



Appeal Decision

Site visit made on 19 December 2023

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 January 2024

Appeal Ref: APP/Y1138/W/23/3323381

Red Linhay, Crown Hill, Halberton, Tiverton EX16 7AY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr J Clapp against the decision of Mid Devon District Council.
- The application Ref 22/00868/MFUL, dated 8 May 2022, was approved on 8 December 2022 and planning permission was granted subject to conditions.
- The development permitted is removal of condition 13 of planning permission 17/01142/FULL - further noise assessments.
- The condition in dispute is No 13 which states that: *The operator is to provide a further noise assessment demonstrating that the screening and acoustic panelling/boxes are adequate and provides enough protection to ensure that the typical minimum background sound level as set out in condition 12 above is not breached from the operation of the Anaerobic digester plant. This assessment must be submitted to the planning authority within 6 months from the date of this permission. Should this assessment identify that suitable noise mitigation has not been provided the operator shall at its expense, within 21 days or such longer period as approved by the Local Planning Authority, undertake an assessment of the noise in accordance with the requirements of the Local Planning Authority. Where the assessment information confirms that the noise levels from the operation of the plant are above the limits specified in Condition 12 of this decision notice, the operator shall carry out works to mitigate such effects to comply with the noise condition, details of which shall have first been submitted in writing and approved in writing by the Local Planning Authority.*
- The reason given for the condition is: *To minimise the potential for pollution and disturbance to local amenity, in accordance with Policy DM4 of the Mid Devon Local Plan 2013-2033.*

Decision

1. The appeal is allowed and planning permission is granted for variation of condition 13 of planning permission 17/01142/FULL - further noise assessments at Red Linhay, Crown Hill, Tiverton, EX16 7AY in accordance with the terms of the application, Ref 22/00868/MFUL, dated 8 May 2022, subject to the conditions in the attached schedule.

Preliminary Matters

2. Planning permission was granted at the appeal site for the erection of a 500kW anaerobic digester and associated works, to include silage clamps. From the evidence, it appears that numerous applications were made to vary aspects of the permission, through varying the conditions or the plans referred to in the conditions.
3. Planning permission was granted under Ref 17/01142/FULL on 5 October 2017 to vary condition 9 of an earlier permission for the anaerobic digester (Ref 16/01180/FULL). Condition 9 referred to the location and source of feedstock

and the subsequent ultimate destination of digestate from the anaerobic digester. For the sake of simplicity, I refer to this as the First Variation.

4. The permission given under the First Variation was subject to two noise conditions; condition 12 and condition 13.

5. Condition 12 states:

Noise emissions from the Red Linhay Anaerobic Digester site at the nearest noise-sensitive locations are not to exceed the decibel levels stipulated below, day or night.

Daytime Noise Level 07.00am - 23.00pm shall not at the boundary of any noise sensitive premises exceed the decibel level 41 dB (LAeq1hr)

Night-time Noise Level 23.00pm - 07.00am shall not when measured at 3.5m from the façade of any noise sensitive premises exceed the decibel level 33 dB (LA90 15min).

Daytime (Evening) & Night-time Noise Level 19.00pm - 23.00pm the Maximum Instantaneous Noise Level shall not when measured at 3.5m from the façade of any noise sensitive premises exceed 55 dB(LAFmax) evening (19.00-23.00hrs) and night-time (23.00-07.00hrs).

**(From the noise data supplied) The average daytime background noise level is 36 dB (LA90 1hr) plus 5 dB exceedance. The average night-time background noise level is 28 (LA90 15min) plus 5 dB exceedance.*

6. Condition 13 of the First Variation permission states:

The operator is to provide a further noise assessment demonstrating that the screening and acoustic panelling/boxes are adequate and provides enough protection to ensure that the typical minimum background sound level 22dB (LA90 15min) is not breached from the operation of the plant. This assessment must be submitted to the planning authority within 5 months from the Operational commencement of the AD unit ("Operational" shall mean the first production of electricity to be exported to the grid confirmed as the 1st June 2017).

A copy of the findings from the assessment and all recorded data and audio files obtained as part of the assessment shall be provided to the Local Planning Authority (in electronic form) within 28 days of completion of the analysis.

Where the assessment information confirms that the noise levels from the operation of the plant are above the typical minimum background sound level 22dB (LA90 15min) within any amenity areas 3.5m from the façade of any noise sensitive properties, the operator shall carry out works to mitigate such effects to comply with the noise condition, details of which shall have first been submitted in writing and approved in writing by the local Authority.

The assessment and any such noise mitigation works shall be completed within 6 months from the date of notification and be so retained. The date of notification is the date the operator is informed in writing by the Local Planning Authority detailing the inadequate screening.

7. The reason given for both Conditions 12 and 13 is as follows: To minimise *the potential for pollution and disturbance to local amenity, in accordance with policy DM7 of the Local Plan Part 3 (Development Management Policies)*.
8. The appeal application sought to remove condition 13 of the First Variation permission. The Condition was varied instead of removed and the new Condition 13 below, was imposed on what shall be referred to as the 'Second Variation Permission':

The operator is to provide a further noise assessment demonstrating that the screening and acoustic panelling/boxes are adequate and provides enough protection to ensure that the typical minimum background sound level as set out in condition 12 above is not breached from the operation of the Anaerobic digester plant. This assessment must be submitted to the planning authority within 6 months from the date of this permission.

Should this assessment identify that suitable noise mitigation has not been provided the operator shall at its expense, within 21 days or such longer period as approved by the Local Planning Authority, undertake an assessment of the noise in accordance with the requirements of the Local Planning Authority.

Where the assessment information confirms that the noise levels from the operation of the plant are above the limits specified in Condition 12 of this decision notice, the operator shall carry out works to mitigate such effects to comply with the noise condition, details of which shall have first been submitted in writing and approved in writing by the Local Planning Authority.

9. Since the appeal was lodged, another variation application has been submitted and granted under Ref 23/01141/FULL (decision date 24 November 2023) (the Third Variation Permission). This has resulted in a new condition 13 as follows:

13. The operator shall provide to the local planning authority a further noise assessment within 1 month of the date of this permission. The assessment shall be undertaken by a suitably qualified noise consultant, shall cover all site noise sources, and shall demonstrate whether the limits specified in Condition 12 are complied with. The assessment shall also include details of noise mitigation works already carried out, and of any further works necessary.

Where the assessment findings show that any noise levels from the operation of the site are above the limits specified in Condition 12 of this decision notice, the operator shall, within 3 months of the noise assessment, carry out works to mitigate such effects to comply with Condition 12, details of which shall have first been submitted to and approved by the Local Planning Authority.

Main Issue

10. The main issue is whether the condition is necessary and reasonable having regard to the living conditions of neighbouring occupiers and the effects of noise.

Reasons

11. The appeal application was made on 8 May 2022 and sought to remove Condition 13 from the First Variation Permission in its entirety. The Appellant's Statement refers to Condition 12 as being enforceable and generally reasonable, in contrast to Condition 13 which was considered unenforceable and unreasonable, but also at odds with Condition 12 given that they refer to conflicting noise limit requirements.
12. In granting permission for the Third Variation Permission, the Council has remedied the inconsistency with the noise limits, which is a logical outcome. However, correspondence provided to me indicates that the Appellant still considers the time limit given for compliance is unreasonable. It is suggested that more time will be needed to instruct a noise consultant to position the equipment for a period of 14 or more days, the process of which may be hindered by particularly poor weather. Then on completion of the data collection, a report would still need to be compiled and submitted.
13. I accept that the Council require the requirements of the condition to be addressed expeditiously, particularly due to the alleged inaction since the earlier grant of permission for the anaerobic digester with the corresponding condition. Ultimately, I agree that it is in the public interest to ensure that the noise limits specified in Condition 12 are not breached and that the expense of assessing compliance with its stated noise limits should be borne by the Appellant who has previously accepted such a responsibility. Thus, in my view, the objectives of Condition 13 are reasonable. However, I consider that precision and enforceability are key and the adjustment to a timeframe of 3 months for compliance would be more reasonable, given the need for any appointed consultant to fit the assessment and associated analysis into any existing work programme. I have consulted with the parties on the rewording of the condition to define its scope and the way in which it can be made more robust, in line with conditions typically used for such purposes.

Conditions

14. For the reasons set out above, it is necessary to reimpose all conditions that were previously imposed save for Condition 13, which is varied.

Conclusion

15. For the foregoing reasons, the amended Condition is necessary and reasonable to make the development acceptable in planning terms. The appeal is therefore allowed.

H Nicholls

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the approved plans listed below:
 - Proposed WIN01_RE_SLb_00 1 Site Location Plan 15/12/2015
 - Proposed WIN01_RED LINHA Y_S73_ELO_004 Elevation - Overview 26/08/2016
 - Proposed WIN01_RED LINHA Y)S73_ELN_004 North Elevation 26/08/2016
 - Proposed WIN01_RED LINHA Y_S73_ELS_004 East Elevation 26/08/2016
 - Proposed WIN01_RED LINHA Y_S73_ELS_004 South Elevation 26/08/2016
 - Proposed WIN01_RED LINHA Y_S73_ELSP_004 South with Planting Schedule
 - Proposed WIN01_RED LINHAY_73_ELW_004 West Elevation 26/08/2016
 - Supporting Information Transport Statement 20/08/2015
 - Supporting Information Manure Management Plan 20/08/2015
 - Supporting Information Nutrient Management Plan 20/08/2015
 - Supporting Information REVISED Noise Assessment 02/11/2015
 - Supporting Information SUPPLEMENTAL Noise Assessment 6/11/2015
 - Travel Assessment AMENDED Transport Assessment 02/01/2016
 - Proposed WIN01_RE_DRAINAGE Drainage Layout 03/12/2015
 - Supporting Information Acoustic Report 19/08/2016
 - Supporting Information VERSION 2 Odour Management 19/08/2016
 - Supporting Information PHOTOGRAPHS Low Level Motor Cover 29/11/2016
 - Supporting Information Noise Barrier System 29/11/2016
 - Noise and Vibration Noise Assessment 06/12/2016
 - Travel Assessment 31/08/2017
- 2) The colour and finish of the building materials (including the digester dome) shall be retained in accordance with the details as submitted and approved in writing by the Local Planning Authority on 27th October 2016 pursuant to 15/01034/MFUL (Drawing nos. WIN01_HA2_EL_W__001, WIN01_HA2_EL_S_001, WIN01_HA2_EL_E_001, WIN01_HA2)EL_N_001, WIN01_HA2_EL_O_002, WIN01_RE_RETAINING WALLS).
- 3) All works and operations shall take place in accordance with the Operational Traffic Management Plan in the agreed parameters as set out under condition 4 of 16/01180/FULL that was received March 2017. The date the plant first became operational ("Operational" shall mean the first production of electricity to be exported to the grid which has been confirmed as 1st June 2017).
- 4) The completed passing bay on Crown Hill is to be retained in accordance with the approved plans "The Passing Bay scale 1:250 and dated 10.02.2015; and The Passing Bay Position scale 1:250 dated 10.03.2015" as set out in 13/01605/MFUL.
- 5) There shall be no storage of chicken and farmyard manures or slurry within the application site except within the liquids buffer tank and feeder hopper (triolet) serving the AD digester approved as part of this planning application.
- 6) All hedgerows within or on the boundary of the site located to the north west of the site and east adjacent to the highway shall be retained and maintained to a minimum height of 2 metres. Any trees or plants die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

- 7) The external lighting shall be retained in accordance with details agreed under condition 4 of 16/01180/FULL received March 2017.
- 8) i) The feedstock and approved quantities for the anaerobic digester shall be slurry (2,000 tonnes), farmyard and chicken manure (3,000 tonnes), grass and arable crops (8,925 tonnes) only, originally sourced from the sites named in Transport Statement(s) of application 17/01142/Full (Hartnoll Farm 62.13ha, Manley Lane 37.60ha, plots 1-13 41.48ha, Maunders 7.71ha, Wellington 23.55ha and Blocks A 19.92ha and B 96ha and shown on plans/aerial photos, Drawing numbers 13425/T04 Revision A 13425/T05 Revision A set out in the approved transport statement date stamped 21st August 2015 under application 15/01034/MFUL and Drawing 3 set out in the approved transport statement date stamped 15th August 2017 and ii) The ultimate destination for the digestate from the anaerobic digester shall be to the sites named in the Transport Statement of application 17/01142/Full Hartnoll Farm 62.13ha, Manley Lane 37.60ha, plots 1-13 41.48ha, Maunders 7.71ha Blocks A 19.92ha and B 96ha only and shown on plan/aerial photos Drawing numbers 13425/T04 Revision A and 13425/T05 Revision A set out in the approved transport statement date stamped 21st August 2015 under application 15/01034/MFUL and set out in the approved transport statement date stamped 15th August 2017. iii) A log book shall be maintained and completed detailing where and when the feedstock(s) for the AD plant have come from and where, when and mode of transport of the digestate leaving the site. The Log book shall record name of farm, plot, supplier, number and gross and net weight of vehicles along with date and time of feedstock delivery / digestate distribution. iv) No other sites are to be utilised for either feedstock source or digestate destination. Such log book records shall be submitted to the Local Planning Authority quarterly or within any other frequency as requested by the Local Planning Authority. v) Records of feedstock input into the digester by weight from the hopper (triolet) shall be kept and submitted to the Local Planning authority in writing quarterly or within any other frequency as requested by the Local Planning Authority.
- 9) The storage of digestate or other hazardous substances must be within the properly constructed bunded areas of sufficient capacity and containment, as approved in plan number WIN01_Redlinhay3_PP_002 under application 16/01180/FULL. Such approved scheme shall be so retained.
- 10) The planting scheme and Bund shall be retained and fully implemented in accordance with details agreed within condition 12 under application 16/01180/FULL (Drawing no. WIN01_RE3). Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.
- 11) The emergency flare stack shall not be operated for maintenance or for testing purpose except between 0700 and 1700 hours on any day (not including Bank Holidays).
- 12) Noise emissions from the Red Linhay Anaerobic Digester site at the nearest noise sensitive locations are not to exceed the decibel levels stipulated below, day or night. Daytime Noise Level 07.00am - 23.00pm shall not at the boundary of any noise sensitive premises exceed the decibel level 41 dB (LAeq1hr).

Night-time Noise Level 23.00pm - 07.00am shall not when measured at 3.5m from the façade of any noise sensitive premises exceed the decibel level 33 dB (LA90 15min). Daytime (Evening) & Night-time Noise Level 19.00pm - 23.00pm the Maximum Instantaneous Noise Level shall not when measured at 3.5m from the façade of PEFULZ any noise sensitive premises exceed 55 dB(LAFmax) evening (19.00-23.00hrs) and night-time (23.00-07.00hrs).

*(From the noise data supplied). The average daytime background noise level is 36 dB (LA90 1hr) plus 5 dB exceedance. The average night-time background noise level is 28 (LA90 15min) plus 5 dB exceedance.

- 13) Within 3 months of the date of this permission, the operator shall provide to the Local Planning Authority, a further noise assessment. The assessment shall be undertaken by a suitably qualified noise consultant, shall cover all noise sources relevant to the Anaerobic Digester, and, with reference to existing attenuation measures, shall demonstrate whether the limits specified in Condition 12 are complied with.

Where the assessment findings show that any noise levels from the operation of the site are above the limits specified in Condition 12 of this decision notice, the operator shall specify further works within the assessment to ensure compliance with the limits specified in Condition 12. The noise assessment, and any necessary works shall be approved in writing by the Local Planning Authority.

Unless within 3 months of the date of this decision, the noise assessment [and, if necessary, details of further works] is submitted in writing to the Local Planning Authority for approval, and unless the approved works are implemented and completed within 3 months of the Local Planning Authority's approval, the use of the anaerobic digester shall cease and all equipment and materials brought onto the land for the purposes of such shall be removed until such time as a scheme is approved and implemented.

If within 6 months of the submission of the noise assessment [and, if necessary, details of further works] the local planning authority refuse to approve it or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

If an appeal is made in pursuance of above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

The approved details shall have been carried out and completed within 3 months of the date of approval.

Upon implementation of the approved works specified in this condition [where necessary], those works shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 14) Heavy and light Goods vehicles along with plant under the control of the operators which deliver waste, remove digestate or biofertiliser or operate at the site (the site is the area set out on the approved location plan outlined in

red) shall only use non-intrusive broadband(white noise) vehicle noise alarms and/or reversing cameras. On such vehicles, there shall be no use of single or multi-pitch reversing beepers.

- 15) Written notification confirming the cessation of operations is to be given to the Local Planning Authority 3 month prior to the cessation of the use of the Anaerobic Digester plant hereby approved.
- 16) On the cessation of the use of the Anaerobic Digester plant hereby approved, the site shall be cleared of all buildings and structures, hardstandings bunds and any wastes within a period of six months from the date of cessation. After removal of the above, the surface of the site shall be regraded and be covered with topsoil to a depth of 500mm within a period of three months. The site shall then be planted in accordance with details to be agreed in writing by the Local Planning Authority.
- 17) The visibility splay at the site entrance shall be retained in accordance with plan 13425/T03 approved under planning permission 13/001605/MFUL with no obstructions within the visibility area over 1m above the adjacent carriageway level. It shall thereafter be so maintained for that purpose.
- 18) The approved system Foscam F19900P or equivalent to monitor the barrier and access to the site is to be retained and maintained operational such results of the monitoring system shall be submitted to the Local Planning Authority quarterly or within any other frequency as requested by the Local Planning Authority. The approved system is to be so retained.
- 19) The permission hereby granted is for a 500kw anaerobic digester only. Power generation from the development shall not exceed 500kw averaged over a quarterly period (such quarterly period to commence from the first Feed In tariff submissions and continue thereafter). Such records of power generation shall be kept and submitted quarterly in writing to the Local Planning Authority.
- 20) The Local Planning Authority shall be afforded access at reasonable times to all on site monitoring systems associated with the operation of the AD plant hereby granted.
- 21) The PF5000 Heavy Duty Manual Raise Barrier shall be retained in accordance with plan Drawing A Camera and Barrier dated 19th January 2017 agreed under 16/01180/FULL.

---END OF SCHEDULE---