal scheme, and I have determined the appeal on that basis.
51. I have considered whether the imposition of suitably worded conditions could sufficiently mitigate the harmful effects of the appeal scheme, such that planning permission could be granted. Although not requested by the parties I have also considered issuing a split decision.
52. However, in light of the discussion at the hearing regarding the desire to regularise all of the development on the site and the inability of the haulage element of the appeal scheme, in particular, to operate with any greater restrictions than that already imposed by the Noise Abatement Notice I have discounted these options.

### **Conclusion**

53. For the reasons given above I conclude that the appeal should be dismissed.

*Mr M Brooker*

INSPECTOR

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<sup>10</sup> Appellants Statement of Case – paragraph 2.2

## **APPEARANCES**

### **FOR THE APPELLANT:**

Mr Edmund Clover  
A Freeman  
T Lasica

### **FOR THE LOCAL PLANNING AUTHORITY:**

Kate Penn  
Richard Sakyi  
Louise Brown

### **INTERESTED PARTIES:**

Eloisa Smith  
Thomas Smith  
Stephen Rattle  
Anthony Northcote  
Simon Blanchard  
Chris Fields  
Cllr Simon Bywater

## **DOCUMENTS**

**Letter from Environment Agency dated 3 April 2023**

**Decision**

**The submissions for [name of applicant]**

**The response by [name of respondent]**

**Reasons**

**Costs Order [where awarding costs]**