

REPORT OF JENNY CLIFFORD, THE HEAD OF PLANNING AND REGENERATION

15/01034/MFUL - ERECTION OF A 500KW ANAEROBIC DIGESTER AND ASSOCIATED WORKS WITH 2 SILAGE CLAMPS. REVISED SCHEME TO INCLUDE THE CHANGE OF ORIENTATION OF THE LAYOUT AND INSTALLATION OF 2 DRIERS - LAND AT NGR 299621 112764 (RED LINHAY) CROWN HILL HALBERTON

REASON FOR REPORT:

To determine the planning application.

Relationship to Corporate Plan:

The emerging corporate Plan sets out four priorities including the economy, community and the environment, upon which this application has a bearing.

Financial Implications:

The Council must be in a position to defend and substantiate each of its reason for refusal.

Legal Implications:

Planning decisions must be made in accordance with the development plan unless material considerations indicate otherwise. The starting point for decision making is therefore the policies within the development plan.

Risk Assessment:

If Committee decide to refuse the application for reasons that cannot be sustained at appeal there is a risk of a successful appeal costs claim against the Council for reasons of unreasonable behaviour.

UPDATE TO PREVIOUS OFFICER REPORTS.

1. BACKGROUND.

At the meeting of Planning Committee on 6th April 2016, Members resolved as follows:

RESOLVED that Members were still minded to refuse the application however following the Counsel opinion outlined by the Head of Legal it was requested that the application be deferred to seek expert advice on all four reasons proposed for refusal.

Consultants were subsequently appointed to independently assess the proposed reasons for refusal.

2. THE CONSULTANT'S FINDINGS.

The following is a summary of the report produced by Peter Brett Associates on behalf of Mid Devon District Council. The findings of their report is summarised and is set out to address each of the reasons for refusal proposed by Planning committee in turn. **A copy of the consultant's report is attached.**

Proposed reason for refusal 1.

'In the opinion of the Local Planning Authority, due to the scale and siting of the proposed Anaerobic Digester installation, the development is considered to have a harmful effect on the rural landscape character and visual amenities of the area including when viewed from public vantage points on local roads and public footpaths including the Grand Western Canal, and it has not been demonstrated that this harm could be satisfactorily mitigated. The application is considered to be contrary to policies COR2 and COR5 of the Mid Devon Core Strategy 2007 (Local Plan Part 1), DM2, DM5 and DM22 of the Local Plan 3 Development Management Policies and the National Planning Policy Framework.'

Summary of consultant findings:

A similar scheme has been consented on the site, and therefore MDDC presumably has taken account of those issues set out in the reason and found the original scheme acceptable. This review finds that in landscape and visual terms, the scheme currently under construction is in most respects equal to or sometimes better than the consented scheme, and therefore the reason for refusal does not apply to the proposal as a whole.

However, it is important that when providing landscape mitigation for a scheme, it needs to be in character with its setting. The mitigation for the consented scheme was not well designed, but was nevertheless consented. A version of that mitigation has been proposed in the new application but crucially has been extended beyond the relatively enclosed and local context into a more open and more widely visible location, where this review believes it causes harm.

Additionally, if MDDC was not aware of the availability of more frequent and open views from the canal than the original LVIA stated, or of the reflective nature or inappropriate colour of the dome, then they may not have given consent to the original scheme and may not give consent to the scheme which is currently under construction, and the harm described in the draft reason would apply.

In terms of policy, COR2 of the adopted Core Strategy requires of development 'high quality sustainable design which reinforces the character and legibility of Mid Devon's built environment and creates attractive places' and COR5 states that 'the development of renewable energy capacity will be supported in locations with an acceptable local impact, including visual, on nearby residents and wildlife.'

Of the Development Management Policies, DM2 concerns high quality design and requires 'Clear understanding of the characteristics of the site, it's wider context and the surrounding area' DM5 requires renewable development to consider landscape character, and DM22 requires agricultural development to be 'well-designed, respecting the character and appearance of the area'.

As a result of the factors set out above, the scheme as now proposed fails to accord with those policies, although only in very specific areas.

In summary: The landscape and visual appraisal points to several critical areas of concern which could constitute a reason for refusal, as follows;

- The mitigation scheme for the original application was not well designed and for the new application it has been extended into a more open and more widely visible location, where it causes harm.
- The original LIVA did not make clear the views from the canal or the reflective nature or inappropriate colour of the dome. With the benefit of this information, the scheme which is currently under construction is considered to cause harm.
- The scheme as now proposed fails to accord with policy set out in the Core Strategy (COR2, COR5, DM2 and DM22), although only in very specific areas.

Proposed reason for refusal 2.

'The proposed development is located in close proximity to the Grand Western Canal Conservation Area. It is the opinion of the Local Planning Authority that if granted it would unacceptably detract from significance of the Conservation Area (a designated heritage asset) in terms of its character and appearance. Accordingly it is considered contrary to policies COR2 and COR5 of the Mid Devon Core Strategy 2007 (Local Plan Part 1), DM2, DM5, DM22 and DM27 of the Local Plan 3 Development Management Policies and the National Planning Policy Framework.'

Summary of consultant findings:

The proposal is not perceived to alter the existing character of the Conservation Area significantly, nor is it expected to hinder the experience of the asset substantially. The most prominent point of the application site is the dome of the anaerobic digester which is already present at the site, and was approved under the previous planning application. The dome is bright green in colour and is therefore prominent in the landscape.

There were no views of the application site from the stretch of Canal in closest proximity to the application site, as it was screened by hedgerows (Photo 3-3). Further along the Canal, the application site came into view (Photo 3-4). The view of the application site will become more limited by the proposed bund and vegetation screening. The additional features of the new proposal will not be higher or more dominant than the existing structures and are therefore considered unlikely to cause any additional setting impact to the Conservation Area. The elevation plans of the new proposal also show that the majority of the structures proposed under the

previously approved plans will be closer to the existing agricultural buildings, and are therefore less likely to change the long-distance views into the site from the Conservation Area. This assumes that the form and colour of these structures does not differ substantially from the existing agricultural buildings. In addition, the proposal incorporates additional planting in order to limit views of the site from the Conservation Area.

Given that the most prominent features at the site are perceived to be those which are already present at the site, and taking into consideration the inclusion of new screening planting, and that views from Conservation Area are interrupted by existing vegetation and hedgerows, the setting impact of the proposed development upon the Conservation Area is considered to be negligible.

Proposed reason for refusal 3.

'In the opinion of the Local Planning Authority, due to the proximity of neighbouring dwellings, it is considered that the proposed development will have an unacceptably negative impact on the amenity of the occupiers of these neighbouring properties due to odours and noise associated with the development and running of the plant. The application is considered to be contrary to policies COR2 and COR5 of the Mid Devon Core Strategy 2007 (Local Plan Part 1), DM2, DM5, DM7 and DM22 of the Local Plan 3 Development Management Policies and the National Planning Policy Framework.'

Summary of consultant findings:

Noise: The noise impact has been correctly assessed and meets the relevant criteria with no further mitigation required. Even if the conclusions of the noise assessments in the two planning applications (13/01605/MFUL and 15/01034/MFUL) are similar (i.e. no significant noise impact), they are different in the amount of detail the assessment goes into. The methodology of the latest assessment is a lot more thorough, with calculations of the noise impact of all activities occurring on site. It is our view that an appropriate methodology and standards have been used for the assessment. We have also found the calculations, as part of the assessment, to be correct. Based on the data presented in the documents and the reviews of said documents, we would agree with the conclusions that the impacts from the different elements of the proposal would meet the relevant criteria and no further mitigation should be required.

Odour: There is no significant effect on residential amenity from odour and there is only a slight difference between the original and revised planning applications. Information within the consented and current planning application documents describes the likely odour from the process in sufficient detail for an assessment of the likely effect on amenity to be made. Controls in place through the Environmental Permitting process should mean that a significant effect on residential amenity is avoided (assuming that a permit for the operation is granted). There is only a minor difference in the likely odour generation potential of the consented and current planning applications. There is likely to be 'slight adverse' effect on residential amenity as a result of odour from the operations of the site. This is unlikely to constitute a significant environmental effect and therefore would not be classed as

an unacceptable negative impact on amenity. The development would therefore be in accordance with policy DM7 and by inference, DM5 and DM22 of the Local Plan Part 3 Development Management Policies. It is unlikely that the impact on residential amenity as a result of odour from the site would justify refusal of the planning application.

Proposed reason for refusal 4.

4a. 'The submitted transport statement is not considered sufficiently up to date and does not address traffic generation associated with the newly erected livestock building on the farm holding. It is the view of the Local Planning Authority that this will impact on the ability of the Anaerobic Digester installation to be able to adequately function without additional and unacceptable traffic generation to the detriment of local amenities and character, contrary to policies COR2 and COR5 of the Mid Devon Core Strategy 2007 (Local Plan Part 1), policies DM2, DM5 and DM22 of the Local Plan Part 3 Development Management Policies and the National Planning Policy Framework. '

OR

4b. 'It is the view of the Local Planning Authority that it has not been satisfactorily demonstrated that the proposed Anaerobic Digester when considered in conjunction with other approved development for livestock buildings, will not result in additional and unacceptable traffic generation to the detriment of local amenities and character, contrary to policies COR2 and COR5 of the Mid Devon Core Strategy 2007 (Local Plan Part 1), policies DM2, DM5 and DM22 of the Local Plan Part 3 Development Management Policies and the National Planning Policy Framework.'

Consultant findings:

The method of assessment is robust and the development proposed under the current planning application is not considered to cause transport or highway impacts that are greater than for the consented development. In overall conclusion, the development proposed under the current planning application is not anticipated to lead to transport or highway impacts (in terms of road safety and / or operation of the network) that are greater than for the consented development. On this basis it is considered unlikely that the development would have a detrimental impact on the local amenity and character as referred in the local policies specified in the potential reasons for refusal 4 a/b.

3. OTHER ISSUES RAISED WITHIN THE CONSULTANT'S REPORT.

The consultant identified two issues within the report with regard to compliance with specific highway related conditions on the previous approval 13/01605/MFUL. These are:

- The passing bay has still to be constructed in accordance with condition set out in 13/01605/MFUL,

- The visibility splay at the site entrance is not undertaken in accordance with conditions. The site access is an existing access associated with the agricultural building on site. The visibility splay required by the application 13/01605/MFUL was to provide uninterrupted views 33m either side of the entrance set back 2.4m from the edge of the carriage way. It was stated in approved Plan 13425/T03 that the splay would be provided by trimming back the existing hedgerow to the east of the entrance. The consultant has expressed concern that the splay to the east has not been completed, but furthermore does not see it as being necessary, could lead to increased traffic speed and through the cutting back /removal of hedge will affect the rural character of the lane at that point.

Officers have forwarding the consultant's findings on these matters to DCC Highways. The DCC Highway response is set out below:

'It is accepted the passing bay is temporary (at the request of Greener for Life) until full construction is completed for the very reasons identified in the report about damage to the road. Once the construction is complete, which was still ongoing, the developer will return to site to carry out the full construction including the full width reinstatement in a manor described by your Consultant. The temporary layby was considered of a suitable nature for construction to commence. The road surface and condition will be inspected prior to the developer returning to site and the Consultant's recommendation of full reconstruction is accepted and will be pursued. I would consider these elements as enforceable if the works are not completed as agreed but would not consider them a reason for refusal, in addition to which the approach taken and agreed appear to be justified and the postponement will result in a betterment, as the designed works may have been abortive and required further remedial and masked the failure of the road on the inner edge.'

'With regard to the access visibility the 33m is the required site stopping distance for the observed speed of traffic and should be made available. I would disagree with the consultant as the constraints that are on the road now will still remain and even if speed increase they will not be significant given the bends and forward visibilities and my recommendation is that the conditioned splays remain. However should the Local Planning Authority be minded to reduce the impact on the hedgerow and accept the Consultants observations I would have no objections but suggest that the required splays be considered after a period of time and an observation of the accident statistics.'

Your officer's assessment of these two points is that firstly with regard to the passing bay this can be controlled by way of a condition as set out in condition 5 below, with strict time scales for implementation. Any repair works to the carriageway /passing place during construction are likely to need to be repeated as further damage is likely. It is most important to ensure that repairs are made at the end of the construction period.

The Highways Authority is of the view that in the interests of highway safety it would be more appropriate for the visibility splay to be fully implemented and maintained thereafter. The trimming back of the hedge will have some negative impacts on the

area due to the loss of the vegetation, and will need to be undertaken at regular times of the year, to maintain the appropriate visibility.

It is your officer's view that undertaking the appropriate visibility splay as set out in plan 13425/T03 is the appropriate way forward to be able to clearly ensure highway safety. The loss of some hedgerow material in this location will not have such an adverse impact as to cause undue harm or detract from the character of the area. The previous approval 13/01605/MFUL considered that the visibility splay was required for the scheme proposed and your officer is of the view that there has been no change in circumstances associated with this application. Therefore would recommend the inclusion of a condition requiring the implementation of the visibility splay as set out in plan 13425/T03.

4. OVERALL CONCLUSION ON THE CONSULTANT'S FINDINGS.

In their independent assessment for the Council on the proposed reasons for refusal, the consultant has concluded that there are certain specific elements of the proposed scheme, the landscape and visual impact of which could form a reason for refusal. These are in respect of the extension of the steep bund to run to the south and west of the site and the colour and reflectiveness of the dome. The consultant is willing to act on behalf on the Council to defend this as a reason for refusal framed around these points of landscape and visual impact. However, the consultant has also raised a significant point –that in his view an Inspector would see these points as valid, but that he would be likely to consider that they should be addressed through negotiation and / or design conditions attached to a consent, rather than refuse and appeal. Instead the approach should be to negotiate a modification to the bund, additional planting and a condition to control the colour and reflectiveness of the dome.

There are three other proposed reasons for refusal – impact on residential amenity (noise and odour), impact upon the canal conservation area and traffic generation. All have been assessed with the conclusion that the impact of the scheme upon them is not significant. The consultant does not support these proposed reasons for refusal and would not assist the Council to defend them.

5. CHANGES TO PROPOSED CONDITIONS.

In response to issues raised within the consultant's report, several amendments to conditions from those set out in the initial officer report are proposed.

Amended conditions:

Condition 5

The passing bay on Crown Hill shall be completed in accordance with the details shown on plan '00030-GFL-Hartnoll-Passing bay' approved under planning permission 13/0160/MFUL within 3 months of the date the AD plant becomes operational and be so retained. Written confirmation of the date the AD plant first becomes operational shall be submitted to the Local Planning Authority within 1 week of this date.

Condition 11

Prior to installation, details of any external lighting including a lighting assessment which should include the following information:

- A description of the proposed lighting scheme together with hours of operation;
- A layout plan of the proposed development site showing the lighting scheme together with light spread, spill and intensity;
- Details of the proposed equipment design;
- An assessment of the impact of the proposed lighting upon ecology; neighbouring properties, roads and character of the site and its surroundings;
- Details any proposed measures to mitigate or compensate for the possible impacts of the proposed lighting

shall be submitted to and approved in writing by the Local Planning Authority. Any approved external lighting shall be installed in accordance with the approved details and thereby retained.

Conditions 15

Change Completion (on the last Line) to Operational commencement or completion whichever is the earlier.

Additional condition:

Condition 20

Notwithstanding the submitted details, within 1 month from the date of the grant of planning permission, details of an earth bund to enclose the western and southern sides of the site together with a landscaping scheme shall be submitted to and agreed in writing by the Local Planning Authority. The bund shall be provided in accordance with the agreed details prior to the development becoming first operational and the landscaping scheme shall be completed in accordance with the agreed details within the first planting season following the development becoming first operational. Once provided the bund and landscaping scheme shall be so retained. 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.

Reason: In the interest of the visual amenity of the area in accordance with policies DM2, DM22 of the Local Plan Part 3

Condition 21

The visibility splay at the site entrance shall be provided and laid out in accordance with plan 13425/T03 within 1 month of the date of this permission with no obstructions within the visibility area over 1m above the adjacent carriageway level. It shall thereafter be so maintained for that purpose.

REASON: To provide adequate visibility from and of emerging vehicles

Informative note.

1. You are advised that condition 20 seeks a revised bund and landscaping scheme design that is more sympathetic to local landform and character.

Contact for any more information

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Background Papers

File Reference

15/01034/MFUL

Circulation of the Report

Cllrs Richard Chesterton
Members of the Planning Committee