

## Appeal Decision

Hearing held on 22 July 2015

Site visit made on 22 July 2015

**by Katie Peerless Dip Arch RIBA**

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

**Decision date: 15 September 2015**

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**Appeal Ref: APP/P2935/W/14/3001690**

**Land at Park Shield, north of the B6319 and electricity substation between Fourstones and Chollerford, Hexham, Northumberland**

- 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 JFS Park Shield Farm Biogas Ltd. against Northumberland County Council.
  - The application Ref: 14/02186/RENE, is dated 2 July 2014.
  - The development proposed is an anaerobic digestion and combined heat and power plant facility.
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### Decision

1. The appeal is dismissed.

### Application for costs

2. At the Hearing an application for costs was made by the appellants against the Council. This application is the subject of a separate Decision.

### Procedural matter

3. The Council issued a refusal of planning permission on 7 January 2015, after the date on which the Planning Inspectorate (PINS) received the appeal, which was 19 December 2014. PINS has subsequently confirmed that jurisdiction over the determination of the planning application passes from the Council to PINS on the date when a valid appeal is received, rather than the date on which it is subsequently registered. The case is therefore proceeding as a failure to issue a decision on an application for planning permission rather than a refusal of the application.
4. However, the refusal notice has formed the basis of the Council's case and, as it was available and it narrowed the potential issues between the main parties, the appellants were allowed additional time to amend their Appeal Statement to address the Council's concerns as expressed in that notice.
5. The day prior to the Hearing, the Council confirmed that it wished to withdraw its reason for refusal number 5, relating to noise. However, interested parties remained concerned about this matter and it was therefore discussed at the Hearing.

## **Main Issues**

6. I consider that the main issues in this case, based on the deemed reasons for refusal and the amendment to the Council's case, are the effect of the proposed development on the character of the local landscape and whether the location of the proposed development is acceptable, with particular reference to the aims and objectives of the Northumberland Waste Local Plan.

## **Site and surroundings**

7. The appeal site lies in open countryside outside the hamlet of Fourstones and at the time of the site visit the field was planted with grass, which is presumably intended to be harvested for hay or silage. There is one entrance to the site off the B6319, which is a rural road with soft verges and no footway. Other roads in the vicinity are unclassified and narrow in places. Most of the field is screened in long views from the south west and south east by woodland, although the site frontage along the B6319 is more open, with only isolated trees and a hedge between the road and the site.
8. The surroundings countryside is mainly rolling farmland with the topography rising up from the entrance to the field and then falling away to the north, before rising again up the 'Long Bank' to a high point where the B6318 Military Road runs east/west along the ridge. The village of Walwick lies to the north east and there is intervisibility between the village and the appeal site.

## **Appeal proposals**

9. The development for which planning permission is sought is an anaerobic digestion (AD) plant with a heat and power facility that would supply electricity to the nearby Fourstones power station on the opposite side of the B6319. The installation would comprise 2 AD tanks, 4 digestate storage tanks and 8 clamps for the storage of silage and manure, as well as associated plant and equipment, a small 'portacabin' for an office and access tracks, all surrounded by a 2.4m high fence.
10. The tanks would have a diameter of about 32m and would vary in height. The base of the 4 digestate tanks would be set below the existing ground level and have a maximum height above ground level of 7.5m. The 2 AD tanks would have a gas collecting dome on top which would take their height to a maximum of 15.8m above ground level.
11. The appellants have confirmed that a previous proposal for a drying shed associated with the development was withdrawn during the course of the consultation period and the Council was aware of this when it issued its reasons for refusal.

## **Reasons**

12. There was much discussion at the Hearing on whether the provisions of policy OW4 of the Northumberland Waste Local Plan 2001 (WLP) are relevant and applicable to this case. The policy seeks to limit the location of AD plant in the countryside to locations where it would be associated with a working farmyard and the proposed development does not meet this criterion.
13. However, the policy is criticised both for being out of date in relation to the more recent provisions of the National Planning Policy Framework (the Framework) and because the appellants consider that the feedstock of the AD plant should not be classified as waste.

14. Prior to the Hearing, they obtained Counsel's opinion on the latter point and this relies on the judgement in the case of the *European Commission v. The Kingdom of Spain C - 416/02*, dating from 2005, where it was held that livestock effluent, when used as fertiliser on land, was not considered to be waste, even if used on land in a different agricultural holding. However, this judgement does not appear to address the matter of whether the livestock effluent would be classified as waste in the situation where it was going to undergo a recovery process, such as anaerobic digestion, where it would be converted to another product. This situation is considered in subsequent paragraphs.
15. Article 5 of the Waste Framework Directive (WFD) confirms that a substance resulting from a production process, the primary aim of which is not the production of that item, may be regarded as not being waste only if a number of conditions are met, which include the requirements that further use of the substance is certain and the substance can be used directly without any further processing other than normal industrial practice.
16. The Environment Agency (EA) states that agricultural manure and slurry is not waste when it is to be spread directly on agricultural land as a fertiliser and this is consistent with the judgement referred to above and latest position set out in the 'Waste Classification Technical Guidance WM3 - May 2015' (WM3), of which the EA is one of the publishing organisations. However, the Council maintains that the EA still advises that such material remains waste when it is destined for a treatment process.
17. WM3, in turn, refers to the DEFRA publication 'Guidance on the Legal Definition of Waste and its Application August 2012 (GLDWA)'. The following paragraphs are direct quotations from relevant paragraphs from that document:

*The definition of waste, as re-enacted in the Waste Framework Directive 2008/98/EC, is: '**waste means any substance or object which the holder discards or intends or is required to discard**'.*

*A substance or object becomes waste when it is **discarded**. Discard has a special meaning which is not necessarily the same as its dictionary meaning. It includes not only the disposal of a substance or object but also its recovery or recycling. Whether a substance or object is being discarded has to be decided on a case-by-case basis, and taking account of all the circumstances, to ensure the aims of the WFD (i.e. protection of the environment and human health) are not undermined. In other words, each case must be assessed on its own merits.*

*Once a substance or object has been discarded and is waste, something usually needs to be done to it for it to cease to be waste. This can range from something relatively minor to quite extensive processing, comprising one or more recovery operations. It may be necessary for waste to undergo a series of recovery operations before it ceases to be waste.*

*Accordingly, the European Court has explained that the term "discard" has a specially extended meaning in the WFD and includes the recovery of a substance or object as well as its disposal. So, a person may be regarded as discarding a substance or object if they are carrying out a recycling or other recovery operation in the course of their business even though the substance or object has a commercial value to them. And it makes no difference whether a disposal or recovery operation is carried out by the person who produced the waste or someone else. In both cases the substance or object will be "discarded" and will be waste.*

*The concept of waste does not exclude substances or objects even if they have a commercial value. The WFD applies to the use of waste in recovery operations and in such circumstances the waste often has an economic value.*

*The use of slurry as a fertiliser does not amount to the disposal or recovery of waste where the use is part of a lawful practice of spreading and the spreading takes place on clearly identified parcels of land without prior processing.*

18. It can be seen from the above discussion that each case would need to be considered on its own merits and this view is supported by a letter to the appellants from the Planning Inspectorate, dated 17 December 2014, relating to another appeal. Although it was accepted that an example of an AD plant was not to be considered as a waste matter in that case, the letter of confirmation also noted that this should not be considered as definitive, as circumstances may differ from case to case.
19. In this particular case, the appellants accept that an exemption permit would need to be obtained from the EA for the processes involved. The livestock effluent material from the farms would be stored, collected, transported, mixed with silage, from an energy crop grown for the purpose, and then treated by an industrial process that would generate biogas. This would then be burnt to produce energy that would be converted to electricity. The remaining liquid digestate would then be returned to the farms as fertiliser. In my opinion, all this amounts to a 'recovery' process that brings the definitions relating to 'discarding' and 'waste' as set out in the GLDWA into play. I conclude therefore that the material would be waste and policy OW4 of the WLP is consequently of relevance to this case.
20. I do accept, however, that the WLP is now somewhat dated, having predated the issue of the Framework, which gives strong encouragement to the provision of renewable and low carbon energy and supports sustainable development. The policy assumes that AD plant for farm slurry is normally small scale and can be sited close to where the feedstock is produced but it is now the case that such AD plant is likely to be large and will serve a number of farms from its catchment area. Larger AD plant are noted as creating more complex siting issues in the reasoned justification for the policy, which seeks to direct them to existing landfill sites or waste transfer stations. Part of the reasoning for this is that waste would be being transported to these sites in any event, but clearly this would not necessarily be the case for farm generated livestock effluent. I therefore consider that the weight that can be attached to the policy in relation to the location of AD plant is not as great as it would be if the forgoing factors has been taken into account when drafting the policy. Nevertheless, the proposal remains in conflict with this adopted development plan policy.
21. In addition, the policy is not out of date in terms of its encouragement for AD plant, or in terms of the environmental protection policies included within the Framework. The Framework also notes that sustainable development is defined as having 3 strands - economic, social and environmental - which are mutually dependent and should not be considered in isolation. As well as supporting the productions of renewable energy the Framework notes that core planning principles should recognise the intrinsic character and beauty of the countryside. In this respect policy EN2(a) of the Tynedale Core Strategy is also in accordance with the Framework where it seeks to ensure that renewable energy schemes will not cause any significant adverse impact on the character and appearance of the landscape.

22. The appellants consider that the advantages of providing this facility, which is intended to serve farms within a 10 mile radius of the site, would outweigh any harmful impact on the character and appearance of the local environment and the loss of the greenfield site to development. There would also be a clear advantage in the location of the site close to the electricity substation, to which the power generated by the AD plant could be directly fed.
23. The local Landscape Character Area<sup>1</sup> is described as distinctly rural, sheltered and tranquil. It has a unified visual composition with little development of a commercial or industrial nature. The site is in a location where it is not widely visible from the B6319, apart from the road frontage noted above. Nevertheless, I saw at my site inspection that the land can be seen in many longer views from roads and footpaths in the surrounding countryside and, as noted above, from the village of Walwick and from other residential properties in the area.
24. The development would be large; it would cover 3.5ha and be on an industrial scale that, against the background of the landscape setting, would represent a prominent and intrusive addition to these views. In my opinion, it would be more appropriately sited in association with other such industrial or agricultural facilities, as required by policy OW4, rather than in an isolated location in otherwise undeveloped countryside.
25. The appellants propose to landscape the installation and have produced photomontage illustrations from 3 viewpoints to demonstrate the projected efficiency of cover from 0 – 20 years. These illustrations are not of a particularly good quality nor do they, to my mind, look sufficiently realistic to assist the appellants' claims that the installation would not be prominent in the landscape. They show the plant coloured a solid green, which might help it to blend into the background at some times of the year, but the background colours will change with the seasons and the man-made nature of the development would not then be permanently disguised by the use of colour.
26. The landscaping scheme would need to surround the whole development to be effective and, from the evidence of the photomontages, would take, I consider, at least 10 years to be even moderately effective. For all these reasons I conclude that the proposed development would significantly harm the existing, attractive environment and damage the character and appearance of the countryside.
27. Objections to the proposal by local people clearly explain why the landscape is valued and appreciated by those who live in the area and by the many tourists who travel to this part of the world to visit its historic sites such as Hadrian's Wall and walk the nearby footpaths. Any harm to the appearance of the existing landscape will therefore be widely experienced by a considerable number of people.
28. In summary, I consider that the harm to the landscape character and appearance would cause the proposal to conflict with policy EN2 (a) of the CS. In this situation, the development would conflict with the adopted Development Plan and with paragraph 17 of the Framework, whether or not it relates to waste development that would engage policy OM4 of the WLP.

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<sup>1</sup> LCA 29a – North Tyne Valley – Northumberland Character Assessment 2010

## **Other matters**

29. Although not raised by the Council as a reason for refusal, local residents are concerned about the impact of the traffic accessing the site. As noted above, some local roads are very rural and would not easily accommodate the size of lorries that would be likely to bring the feedstock to the site and remove the digestate from it.
30. It was confirmed at the Hearing that the livestock effluent material for the feedstock would be stored on the farms where it is produced until needed at the site and then brought either by the farmers in tractors and trailers or collected by lorry. The appellants however, maintain that any traffic coming to the appeal site would be on the road in any event and would not be adding to the overall number of vehicle movements in the area.
31. The vehicles delivering to the AD facility would create traffic all year round as, although the silage material would be stored on site, the manure and slurry would be transported as noted above. However, it was confirmed that, due to the harvesting of the silage material, there will be an increase in the number of vehicle movements needed at this time.
32. While I appreciate that rural roads are likely to accommodate an increased number of agricultural vehicles during the harvest period in any event, I am concerned that traffic from the wider area coming to the site would only exacerbate the problem, even if only during certain periods of the year when the AD facility would add to local traffic by importing feedstock from the wider area.
33. The appellants have submitted a plan showing 16 farms from an approximate 10 mile radius from the appeal site from where it is hoped to source feedstock material and the objectors have submitted a petition from local farmers who would not support the facility. Looking at the location of all these farms, I note that there are a considerable number of farms close to the appeal site that would not be using the proposed AD facility and any agricultural traffic from these locations would therefore be travelling elsewhere on local roads. The vehicles serving the appeal site would consequently be increasing the overall level of vehicle movements on roads in the immediate vicinity of the AD facility and at times these could be of a significant number. I consider the inconvenience and safety risks of these movements, albeit limited, nevertheless add to the other concerns over the impact of the proposal.
34. Although the Council has accepted that the noise from the site could be kept to an acceptable limit, this has also been challenged by local residents. However, the site is relatively remote from any residential properties, the nearest being some 350m to the north and, despite the reservations of local people, I consider that the conditions discussed at the Hearing, when attached to any planning permission, would ensure that noise levels were kept down to an acceptable level.
35. Similarly, although there are concerns that odours from the silage clamps would prove offensive, the Public Protection Department of the Council has reviewed the information submitted by the appellants and has concluded that, subject to appropriate conditions, there is no objection relating to odour. I find no reason to disagree with the conclusions of this assessment.

36. The installation could be seen, albeit at some distance, from the World Heritage Site of Hadrian's Wall and, if the intervening tree cover were lost, from the iron age hill fort at Warden Hill and would consequently lie within their settings. However, Historic England (formerly English Heritage) has given a detailed explanation of the factors that contribute to the significance of the heritage assets and has confirmed that, in its view, the development would not have a harmful impact on the appreciation of their significance.
37. The Framework, in paragraph 132, notes that the significance of a heritage asset can be harmed through development within its setting but in this case I am satisfied, for the reasons set out in the cogent analysis put forward by Historic England, that this would not occur. Nevertheless, this does not reduce the degree of harm that I have found would occur to the character of the landscape.

### **Conclusions**

38. The use of AD plant for producing sustainable energy is given strong encouragement in national planning policy and the proposed development would be very conveniently placed for connection to the substation; I therefore attach considerable weight to the benefits of the proposed development. However, I have also found that the harm caused to the landscape character would be significant and that there would be additional drawbacks caused by the increased traffic volumes on the surrounding rural roads.
39. I also note that, since the omission of the drying shed, which would have utilised waste heat from the combined heat and power unit (CHP), an alternative option has not been decided upon. The appellants state that mobile drying trailers might be used, and/or that a further planning application for a drying building might be submitted. It seems, therefore, that the proposed development would inevitably result in pressure for further on-site equipment or buildings that are not being considered as part of this application and which could be difficult to resist once the development had gained initial approval.
40. There is policy encouragement to locate AD plant close to the source of the feedstock or adjacent to other development and, even if this policy was now found to be dated, I am not persuaded that sufficient justification for the use of this greenfield site for such development has been established, particularly given that it is likely that feedstock would have to be brought to it from some distance away, thereby further reducing the sustainability credentials of the site.
41. I have found that the proposed development is not in accordance with development plan policy and, taking all the above factors into account, I consider that it does not represent sustainable development. When the 3 strands that comprise such development are considered together, I conclude that the environmental disadvantages of the proposal would significantly outweigh the benefits of using this site to generate sustainable energy and that planning permission should therefore not be granted.

*Katie Peerless*

**Inspector**

## **APPEARANCES**

### **FOR THE APPELLANTS:**

Stephen Barker	Prism Planning
Matthew Flint	JFS Park Shield Farm Biogas Ltd.
John Goodwin	Resource and Environmental Consultants Ltd.
Nicholas Robinson	Farmer

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

Joe Nugent	Senior Planning Officer, Northumberland County Council
Kevin Tipple	Planning Officer, Northumberland County Council

### **INTERESTED PERSONS:**

Ken Page	Chair, Warden Parish Council
Adrian Brewster	Local resident
Prof. Roy Sandbach	Local resident
Bob Elliot	Wall Parish Council
Dave Mowbray	Scouts Association
Roddy Findlay	representing Parkstone Farm
Simon Robson	Local resident
Dr. Margaret Lewis	Local resident
Michael Guthrie	Local resident
Steve Heminsley	Local resident
Dame Jackie Fisher	Local resident
Christine Blunt	Local resident
Pat Johnston	Local resident
Frances Whitehead-Lees	Local resident
Julian Hindle	Local resident
Iain Bennett	Local resident

## **DOCUMENTS**

- 1 Letters relating to appeal APP/Y2736/A/14/2226293
- 2 Legal opinion on appeal APP/Y2736/A/14/2226293
- 3 Submission from Adrian Brewster
- 4 Letter from Peter Nichol, County Commissioner, Northumberland County Council
- 5 Letters of support from local farmers submitted by appellants
- 6 Emails between County Council and appellants dated 10 July 2015
- 7 Email from County Council to appellants dated 21 July 2015
- 8 Petition from local farmers submitted by objectors
- 9 Notes of appellants costs claim
- 10 Notes of Council's response to costs claim
- 11 Emails between the County Council and the EA dated 4 December 2014
- 12 Memo from County Council dated 9 December 2014
- 13 Emails between County Council and appellants dated 6 January 2015
- 14 Emails between County Council and appellants dated 1 April 2015



- 15 (a) & (b) Emails between County Council and appellants dated 27 July 2015
- 16 Email from County Council and PINS dated 28 July 2015
- 17 EA Position Statement 29 (now withdrawn)
- 18 Counsel's opinion on Position Statement 29

## **PLANS**

- A Location of interested farms (1)
- B 10 mile radius around site
- C Location of interested farms (2)
- D Location of objecting farms