



Appeal Decision

Hearing held on 25 June 2013

Site visit made on 25 June 2013

by **Mike Robins MSc BSc(Hons) MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 26 July 2013

Appeal Ref: APP/Y1138/A/13/2193382

Menchine Farm, Nomansland, Tiverton, Devon EX16 9NP

- 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 Stuart Cole against Mid-Devon District Council.
 - The application Ref 12/01659/MFUL, is dated 7 November 2012.
 - The development proposed is an anaerobic digestion facility.
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Decision

1. The appeal is allowed and planning permission is granted for an anaerobic digestion facility at Menchine Farm, Nomansland, Tiverton, Devon EX16 9NP in accordance with the terms of the application, Ref 12/01659/MFUL, dated 7 November 2012, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) No development shall take place until:
 - i) Visibility splays of 2.4 metres, measured back from the nearside carriageway edge on the centreline of the site access junction with the B3137 to points 160 metres and 120 metres to the west and east respectively have been laid out. These visibility splays shall be to the nearside carriageway edge with all land and vegetation enclosed within the splays reduced to a height not exceeding 600mm above the adjacent carriageway level;
 - ii) The site access junction with the B3137 has been widened and improved to include bellmouth radii, hard surfacing and drainage.

All matters shall be in accordance with details that shall have been submitted to and approved in writing by the local planning authority. Once provided, the visibility splays and access improvements shall thereafter be retained and maintained at all times.
 - 3) No part of the development hereby approved shall be brought into its intended use until the access driveway from the B3137 to the vehicle unloading area, and commercial vehicle turning area, has been provided and maintained in accordance with details that have been submitted to and approved in writing by the local planning authority. The access shall thereafter be maintained and retained for that propose at all times.
 - 4) No development shall take place until a Construction Method Statement has been submitted to, and approved in writing by the local planning

authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

- iii) the parking of vehicles of site operatives and visitors
 - iv) loading and unloading of plant and materials
 - v) storage of plant and materials used in constructing the development
 - vi) a programme of works including measures for traffic management.
- 5) No development shall take place until there has been submitted to and approved in writing by the local planning authority a scheme of landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development.
 - 6) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and 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 approval to any variation.
 - 7) No development shall take place until details of the colour and finish of the building materials to be used has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
 - 8) The operator of the development hereby approved shall keep records to include the number of vehicles which enter or leave the site associated with the operation hereby approved. These records shall include the size, type and load details, as well as the vehicles point of origin or destination. These records shall be made available to the local planning authority on request.
 - 9) There shall be no floodlighting during the hours of darkness, except for low-level safety lighting for the protection of personnel or for purposes of essential maintenance.
 - 10) There shall be no outdoor storage of any waste materials, and all deliveries of waste material shall be made directly to the intake building.
 - 11) The development hereby permitted shall be carried out in accordance with the following approved plans: MF/AD/01, MF/AD/02, MF/AD/03, MF/AD/04 and MF/AD/05.

Procedural Matters

- 2. Although this appeal arises from non-determination by the Council, a report was taken to the planning committee where Members confirmed that they would have refused the appeal. Two reasons were cited: the first considered the development as of industrial style with a detrimental impact on the landscape character and visual amenities of this part of the open countryside; and the second considered that additional hazards for users of the public highway would result from the increase in traffic.
- 3. The National Planning Policy Framework, (the Framework) was published in March 2012, and set out an implementation period in relation to development

plan policies. While the starting point for determination of any appeal remains the development plan, Paragraphs 214 and 215 indicate the importance of consistency with the Framework up to, and now following the 12 month implementation period. I have taken this into account in my decision.

4. A previous appeal on this site¹ involved a proposal for a larger anaerobic digestion (AD) scheme, with a predominantly waste derived feedstock. This scheme was dismissed, citing harm to the landscape and insufficient clarity on the transport implications.

Main Issues

5. I consider that there are two main issues in this case, firstly the effect of the proposed development on the character and appearance of the area, and secondly, the effect of traffic generated by the proposal on the local road network, with particular regard to highway safety, noise and vibration.

Reasons

6. The appeal site is an open agricultural field located within an existing farm unit. The farm currently relies on free-range poultry and arable cropping on approximately 50 hectares, with some off-farm lands. The poultry units comprise about 56,000 birds housed in seven sheds. The relevant environmental permit would allow up to 95,000 birds, although such expansion is not covered by planning permission.
7. The appellant reported that approximately 50% of the poultry litter associated with the enterprise is used on the existing farm, while 50% is taken off farm, either to leased lands or to other farms.
8. This proposal would provide an anaerobic digestion facility which would operate under a continuous mesophilic process, taking in some 3,000 tonnes of poultry litter and 6,545 tonnes of maize/grass silage, with an output of up to 500kW. With a relatively low proportion of waste feedstock, the scheme is considered as a renewable energy proposal. It is clear to me that there could be variation in feedstock, both in the proportion of waste to silage, but also in the balance of maize and grass. This may effect yields and have a limited effect on transportation. However, were the scheme to change significantly, particularly were it to increase the proportion of waste feedstock, this would have implications for both planning and permitting controls.
9. Such a scheme is not before me, and on the evidence presented I am satisfied that it would operate within the parameters set out, both in terms of feedstock and the transportation implications to and from the site.
10. The proposal comprises a number of structures, with a certain amount of landforming to set some into the slope to reduce overall heights. As a result there would be a large silage clamp, approximately 50 metres by 30 metres and 3 metres high, a digestion tank, 25.9 metres in diameter and 11.24 metres high, an intake building, approximately 30 metres by 18 metres and 9.9 metres high, and a digestate bag, approximately 39 metres square and 2 to 3 metres high. In addition there would be a transformer and gas engine unit and associated hardstanding. The new approach to this part of the site from the farm's main access would include the removal of some sections of hedgerow.

¹ APP/J1155/A/11/2154302

Character and Appearance

11. The site is located within open countryside not far from the village of Nomansland. There is a classified road, the B3137, which runs along a ridge and links this village to the neighbouring village of Witheridge. Access to the farm is taken off this road, with the farm extending down the valley slope towards the south. The Mid Devon District Landscape Character Assessment identifies the area as 'Culm Measures (Broad Plateau Culm Measures)', with isolated farmsteads set on the slopes of valleys. The area is identified as having a high local sensitivity to change.
12. Although the area is not formally designated for its landscape character, it nonetheless presents a mosaic of fields with isolated farmsteads typical of the Devon countryside. The existing farm is again typical in its positioning on the slope of the valley. However, it has seen a considerable expansion to its eastern side with the large poultry sheds and associated infrastructure.
13. The proposal would introduce new structures into the fields to the west of the farm. This proposal differs significantly from the previous appeal. Drawing on evidence, including the Devon County Landscape Officer's proof of evidence to the previous appeal and the submitted wire frame images, it is clear that the previous scheme was of greater bulk, height and spread across the valley slope. While I accept that the large silage clamp and digestate bag contribute to a relatively large footprint in the scheme before me, the two buildings of significant height are the intake building and the digestate tank, both of which are located lower on the slope and closer to the farm than previously. I also consider that these structures are of a more appropriate agricultural scale and form.
14. Nonetheless, the application under consideration in this appeal was not accompanied by a Landscape and Visual Impact Assessment, and focussed primarily on the visual impact across the valley from Footpath No 12, which rises to the southeast of the site. An assessment of the landscape impacts of the scheme and landscaping proposals was carried out by the appellant's landscape witness, who provided comment at the Hearing. His conclusion was that impacts in the short and long term were acceptable.
15. I consider that the structures proposed here would not be out of character with the agricultural nature of the surrounding area. However, although there are some large farms and individual buildings visible in the surrounding landscape, the combination of the poultry units and the proposed AD plant would result in an uncharacteristically large farming unit. There would be some harm to the landscape character.
16. Turning to the visual impacts, the position of the farm means that public views are generally limited. The lowered structures results in there being little opportunity for even glimpsed views from the B3137, and the views from the footpath and small hamlet of Upcott are similarly reduced. While I found glimpses from the rural road connecting Upcott with Nomansland, these were of the farmhouse and poultry sheds, and were very restricted in terms of the area for the proposed AD plant. The significant viewpoint is from Footpath No 12.
17. From this viewpoint, a relatively open vista of the farm operation is achieved from quite high on the slope and along the northern edge of the hedgerow,

down the path, until it drops low enough in the valley to achieve screening from trees. Much of the path is concreted, and the evidence that it is well used has not been challenged by the appellant. However, much of the lower lying structures would have a limited presence to these views, as they would appear as low level linear features, and would be seen behind existing hedgerows or against a backdrop of hedgerows. Providing the earth retaining banks for the silage clamp and digestate bags are well landscaped, I do not consider that these would have a particularly harmful effect.

18. The larger structures would be visible from this footpath. They would be lower down the slope and better related to the farmhouse, than those in the previous scheme. However, they would extend the scale of the agricultural development here. This would be uncharacteristically large, and for a short part of the footpath these structures would be viewed as breaking the skyline. There would be some visual harm.
19. The appellant has proposed a landscaping scheme comprising fast growing poplars interpolated with more characteristic oak and beech trees, of approximately 4 metre nursery stock, and an under-planting of woodland species to give low level screening. There was some concern that the poplars were not characteristic species, however, I note they would be for early screening and could be removed as the native trees establish.
20. While I fully accept that this landscaping scheme would not have an immediate screening effect, nonetheless the planting, removal of poplars and establishment of the native species can be secured by condition. Visually, the poplars would assist in early years to partially screen the development, and the eventual scheme would add to the characteristic wooded elements of the landscape in the longer term. The landscaping scheme would also address the small loss of hedgerow associated with the access, and the appellant has proposed to utilise appropriate colours on the structures; these matters can be addressed by condition. The landscaping proposals and these other matters can be considered to limit the harm somewhat.
21. Overall, I consider that there would be some harm to the character and appearance of the area. Although this would be limited as set out above, it would nonetheless not be fully in accord with Policies COR2 and COR18 of the Mid Devon District Council Core Strategy (the Core Strategy). These seek to sustain the distinctive quality and character of Mid Devon's environmental assets and allow for appropriately scaled farm diversification. I consider that these policies are in general conformity with the aims and objectives of the Framework in this regard.

Traffic

22. The appellant submitted a transport statement in which the location of feedstock and future locations for digestate spreading were considered. While I accept that these locations may be subject to change, I note that letters of intent have been submitted by farmers associated with this activity. In simple terms this assessment concluded that there would be an average requirement of up to 10 movements per day utilising tractor and trailer units. This, it was suggested, needed to be offset against the existing movements of the silage and poultry litter for other purposes, which would be replaced by the AD proposal.

23. These figures were strongly disputed by local residents, as they considered that the process would be seasonal with a focus of traffic movements associated with harvest time and with periods outside of the Nitrate Vulnerable Zone (NVZ) restrictions. Furthermore, they considered that the movements would take place on the narrow local roads, through villages and near houses, in order to access the relevant farms.
24. I visited a number of the proposed locations and noted that while the B3137 provides a spine route for traffic, and would appear to be operating well within its capacity, there were some smaller rural lanes that would be used by vehicles involved in this scheme.
25. I am satisfied that the volumes of feedstock and digestate lead to the averaged trip movements as set out in the assessment. A clearer statement on the cyclical nature of the business may have allowed a more detailed assessment of movements, although I accept that the peak times for activity would coincide with the peak times associated with the existing transport of silage and poultry litter for distribution and spreading.
26. Nonetheless, even were movements to be clustered into the allowed spreading periods for the NVZ, or centred on the principle harvest period, this may only result in a doubling of trips. While this may mean approximately 20 movements to and from the main farm access and onto the B3137, the actual numbers associated with the individual farms, would be significantly less. Therefore these associated sites, which are all within approximately 6km of the site, would experience much lower numbers of additional movements, and these must be considered in light of the existing movement of poultry litter or of silage. Overall, I consider that this would not represent a significant increase in traffic movements.
27. The previous scheme relied on HGV movements. While these would have carried a greater quantity, they would have to travel significantly greater distances. While tractor and trailer units have increased in size, over the short distances they would travel here, I consider that they would not be materially harmful.
28. I have sympathy for the existing conditions experienced by some local residents. This is an agricultural area, and the gradual decrease in mixed farming operations is likely to have increased the amount of on road traffic of farm wastes and produce. Nonetheless, my assessment must consider whether the additional movements represented by this scheme would be sufficient to lead to material harm. In this case, I consider that it would not do so.
29. Subject to securing junction improvements to improve visibilities at the main farm access, I am satisfied that the proposal would not result in material harm to the highway safety of users in the surrounding area, nor would it lead to a material increase in traffic such as to result in harm from increased noise or vibration. In comparison to the previous scheme, this would be a local centre for AD, drawing feedstock from a small area which would limit traffic movements. The proposal would therefore comply with objectives of Core Strategy Policy COR9, which amongst other things seeks development that properly assesses the transport impacts and manages transport demands. This is consistent with the Framework that seeks to promote sustainable transport which achieves safe and suitable access for all.

Other Matters

30. Local residents, concerned over the increase in traffic, have indicated that they consider the proposal would interfere with their rights to private and family life and their home. The Human Rights Act 1998 came into force in October 2000, bringing in most of the fundamental rights and freedoms enshrined in the European Convention on Human Rights (ECHR)
31. Residents have indicated that Article 8 of the ECHR may be engaged. I have also considered whether there is a need to consider the Public Sector Equality Duty, although as no groups with specific relevant protected characteristics have been identified, I consider that this Duty is addressed in the consideration of interference with human rights.
32. I recognise that if the appeal is allowed it would result in a relatively small increase in tractor and trailer movements in the area. Individually these would add a small amount to the noise environment of traffic on the rural road network and this could be considered to interfere with the home and family life of local residents affected by this transportation. This consideration must be balanced against the rights and freedoms of others, however, and in the light of my conclusions above, I am satisfied that if this development goes ahead its effect on local residents would not be disproportionate.
33. For the same reasons given in respect of Article 8, I consider the interference with local resident's peaceful enjoyment of property is proportionate and strikes a fair balance in compliance with the requirements of Article 1 of the First Protocol.
34. Concern was also raised that the change in land use to energy crops to supply the AD plant would have a detrimental impact on food production and on local availability of feed, for example for horses in the area. I accept that there may be a slight reduction in available hay or silage, but the transfer of land to maize or grass silage is unlikely to be a significant change in the existing cropping regimes on these farms. I consider that this matter does not weigh significantly against the scheme.
35. I note local residents referred me to the need for alternatives to be considered, as set out in the National Policy Statement for Renewable Energy Infrastructure (EN3). However, this document provides the primary basis for decision making on nationally significant renewable energy infrastructure. In the case of energy from biomass or waste, these units are those in excess of 50MW.

Planning Balance

36. The active promotion of renewable energy projects and tackling the effects of climate change are key Government objectives and, under the Climate Change Act of 2008, a statutory requirement. One of the core principles set out in Paragraph 17 of the Framework is the need to support the transition to a low carbon future in a changing climate, and encourage the use of renewable resources. The Framework advises that applications should be approved if the project's impacts are (or can be made) acceptable.
37. This proposal would not only produce an improved product for landspreading, and in so doing address some of the problems associated with poultry litter spreading, but would also produce heat and electricity. I note the concerns of local residents regarding the absence of need for these on the farm, viewing

the operation as more akin to a power station than a sustainable diversification of farming. However, while the appellant acknowledged an investment in 5, 100kW biomass boilers for the poultry sheds, he identified that these are supplemented with LPG, and that there was an overall heat demand of 1,275kW.

38. The AD unit heat output would contribute to this for much of the year, due to the specific heat requirements within the sheds, and offset reliance on fossil fuels. There would also be heat demand from the process itself. While much of the electricity would be exported to the grid, this should not lessen the overall benefits that accrue from renewable energy. The Council's own emerging Local Development Framework Development Management Policies, set out their approach to renewable energy in Policy DM/5. It was reported that this document has been through public examination, with published modifications. Furthermore, there are no relevant objections to this policy, and I therefore accord it significant weight.
39. Policy DM/5 seeks to balance the benefits of renewable energy developments against their impacts, and indicates that they be permitted where they do not have significant adverse impacts on the character, amenity and visual quality of the area. In this case, I have found some limited impact to the landscape and visual quality of the area. I have noted that a landscaping scheme would not address this entirely in the short term, but in the longer term would establish native woodland of value which would be characteristic of the area.
40. There are significant benefits that would arise from this locally centralised AD unit, which include the management of poultry litter, offsetting the use of artificial fertilizers and production of renewable energy of value both on-farm and as a contribution to overall renewable energy generation. These reflect the objectives of the Framework in relation to renewable energy and supporting rural economic growth and the development and diversification of agriculture. On balance, I consider these benefits outweigh the limited harm to the character and appearance of the area, in accordance with the Framework and with emerging Policy DM/5.

Conditions

41. I have considered the conditions put forward by the Council against the requirements of Circular 11/95 – *The Use of Conditions in Planning Permissions*. In addition to the standard timescale condition (1), which I have imposed as the Council have not justified their reasons for requesting a shorter period, I have imposed a condition to address the highway improvements at the access onto the B3137 (2). To ensure the site is properly constructed and local residents' living conditions are protected, I have required conditions relating to provision of the on-farm access (3), and a construction method statement (4).
42. To protect the surrounding landscape I have imposed conditions relating to submission of detailed landscaping proposals (5, 6), the colour and finish of the buildings (7) and external lighting (9). To ensure that the scheme operates within the parameters set out, I have required that records be kept of all vehicles entering or leaving the site associated with the operation (8).
43. Finally I have required the proper management of wastes delivered to the site to prevent odours (10). I do not consider that the requested conditions

relating to hours of operation, number of deliveries and restriction on overall feedstock importation are reasonable or necessary in this case. Otherwise than as set out in this decision and conditions, for the avoidance of doubt and in the interests of proper planning, it is necessary that the development shall be carried out in accordance with the approved plans (11). Where necessary and in the interests of clarity and precision I have altered the conditions to better reflect the guidance in Circular 11/95.

Conclusion

44. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

Mike Robins

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr S Coles	Appellant
Mr C Wilson	George S Wilson Associates - Planning Agent
Prof M Chesshire	AD advisor
Mr P Lever	David Wilson Partnership - Landscape consultant
Mr M Bellamy	Hydrock consultants - transport

FOR THE LOCAL PLANNING AUTHORITY:

Mr S Trafford	Planning Officer – Mid Devon District Council
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INTERESTED PERSONS:

Cllr M Squires	Ward Councillor
Cllr Lees	Ward Councillor
Mrs C Lamb	CPRE and Local resident
Dr P Bratby	Local resident
Mr R Davey	Local resident
Mr B Cornes	Local resident
Mr J Lawler	Local resident and Farmer
Mr B Govett	Local resident
Mr P Bishopp	Local resident
Mr R Grant	Local resident
Mrs V Curtis	Local resident

DOCUMENTS

1 Written Statement - Mr Davey