
Appeal Decision

Site visit made on 8 December 2014

by Jessica Graham BA(Hons) PgDipL

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

Decision date: 15 January 2015

Appeal Ref: APP/X1118/A/14/2226565

Great Hele Farm, Great Hele Lane, South Molton, Devon EX36 4LB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr W Reed against the decision of North Devon District Council.
 - The application Ref 56827, dated 23 December 2013, was refused by notice dated 4 August 2014.
 - The development proposed is a 1.3MW anaerobic digester with associated buildings and structures.
-

Decision

1. The appeal is allowed and planning permission is granted for a 1.3MW anaerobic digester with associated buildings and structures at Great Hele Farm, Great Hele Lane, South Molton, Devon EX36 4LB in accordance with the terms of the application Ref 56827, dated 23 December 2013, subject to the thirteen conditions set out in the schedule attached to this Decision Letter.

Procedural matters

2. The description of development given on the planning application form included a detailed list of the buildings and structures associated with the anaerobic digester. In the interests of concision, I have adopted the abbreviated description used by the Council in its Refusal Notice.
3. An application for costs was made by the appellant against the Council. That application will be the subject of a separate Decision Letter.

Main issues

4. The two main issues are
 - The proposed use to be made of existing agricultural land, and whether this would prejudice the agricultural operations of the farm; and
 - The effect that the proposed development would have on the character and appearance of the area.

Reasons

5. Great Hele Farm is a predominantly arable farm, growing wheat and silage with some cattle and sheep finishing. It is located in open countryside approximately 1km to the south of South Molton. The anaerobic digester and

associated structures would be installed on land to the south of the farm, adjoining the existing collection of farm buildings. The total area of this land would be some 2.24 hectares, comprising part of the farmyard and part of an area used for arable farming. Access would be through the existing farmyard, via Great Hele Lane.

6. The anaerobic digester would treat an annual supply of 23,224 tonnes of feedstock, comprising 5,000 tonnes of slurry, farmyard manure and poultry manure, and 18,224 tonnes of maize silage, grass silage, beet and wheat.

The use of the land

7. The supporting text to Policy ECN6 of the North Devon Local Plan 1995 – 2011 explains that due to the decline in agriculture, encouragement will be given to diversification schemes to help protect farm incomes. It goes on to note that farm diversification enterprises are varied, and can include the growing of a wide range of crops and plants other than foodstuffs, for uses such as energy. Policy ECN6 itself sets out the four criteria that farm diversification schemes must satisfy in order to be permitted. The Council's view is that the current proposal would not comply with Criterion A, which requires the scheme not to prejudice existing agricultural operations on the farm.
8. It is important to bear in mind that the use of land for agricultural purposes does not constitute "development", such that changes to the types of crops grown on the land in question do not require planning permission. It would therefore be open to any farmer, should he or she choose, to use farmland for the sole purpose of growing feedstock for a biomass plant or anaerobic digestion facility, without the need to obtain planning permission for that change of use.
9. In this particular case, the feedstock that would be grown on the holding would be grass and maize silage, and beet fodder. Wheat would also be used, but this would be provided by other local farms. Beet, grass and maize are traditional agricultural crops, which would not look out of place within this rural landscape, and would require no significant changes to existing arable operations at the farm. Further, the anaerobic digester would process the farm's own farmyard manure, producing liquid and solid digestates which would be used on the farmland as an organic fertiliser and a soil conditioner, thereby reducing the existing need to import fertiliser, and improving the quality of the soil. Heat produced during the process of anaerobic digestion would be used to heat the farmhouse, control cabin and digester, and the conversion of biogas to electricity would provide a source of discounted power for the farm.
10. Taking all of this into account, I consider that the proposed development would be likely to complement, rather than prejudice, agricultural operations at Great Hele Farm. It would not therefore conflict with Criterion A of Local Plan Policy ECN6.
11. I note the Council's concern that an area of land that could otherwise be used for food production would be lost purely to feed the anaerobic digester. Policy ENV7 of the Local Plan does provide the Council with some degree of control over the uses that may be made of high-quality agricultural land within the district. It provides that development proposals not associated with agriculture will only be permitted on the best and most versatile agricultural land (defined

as grades 1, 2 and 3a of the Agricultural Land Classification) in certain specified circumstances.

12. However the evidence of the appellant, which the Council does not dispute, is that the quality of the area of land on which the proposed development would be installed is grade 3b. It would not, therefore, fall within the remit of Policy ENV7. Changing the use of agricultural land from growing edible crops to growing feedstock for an anaerobic digester does not constitute "development", and so does not fall within the remit of this policy either. Even if it did, there is evidence that all but 7% of the associated farmland on which feedstock will be grown at Great Hele Farm is graded 3b, or poorer.
13. Other interested parties have also expressed concern, in the light of projected population growth and the acknowledged need for more housing, that using farmland to grow feedstock results in the "loss" of land that could potentially be used for growing food. However, the planting of feedstock crops does not result in the land being "lost" in the sense that it would be if houses, or other permanent structures, were built upon it. It is a temporary, and very easily reversible, use. Should national or local government determine, at any point, that the need for food crops outweighed the need for feedstock, it would be open to them to incentivise the former through the payment of subsidies, or to require it through the introduction of policies.

The character and appearance of the area

14. The appeal site lies within countryside identified in the Devon Landscape Character Assessment as "South Molton Farmland". The fields and lanes of this undulating, pastoral landscape are generally bound by thick, mature hedgerows; some scattered copses and farmsteads lie outside the settlements. Great Hele Farm is clearly identifiable as one such farmstead, due to the presence of a collection of outbuildings, large barns, and two grain silos more than 20m high. The proposed development would introduce a variety of new structures alongside these existing buildings. The proposed silage clamps would form a large part of the new development, and these would not look out of place in the context of the existing farm.
15. However other elements of the scheme, such as the 45m diameter digester tank, and the digestate storage tank with a 7m gas collection dome above it, would appear out of keeping with the character of the adjoining agricultural development, and the surrounding rural landscape. The visual impact would be mitigated to some degree by the proposed bund, screen planting, and the careful choice of recessive colours and finishes for the plant and buildings, all of which could be secured by condition. Nevertheless, the proposal would increase the amount of built development at Great Hele Farm, extending its footprint into the surrounding open countryside, and this would be apparent from a number of public viewpoints.
16. I find that the proposed development would, therefore, result in some harm to the character and appearance of the area. While relatively limited, for the reasons set out above, this would nevertheless conflict with Criterion C of Local Plan Policy ENV1, Criterion B of Local Plan Policy ECN4 and Criterion 1A of Local Plan Policy ECN15. These seek to prevent development that would fail to protect or enhance the character or beauty of the countryside, or that would adversely affect the visual character of its surroundings.

Other matters

17. The active promotion of renewable energy projects, and tackling the effects of climate change, are not only key Government objectives but statutory requirements. One of the core principles set out in paragraph 17 of the NPPF is the need to support the transition to a low carbon future in a changing climate, and encourage the use of renewable resources. Paragraph 98 explains that applications should be approved if the project's impacts are (or can be made) acceptable.
18. The Government's *Anaerobic Digestion Strategy and Action Plan* sets out a commitment to substantially increase the production of energy from waste, through the anaerobic digestion process. I note that some local residents expressed concern about the perceived scale of the installation proposed at Great Hele Farm, but with a capacity of 1.3MW, the equipment would be well below the limit of 5MW set by the Government for the Feed-in-Tariff scheme, a programme aimed at promoting widespread uptake of a range of small-scale renewable and low-carbon electricity generation technologies. Paragraph 98 of the NPPF notes that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions.
19. Given the narrow and twisting nature of the rural lanes around (and within) South Molton, and the sharp bend at the eastern end of Great Hele Lane, a number of local residents are understandably concerned about the impact that vehicle movements associated with the proposed development would have upon the local highway network. The appellant has produced a Transport Statement which, among other things, compares the traffic currently generated by operations at Great Hele Farm with that which would result from the proposed development. The anaerobic digester would require deliveries of additional slurry, wheat and manure. The solid digestate produced as part of the anaerobic process would need to be transported back to the surrounding farmland, but this would also mean that it was no longer necessary for the farm to receive deliveries of fertiliser. The silage and maize that is currently grown on the farm but exported elsewhere, would instead remain and be used as feedstock for the digester.
20. The Statement concludes that the proposed development would result in an average of eight vehicle movements per day, compared to the existing average of four vehicle movements per day. I note the concern that calculation of average figures obscures the fact that at peak times (such as harvest) there would be a higher concentration of vehicle movements than when out of season, but the same is true of the figures for current movements. The Highway Authority has also considered the scheme and has raised no objections, subject to the imposition of a condition requiring the proposed improvements to visibility splays to be completed before the development commences. The Council is satisfied that on this basis the proposed development would not have a significant adverse impact on the local highway network, and I share that view.
21. The Council suggested a condition requiring adherence to an agreed HGV routing protocol, to minimise the risk of potential conflict between highway users, and the appellant suggested a condition preventing deliveries to and from the appeal site during school drop-off and pick-up times on weekdays in term times, for similar reasons. These are both reasonable requirements, and

in my view could be addressed by a single condition requiring adherence to an agreed Transport Management Plan.

22. Concerns about the potential for disturbance by unpleasant odours are also understandable. However, the anaerobic digestion process must take place in airtight conditions without oxygen, which means that odours cannot escape during digestion. There is evidence that due to their low concentration of volatile fatty acids, the resulting digestates are significantly less odorous than slurry and manure, such that when spread on the land, they would be much less likely to cause offensive odours than traditional muck-spreading operations. The risk of odour release would therefore be limited to feedstock intake, storage, and the loading of the digester. The appellant has produced a comprehensive Odour Management Plan detailing the steps which would be taken to minimise such risks and control fugitive odours, and this could be secured by condition. It is relevant to note that the proposed anaerobic digestion facility would require a Permit from the Environment Agency before operations could commence, which would also address the issue of odour controls.
23. The primary sources of noise from the proposed development would be deliveries to and from the site, and the operational noise of the Combined Heat and Power (CHP) Unit. The noise generated by deliveries is unlikely to be markedly different to, or greater than, the noise of current agricultural vehicle movements associated with the operation of the farm. The CHP Unit would be located a considerable distance from the nearest of the residential properties that are not associated with the farm, and would be housed inside a building that would be fitted with noise attenuation. While it would have been preferable for a noise survey to have been submitted alongside the other application details, I agree with the Council's Environmental Health Manager that since the circumstances provide very limited opportunity for noise disturbance to affect the living conditions of nearby residents, it would be appropriate to require the provision of further details (and mitigation as necessary) by condition. Similarly, a condition requiring the Council's prior approval of any external lighting would ensure that neighbouring properties, as well as the surrounding countryside, would not be troubled by light pollution.
24. I note that planning permission has been granted for other anaerobic digesters in the area, but I have not been provided with any evidence to indicate that this would result in any cumulative harm that would weigh against the current proposal. I also note suggestions that other types of renewable energy, such as solar panels, could prove a more effective means of generating the same amount of energy at the appeal site. It is fair to say that different types of renewable energy schemes carry with them different types of adverse impacts, as well as benefits. I am obliged to determine the proposal that is currently before me on the basis of its own particular merits.
25. My attention was drawn to statements made by the Chairman of the Committee on Climate Change, the Secretary of State for the Department of Energy and Climate Change, and the Prime Minister's Political Private Secretary, to the effect that all of the projects needed to meet Britain's renewable targets have already received consent under the existing planning regime. I note those remarks and the standing of those who made them, but they do not alter, override or replace current planning policy, which is what I must apply.

Conclusions

26. The encouragement of renewable energy provision is currently an objective of both local and national planning policy. The Council's approach to renewable energy proposals is set out in Policy ECN15, which states that the benefits of the development will need to be balanced against the impact on the local environment. In this case, I have found that the proposed development would cause some limited harm to the character and appearance of the area. The benefits encompass the production of an improved product for spreading on land, and the production of renewable energy of value both to the farm and as a contribution to overall renewable energy generation and the security of the national energy supply. These reflect the objectives of the NPPF in relation to supporting and encouraging renewable energy, rural economic growth and the diversification of agriculture, and are material considerations to which I attach a great deal of weight. On balance, I find that the benefits of the proposed development would outweigh the limited harm that would be caused to the character and appearance of the area.

Conditions

27. The Council suggested that a number of conditions be imposed should planning permission be granted, and I have considered these in the light of Circular 11/95 *The Use of Conditions in Planning Permissions* (so far as that guidance remains extant) and the advice contained in the NPPF. In addition to the standard conditions governing the timescale for commencement (1) and requiring compliance with the approved plans (2), it is necessary to attach a condition securing the mitigation measures needed to ensure there would be no adverse impact on wildlife (3).
28. As discussed above, conditions are attached to secure the prior provision of improvements to visibility splays (4) and adherence to an agreed Traffic Management Plan (5) in the interests of highway safety. Conditions are also needed to secure compliance with the Odour Management Plan (12) and the Council's prior approval of lighting arrangements (6) and noise levels (7), so as to protect the amenity of neighbouring residents. In order to help reduce the adverse impact on the character and appearance of the area, I have imposed conditions relating to the submission of landscaping and planting schemes (8 & 9), the colours and finishes of the proposed structures (10) and the removal of the equipment after 25 years, or 6 months after any earlier termination of operations (13). Since an archaeological evaluation has indicated the presence of heritage assets within the appeal site, I have attached the condition suggested by the County Archaeologist which requires further investigation to be carried out before any development commences (11).

Determination

29. For the reasons set out above, I conclude that the appeal should be allowed.

Jessica Graham

PLANNING INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Figure 1a (Site location), Figure 1(b) Site location), Figure 3 (Elevations), drg. no. GFL-Great-Hele_PBP_01 (Block Plan) and drg. no. GFL-Great-Hele_GS_01 (Ground sections).
- 3) No development shall take place until a detailed scheme and timetable for the implementation, management and monitoring of mitigation measures for the protection of wildlife have been submitted to and approved in writing by the local planning authority. The scheme shall incorporate further details of recommendations made in the "Extended Phase 1 Habitat Survey Report" submitted in support of the application. Development shall only be carried out in accordance with the approved details.
- 4) No development shall take place until visibility splays have been provided at the site access in accordance with detailed plans that have first been submitted to and approved in writing by the local planning authority, which shall incorporate the visibility improvements shown on illustrative plan 13544/T03 Revision B. Development shall be carried out, and the visibility splays maintained, in accordance with the approved details.
- 5) No development shall take place until a Transport Management Plan has been submitted to, and approved in writing by, the local planning authority. The Plan should include details of the route to be taken to and from the site by HGV drivers, the method of imparting this information to HGV drivers visiting the site, and details of action to be taken in the event of breaches. The plan should also include details of the hours during which deliveries will be taken at, and despatched from, the appeal site. The development hereby permitted shall only be operated in accordance with the approved Plan.
- 6) No development shall take place until a detailed lighting plan, indicating the position and luminosity of external lights and minimising the potential for obtrusive glare, has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 7) No development shall take place until the local planning authority has been provided with a noise report from a suitably qualified person (a Member of the Institute of Acoustics, or equivalent). The report shall identify sources of noise associated with the development hereby permitted, and consequent noise levels at nearby dwellings. A comparison with existing background noise levels shall be provided (as per BS 4142 1999 or any superseding guidance). Where predicted noise levels exceed 5dBA over background levels, a scheme of noise mitigation measures reducing that exceedance to 5dBA or less shall be approved in writing by the local planning authority prior to the commencement of development. Development shall be carried out in accordance with the approved details.

- 8) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include proposed finished levels or contours; means of enclosure, including the proposed earth bund; areas of hardstanding; proposed and existing functional services above and below ground, such as drainage, electric and gas connections and pipelines, with details of lines, manholes and supports; planting plans and written specifications (including cultivation and other operations associated with plant establishment); schedules of plants (noting species, plant sizes and proposed numbers/densities); and an implementation and management programme. The development shall be carried out in accordance with the approved details.
- 9) 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 installation of the anaerobic digestion facility, and any trees or plants which within a period of 5 years from that date 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 its written approval to any variation.
- 10) No development shall take place until details of the colours and finishes for the external surfaces of the buildings, fixed plant and machinery have been submitted to and approved in writing by the local planning authority. Thereafter the approved colours and finishes shall be implemented and kept in suitable condition to meet their intended function throughout the operational phases of the development.
- 11) No development shall take place until the implementation of a programme of archaeological work has been secured, in accordance with a written scheme of investigation which has first been approved in writing by the local planning authority. The development shall only be carried out in accordance with the approved scheme, unless the local planning authority gives its written approval to any variation.
- 12) The development hereby permitted shall operate in accordance with the submitted Odour Management Plan dated May 2014, subject to any variation necessary to meet the requirements of the Environment Agency.
- 13) Within 25 years and six months of the completion of construction of the development, or within 6 months of the cessation of gas production from the anaerobic digester, whichever is the sooner, the digester tank, digestate storage tanks, control cabin and all other associated buildings and works shall be dismantled and removed from the site. The operator shall notify the local planning authority no later than five working days following cessation of power production. The site shall subsequently be restored to its former condition in accordance with a scheme and timetable that has been submitted to the local planning authority for written approval no later than three months from the cessation of power production.