



PLANNING COMMITTEE

Tuesday 29 September 2015 at 6.00 pm

Council Chamber, Ryedale House, Malton

Agenda

1 **Apologies for absence**

2 **Declarations of Interest**

Members to indicate whether they will be declaring any interests under the Code of Conduct.

Members making a declaration of interest at a meeting of a Committee or Council are required to disclose the existence and nature of that interest. This requirement is not discharged by merely declaring a personal interest without further explanation.

3 **Schedule of items to be determined by Committee** (Page 2)

4 **15/00781/73AM - Gravel Pit Farm, Sand Hutton, York** (Pages 3 - 60)

Agenda Item 3

APPLICATIONS TO BE DETERMINED BY RYEDALE DISTRICT COUNCIL

PLANNING COMMITTEE - 29/09/15

#Error

Application No: 15/00781/73AM

Application Site: Gravel Pit Farm Sand Hutton York North Yorkshire YO41 1LN

Proposal: Variation of Condition 05 of application 14/00709/MFUL as allowed by appeal APP/Y2736/A/14/2226293 dated 26.05.2015 to allow an increase of 6,500 tonnes of grass silage feed stock per annum to give a total of 20,000 tonnes of grass silage feed stock per annum in addition to the 12,150 tonnes of Cattle FYM and 900 tonnes of chicken manure per annum

RYEDALE DISTRICT COUNCIL PLANNING COMMITTEE

SCHEDULE OF ITEMS TO BE DETERMINED BY THE COMMITTEE

PLANS WILL BE AVAILABLE FOR INSPECTION 30 MINUTES BEFORE THE MEETING

Item Number: 4
Application No: 15/00781/73AM
Parish: Sand Hutton Parish Council
Appn. Type: Major Non Compliance Conditions
Applicant: JFS Gravel Pit Farm Biogas Ltd
Proposal: Variation of Condition 05 of application 14/00709/MFUL as allowed by appeal APP/Y2736/A/14/2226293 dated 26.05.2015 to allow an increase of 6,500 tonnes of grass silage feed stock per annum to give a total of 20,000 tonnes of grass silage feed stock per annum in addition to the 12,150 tonnes of Cattle FYM and 900 tonnes of chicken manure per annum
Location: Gravel Pit Farm Sand Hutton York North Yorkshire YO41 1LN

Registration Date: 3 July 2015
8/13 Wk Expiry Date: 2 October 2015
Overall Expiry Date: 19 September 2015
Case Officer: Alan Hunter **Ext:** Ext 276

CONSULTATIONS:

Highways England	
Health And Safety Executive	Does not advise on safety grounds against the granting of planning permission
Parish Council	Object
Countryside Officer	No comment to make on this application
Environmental Health Officer	No objection
Tree & Landscape Officer	No views received to date
Head Of Planning Services	No views received to date
NY Highways & Transportation	No objection
Highways England	No objection
Sustainable Places Team (Yorkshire Area)	No objection
Land Use Planning	No views received to date
Northern Gas Networks	No views received to date

Neighbour responses: Ms Carol Rodgers, Mrs Susan Conyers, Mr Charlie & Mrs Michelle Kimmings, Mr Robert Wilson & Mrs Rosie Thornton, Mr Richard Steele, Lynne Pearce, A And B Atkinson, Mrs Gillian Moss, Mr Colin Garner, Mrs Sara Esler, Mr Brian Kingston, Mr Philip Moss, N And T Magson, Eilis Burrows, M Shepherd, RW And RE Miers, Mr J Short, C & P Pacitto, E A White, Susan And Norman Maitland, Dr P Orton, Dr C Hall, Mr And Mrs K A Freeman, Mr Michael Young,

SITE:

Gravel Pit Farm is located just over 1km west of Sand Hutton and the supporting information (submitted with original application) states that the application site is part of a collection of farms comprising a holding of some 5,250 acres spread across various sites in the North Yorkshire area. Gravel Pit Farm has a farmhouse and a range of traditional and modern farm buildings. The agent has stated the farm as having 800 acres of arable land. This land is used predominately for grain and root crop, hay and silage.

The application site itself is located on a field immediately west of the farmstead. The site extends to 4.37ha and is bounded to the south, east and west by dense conifer plantation. The farm is currently accessed by a farm track from the road which links the A64 to Sand Hutton.

The surrounding area is predominately agricultural, with the farmstead being located approximately 1km from the A64. Less than 1km to the south-west of the farm is the Sand Hutton Applied Innovation Campus - a 27,800m² facility which houses businesses engaged in agriculture, food, biotechnology and science fields, including the HQ of the Food and Environment Research Agency. Sand Hutton itself is around 10km north-east of York, with a population of just under 200. The village has a distinctly rural feel, characterised mainly by detached houses on generous plots with a substantial spread of mature trees throughout the village. The village is located within the Parish of Claxton and Sand Hutton, with the majority of it being within the Sand Hutton Conservation Area. It contains three listed buildings, including Grade II Listed St Mary's Church, Stank Bridge and Dovecote, as well as the Scheduled Ancient Monument of St Leonard's Church.

PROPOSAL:

Planning permission is sought for the variation of condition 05 of application 14/00709/MFUL as allowed by appeal APP/Y2736/A/14/2226293 dated 26.05.2015 to allow an increase of 6,500 tonnes of grass silage feed stock per annum to give a total of 20,000 tonnes of grass silage feed stock per annum in addition to the 12,150 tonnes of Cattle FYM and 900 tonnes of chicken manure per annum.

Condition 05 of appeal APP/Y2736/A/14/2226293 states:

"The annual input of feedstock into the development hereby approved shall not exceed the following, unless otherwise agreed in writing by the Local Planning Authority:

- *Cattle FYM - 12,150 tonnes*
- *Chicken Manure - 900 tonnes*
- *Grass Silage - 13,500 tonnes*

Records, including weights, of all feedstock brought to the site in association with the proposed development shall be retained for at least two years and be available for inspection by the Local Planning Authority upon request".

The agent states that the grass silage will be grown at Gravel Pit Farm, and the additional digestate spread at Gravel Pit Farm. Furthermore the agent has stated that there are no additional requirements for storage at Gravel Pit Farm to accommodate the proposed additional grass silage. A draft Digestate Management Plan (DMP) has been submitted with the application, which seeks to demonstrate that the digestate produced by the AD plant including the additional grass silage can be spread on the arable land at Gravel Pit Farm.

This application has been screened in accordance with The Town & Country Planning (Environmental Impact Assessment) Regulations 2011 and it has been confirmed that it does not constitute EIA development.

HISTORY:

The most relevant planning history relating to the site includes:

14/01073/MFUL - Application approved by the Local Planning Authority for the Installation of an anaerobic digestion and combined heat and power plant to include 3 no. tanks, ancillary structures, silage clamps and digestate storage lagoon.

14/00709/MFUL - Application allowed on appeal following a non-determination appeal for the Installation of an anaerobic digestion and combined heat and power plant to include 3 no. tanks, ancillary structures, silage clamps and digestate storage lagoon.

03/00250/FUL - Change of use of agricultural buildings and land for use as wholesale fruit and vegetable business - Approval

POLICY:

National Policy Guidance

National Planning Policy Framework (NPPF) 2012

National Planning Policy Guidance (NPPG) 2014

National Anaerobic Digestion Strategy and Action Plan (NADSAP) 2011

Ryedale Local Plan Strategy (2013)

Policy SP1 - General Locations for Development

Policy SP9 - Land Based Economy

Policy SP13 - Landscapes

Policy SP14 - Biodiversity

Policy SP16 - Design

Policy SP17 - Managing Air, Land and Water Resources

Policy SP18 - Renewable and Low Carbon Energy

Policy SP19 - Presumption in Favour of Sustainable Development

Policy SP20 - Generic Development Management Issues

APPRAISAL:

Introduction

It has been considered that due to the level interest in this submission and in the previous two planning applications, together with the need to facilitate a decision within the initial statutory time period (ending 2 October 2015), this application should be considered at a Special Planning Committee meeting.

Members will note from the history that there has been two previous applications for an Anaerobic Digester on the site. Both these applications were identical. There were considerable delays with the first application due to a dispute regarding whether the application was a District or County planning matter which centred on the level of imported manure to Gravel Pit Farm. PINS finally determined that the proposal was a District matter. PINS had jurisdiction over the first application that had been the subject of a non-determination appeal because of the aforementioned delays. The Local Planning Authority retained jurisdiction over the second application, which was approved by Planning

Committee at its February meeting this year. This approval was the subject of detailed planning conditions to tightly control the development. Despite obtaining an approval from the LPA the applicants continued with the non-determination appeal as they disagreed with 5 conditions that the LPA had imposed. One of these conditions was condition 05, the subject of this application. The other conditions related to :

- Condition 4: the sourcing of feedstock;
- Condition 9: the deposition of mud on the highway;
- Condition 10: HGV routing proposals; and
- Condition 13: requirement for a Digestate Management Plan(DMP).

The Inspector allowed the appeal and granted planning permission, and of the conditions challenged only condition 9 above was not considered to be necessary by the Inspector. Condition 05 remained as originally approved and drafted by the Local Planning Authority.

In regard to any change in the tonnages specified in Condition 05, Para 23 to Appeal decision APP/Y2736/A/14/2226293 states:

Para 23 *"As it stands, the condition permits the submission of a schedule to the Council for approval in writing, when a change is proposed. This would allow the Council to either accept the change having considered the implications or decline to accept the change by informing the Appellants that it would constitute a material change in the permission. On balance this seems a sensible approach, although I do accept it does not offer the flexibility the Appellants would like and it would mean a little extra work for both main parties. Again, I am satisfied that the draft condition would meet the tests espoused in the PPG and is appropriately worded".*

Officers met the agent and developer in June 2015 to discuss the proposed amendment to the application. The agent considered the additional feedstock could be agreed by Officers without a formal application by virtue of the wording of paragraph 23 above. Officers took a contrary view that 6,500 additional tonnes of grass silage was a material change that required the submission of an a further planning application for consideration. It represents a 46% increase in the amount of grass silage to be used in the Anaerobic Digester and an increase of 24% in the tonnage material overall, (including cattle and chicken manure).

During the consideration of this application it was established by Officers when verifying the extent of the Gravel Pit Farm holding that Certificate B (ownership notification) had not been completed correctly. The agent has since amended his application and served notice on all three owners of the application site. The correct notices were served on 1 September 2015 and the revised Certificate B was received by the Local Planning Authority on 2 September 2015. In addition, the agent had been asked to provide a site location plan identifying the other land owned by the applicant, and shown in blue on the site location plan. This often occurs with agricultural development so there is an appreciation of the land holding. It was also considered important in this case due to the land required for spreading the digestate. The agent has not provided this additional information as he does not consider it necessary. A draft Digestate Management Plan has been submitted showing land where the digestate is proposed to be stored and spread. Officers have verified all but one of these fields (Field 44) as belonging to the owners of Gravel Pit Farm. The agent has confirmed that Field 44 is rented by the owners of Gravel Pit Farm on a rolling 5-year agreement, and has been since 2010. In the circumstances, Officers are satisfied that the land stated as being available for spreading the digestate is available to Gravel Pit Farm for the said purpose, and whilst preferable, it is not essential for the land to be identified in blue on the site location plan.

Conditions 09 and 12 of the second permission (granted on appeal) have been discharged by Officers. Condition 09 related to the routing of HGV construction traffic and the local Highway Authority raised no objection to the details submitted. Condition 09 related to a Digestate Management Plan.

Officers consulted the Environment Agency who did not object to the proposal, and also sought expert advice from England & Lyle (Planning Consultants) who independently confirmed the DMP was fit for purpose and advised Officers that the condition could be discharged. This application, if approved, relates to an increase in grass silage that was not accounted for within the information submitted to discharge condition 09. A revised DMP has been submitted with this application that addresses the increased feedstocks and additional digestate. However, it is the opinion of the Council Solicitor that as this application only seeks a variation to condition 05, (and that variation increases the feedstocks) a further DMP condition should be imposed if planning permission is granted for this application. This opinion has been disputed by the agent and the further views of the Councils Solicitor will be made at the meeting.

Within the appeal statement on the first application it was stated by the Inspector at para 21:

'However, the figures contained in the draft condition were expressed by the Appellants as maximum feedstock quantities for the AD plant.'

Many third party consultation responses have asked why the AD plant can now accommodate an extra 6,500 tonnes of grass silage in light of Para 21 above. The agent has stated in his letter dated 4 September 2015:

'The quantities of material debated at the hearing were based upon delivering a scheme which produced the quantity of gas and power that it was believed the infrastructure network could accommodate. It will be appreciated that there is no point in producing excess gas or electricity that cannot be accommodated in the local network.'

Since the Appeal Hearing (Appeal ref APP/2736/A/2226293) our clients have been in discussions with Northern Gas Networks and a Detailed Network Study has been undertaken. This has indicated a greater consumption of gas and our clients are simply trying to help meet that need. It is assumed that this will be recognised as a highly sustainable situation?'

Policy Background for Anaerobic Digestion Development

Paragraph 93 of the NPPF makes it clear that planning plays a key role in “supporting the delivery of renewable and low carbon energy and associated infrastructure.” Paragraph 96 goes on to state:

“In determining planning applications, local planning authorities should expect new development to:

- *comply with adopted Local Plan policies on local requirements for decentralised energy supply unless it can be demonstrated by the applicant, having regard to the type of development involved and its design, that this is not feasible or viable; and*
- *take account of landform, layout, building orientation, massing and landscaping to minimise energy consumption.”*

It goes on to state at paragraph 98 that when determining planning applications, local planning authorities should not require applicants to demonstrate overall need (noting that even small-scale projects provide a valuable contribution towards cutting greenhouse gas emissions) and approve applications if its impacts are, or can be made, acceptable.

Policy SP18 of the Ryedale Local Plan Strategy (2012) states those developments which generate renewable and/or low carbon sources of energy providing proposals:

- *Can be satisfactorily assimilated into the landscape or built environment;*
- *Would not impact adversely on the local community, economy or historical interests, unless their impact can be acceptably mitigated;*

- *Would not have an adverse impact on nature conservation, unless their impact can be acceptably mitigated;*
- *Would not have an adverse impact on air quality, soil and water resources, unless their impact can be acceptably mitigated.*

Policy SP9 states that Ryedale's land-based economy will be sustained and diversified with support for new buildings that are necessary to support land-based activity and a working countryside, including for farming, and appropriate new uses for land including energy production.

Para 98 of the NPPF advises that the utilisation of manure and crops produced on farms for anaerobic digestion can play a role as an efficient process in the capture and treatment of waste material and can help play a role in reducing greenhouse gas emissions. In addition the use of digestate as a fertiliser for spreading on agricultural land again offers benefits as it is nitrate rich, and it does not result in odours like the conventional spreading of untreated manure. Finally the biogas resulting from the AD process has clear, significant benefits in that it provides a low carbon form of heat and power which contributes towards reducing emissions.

The proposed AD plant would utilise raw materials which are currently a by-product of farming practices to generate heat and power to Gravel Pit Farm through the Combined Heat and Power Plant. It is considered that AD technology is at the forefront of the Government's drive to increase the provision of renewable energy whilst also dealing with waste products. The proposed development accords with the 'presumption in favour of sustainable development' set out in the NPPF and Policy SP19 of the Ryedale Local Plan Strategy. In summary, the principle of the development has already been anchored by grant of earlier planning permissions for the AD plant, the impact of the proposed variation are discussed below.

Key Considerations

The main issues in the consideration of the proposed variation of condition 05 are:

- *Pollution/amenity (Noise and Odour); and*
- *Highway safety;*

Pollution/Amenity (Noise/Odour)

Policy SP20 states that, “*new development will not have a material adverse impact on the amenity of present or future occupants, the users or occupants of neighbouring land and buildings or the wider community by virtue of its design, use, location and proximity to neighbouring land uses. Impacts on amenity can include, for example, noise, dust, odour, light flicker, loss of privacy or natural daylight or be an overbearing presence.*”

In terms of amenity impacts, the two likely sources of impacts that could arise due from noise and odour. From a physical/visual impact, the application site is over 1km from the closest residential properties of Sand Hutton. Given the scale and siting of the proposed development, is unlikely to result in loss of privacy or be overbearing on local residents, and in this respect it is no different to the approved scheme.

A Noise Impact Assessment prepared by Resource and Environmental Consultants (REC) Ltd (dated 5 September 2014) was submitted in respect of the first application and at the request of the Council's Environmental Health Officer an updated noise report was submitted dated 8 January 2015. The reports concluded that the assessment identified that the total noise rating level from the proposed plant falls below the adopted noise criteria at the closest dwelling and as such there is no need for mitigation measures. The Assessment examines the impact from the proposed AD/CHP facility at the closest residential receptor – located beyond the southern boundary of the Site equidistant back from

the road relative to White Syke Farm. The main source of noise was from distant road traffic using the A64. There was also an assessment undertaken of the proposed conditioning plant. The Council's Environmental Health Officer responded on 29 January 2015 to the first application indicating there are no objections subject to conditions restricting feedstock to animal manure and crops only and requiring their storage only in the feedstock clamps, main and secondary digestion tanks and the digestate storage lagoon. In respect of noise on the proposed variation of Condition 05, the Environmental Health Officer has stated that because it was assumed that the gas production would be a continuous operation, there is not requirement for an updated noise assessment. The other conditions as agreed by the Inspector are recommended to be imposed if this application is approved.

In respect of odour, an Odour Assessment prepared by REC Ltd dated 5th September 2014 was submitted to the Council in support of both the original and subsequent application. The Odour Assessment sets out potential odour emissions being defined based upon the proposed plant operation and monitoring undertaken of materials similar to those used on site which were represented within a dispersion model. The Assessment quantified impacts at sensitive receptor locations in the vicinity of the site. The results compared with the EA odour benchmark level and the significance of impacts was assessed in accordance with IAQM guidance.

The Assessment concludes that predicted odour concentrations were below the relevant EA odour benchmark level at all receptor locations. The significance was defined as negligible at all but one sensitive receptor. The overall odour effects as a result of the proposed development are considered by the Assessment to be low.

The Council's Environmental Health Officer initially requested an updated Odour Assessment to take account of the increased grass silage usage, particularly in relation to the:

- Silage transfer route between the silage clamp and feed hopper (this was assessed on the basis of being carried out for 2 hours a day in the original assessment); and
- Agitated silage within the feed hopper (this was also assessed as a 2 hours a day activity).

A letter was forwarded by the agent to Officers dated 4 September 2015 from REC who undertook the original Odour Assessment. In their opinion a further assessment is not required and they provided reasoned justification for this. A further email was submitted by Mr Steve Barker (agent) dated 7 September 2015 re-affirming in his opinion that there is no need for such an assessment. Those acting for the applicant's have concluded that, even taking a worst case scenario and using maize rather than grass silage (maize is considered to be the most odorous silage, $20\text{ou}_E\text{m}^3$ as opposed to $0.5\text{ou}_E\text{m}^3$ for grass silage) with the maximum odour at any receptor being $0.69\text{ou}_E\text{m}^3$ below the benchmark of $3\text{ou}_E\text{m}^3$ and lower benchmark of $1.5\text{ou}_E\text{m}^3$. The agent and his Odour Consultant have therefore maintained that the production of an updated Odour Assessment is not necessary. The Council's Environmental Health Officer has considered their response and confirmed that there is no requirement for an updated Odour Assessment and furthermore the Environmental Health Officer raises no objection to the proposal.

The movement, management, storage and disposal of manure is a common operation within farming enterprises. Given that the quantities of waste utilised by the proposed development are already brought onto the site (or could be brought onto the site without planning control) it is considered that subject to conditions controlling this, that odours are unlikely to be beyond existing levels and therefore unlikely to have a significant detrimental impact on the amenity of surrounding residents.

In terms of the 'end-product', the digestate is inert and does not result in malodours. Indeed its use for spreading on arable land would actually reduce existing odour levels where raw manure is currently spread. It is not considered that this additional amount of digestate will be detrimental to the occupiers of properties in the locality.

The Environment Agency has confirmed no objection to the proposed increase in grass silage. They have indicated that an Environmental Permit, in accordance with their regulations will be required. The purpose of the Environmental Permit is to offer regulatory control over the management of the operation and to limit the potential for emissions in respect of odours, noise, groundwater pollution etc. National Policy Guidance (National planning Policy for Waste 2014) makes clear in paragraph 7 that local authorities in determining planning applications should, *"concern themselves with implementing the planning strategy in the Local Plan and not with the control of processes which are a matter for the pollution control authorities."*

In view of the above, there are considered to be no sustainable objections to the proposal in terms of noise or odour, or in terms of the potential impact of the proposal upon the amenities of occupiers of properties in the locality.

Highways

In regard to the earlier two planning applications for the AD plant the agent stated on the 20 January 2015, as follows:

- *100% of the feedstocks will be sourced from crops grown at Gravel Pit Farm, as well as manure deposited on Gravel Pit Farm as part of the farms collective operations across its bases previously identified*
- *Silage production at Gravel Pit Farm varies year-on-year*
- *Approximately 2,430 tonnes per annum of FYM from approximately 200 cattle is produced from Gravel Pit Farm*
- *No chicken manure is produced from Gravel Pit Farm*
- *Approximately 2,000 tonnes per annum of silage is imported to the site*
- *Approximately 9,720 tonnes per annum of FYM is imported to the site from 800 cattle across the farms operations*
- *Approximately 900 tonnes per annum of chicken manure is imported to the site from the farms operations*
- *Articulated HGV's are used to import and export manures and silages with approximate loads of 29 tonnes, therefore 9,720 imported tonnes per annum equals less than 1 trip per day over a year*
- *The importation of chicken manure results in 31 vehicle trips per annum*
- *The imported material comes from:*
 - *Smaws Farm, Tadcaster - 20 miles*
 - *Landmouth Hall, Kirby Sigston - 36 miles*
 - *High House Farm, West Harlsey - 41 miles*
 - *Goosecroft Farm, East Harlsey - 42 miles*
 - *North Lowfields Farm, Kirby Fleetham - 47 miles*
- *The current arrangements for the importing of material would continue*
- *The sources of the feedstock would be the same and importation would carry on as currently*
- *Approximately 800 acres would be utilised at Gravel Pit Farm for spreading.*

On this basis the local highway authority had no objections to the original identical applications.

Policy SP20 states in relation to highway safety that *"access to and movement within the site by vehicles, cycles and pedestrians would not have a detrimental impact on road safety, traffic movement or the safety of pedestrians and cyclists"*.

The agent contacted Highways England and NYCC regarding the proposed amendment who raised no objection. Their response to the agent's pre-application enquiries are included within the submission, and the agent states within his supporting letter dated 3 July 2015:

"Although we expressed our intention to produce all the additional feed stock at Gravel Pit, they have assessed the proposal on a worst-case scenario in that all the additional tonnage is to be imported to Gravel Pit Farm. They have concluded that if this were the case, it would not have an adverse impact upon the safety or capacity of the local highway network. To put the worst case scenario into context 6,500t would equate to less than one additional HGV movement on the network every day".

In response the Case Officer's questioned the frequency of such movements, if the silage was imported to the application site. The agent stated within his letter of response dated 4 September 2015:

*"To be absolutely clear we are proposing using additional grass silage grown on Gravel Pit Farm as shown in the submission. **There will be no increased traffic movements to the farm as a result of this proposal.** The Highway Authority and Highway Agency are both satisfied on this point".*

Highways England and the local Highway Authority have confirmed that they have no objection to the additional 6,500 tonnes of grass silage. As such and even on the worst case scenario of the grass silage being imported, the highway network can adequately accommodate the additional traffic. Furthermore, if the grass silage were to be imported, Condition 04 limits the locations from where such grass silage could be imported from, namely:

- Smaws Farm, Tadcaster
- Landmouth Hall, Kirby Sigston
- High House Farm, West Harlsey
- Goosecroft Farm, East Harlsey
- North Lowfields Farm, Kirby Fleetham
- Gravel Pit Farm, Sand Hutton

It is also noted that Condition 06, (which is also recommended to be repeated if the application is approved) prevents the export of any digestate from Gravel Pit Farm.

In view of this, there are considered to be no sustainable highway related objections to the proposed development.

It is not considered appropriate to repeat Condition 12 (routing of construction vehicles) as this condition has already been discharged and there are no changes proposed on this application to affect the construction of the AD plant, unlike the DMP condition. A condition is however, recommended to ensure the construction traffic is routed in accordance with the details previously submitted to discharge condition 09.

Other issues

There are no physical changes to the approved scheme that will adversely affect the visual impact of the AD plant. Furthermore, there are not considered to be any changes proposed to the approved scheme that are considered to have any material change in terms of the impact upon biodiversity and ecology. The Council's Countryside Management Officer raises no objection to the proposal.

There is no objection to the proposal from the Health & Safety Executive in regard to the proximity of underground pipework.

The site is not located within a flood zone, and the proposal is not considered to be at any unacceptable risk of flooding. Neither is the proposal considered to be likely to have an adverse effect upon ground water pollution, and there are no changes to the storage facilities at the site. The Environment Agency, as advised above, do not raise objection to the proposal.

Third party comments

The Parish Council has objected to the application, and there have been 24 letters of objection received, raising the following issues:

- Traffic and highway safety;
- That the AD plant will operate longer and more intensively;
- Noise and odour;
- The credibility and integrity of the application;
- Incremental creep of the AD plant;
- Nuisance and pollution;
- Landscaping and screening from the A64, Public Right of Way and from the villages of Sand Hutton and Claxton;
- That the applicant had previously stated maximum feedstocks for the AD plant, as quoted in para 21 of the Appeal Decision;
- The frequency of vehicle movements associated with the additional grass silage;
- The length of the time the digestate could be stored at the site;
- A suggestion that the owner of Gravel Pit Farm bought an additional farm in the locality;
- A request that all figures provided by the applicant/agent are independently verified;
- Insufficient land to accommodate the level of nitrogen produced;
- Impact on FERA/CAPITA site;
- The presence of a cordon sanitaire around the FERA/CAPITA site;
- Is there an increase in storage capacity required?;
- A suggestion that alternative technology could require less grass silage; and
- That the land at Gravel Pit Farm is not capable of yielding sufficient grass silage.

The appraisal above has already addressed the issues of: traffic and highway safety; frequency of vehicle movement; noise and odour; and potential nuisance and pollution.

The comments about the maximum feedstocks that the AD plant could accept is also mentioned above along with the agent's response. It is noted that the AD plant will be operating more intensively than approved with the additional grass silage but this is not in itself a reason for refusal. The impacts associated with this have been appraised (see above) and there are considered to be no sustainable planning objections to this. The LPA has verified the land ownership of the land associated with Gravel Pit Farm. It is not considered that there is any need to independently verify other information on this application. The agent has confirmed that there are no additional plans to amend the AD plant at the present time. The agent is content that there is sufficient storage at the site for the digestate and there are tightly worded conditions to control the storage and spreading of the digestate. The comments about the amount of arable land required for spreading the digestate, the grass silage yield from the site; and the capability of the arable land to accommodate the nitrogen produced are noted, but these opinions are not supported by the responses from technical consultees. The DMP for the approved scheme has been independently checked by a consultant, and the agent is confident that the arable land at Gravel Pit Farm can produce the additional grass silage and accommodate the additional digestate. The conditions as approved and recommended on this application to be imposed are tightly worded to control this. No objections have been received from FERA/CAPITA. It is noted that representatives from FERA were involved in preparing the National Anaerobic Digestion Strategy and Action Plan (NADSAP) 2011. Officers are not aware of any such 'cordon sanitaire' around the FERA/CAPITA site for planning purposes. The use of alternative technologies is not a material consideration. The agent has already stated that no further storage facilities are required at the site. Condition 8 below, as already approved is recommended to ensure additional planting between the proposed AD plant and the existing plantation. No additional planting was imposed in relation to the existing public right of way or in respect of the village of Sand Hutton and Claxton, and it is considered to be unreasonable to impose such a condition on this application.

Conclusion

It is considered that having regard to all relevant development plan policies and all other material planning considerations, the proposed development is considered acceptable subject to the conditions set out below.

RECOMMENDATION: Approval

1 The development hereby permitted shall be begun on or before 3 years from the date of this permission.

Reason:- To ensure compliance with Section 51 of the Planning and Compulsory Purchase Act 2004.

2 The development hereby permitted shall be carried out in accordance with the following approved plan(s):

- Site Location plan received by the LPA on 30 September 2014
- Landscaping Plan (File Ref. 148 Drg.01) received by the LPA on 06 January 2015
- 14T661-100 Rev P7 received by the LPA on 30 September 2014
- 14T661-600 Rev P6 received by the LPA on 30 September 2014
- Design and Access Statement received by the LPA on 30 September 2014
- Planning Statement received by the LPA on 30 September 2014
- Noise Assessment received by the LPA on 30 September 2014
- Odour Assessment received by the LPA on 30 September 2014
- Flood Risk Assessment received by the LPA on 30 September 2014
- Phase 1 Ecology Report Rev 2 dated 13 January 2015

Reason: For the avoidance of doubt and in the interests of proper planning.

3 No feedstock shall be used in the development hereby approved other than farmyard manure, chicken manure and grass silage.

Reason:- In the interests of highway safety and to protect nearby occupiers and to satisfy Policy SP20 of the Ryedale Plan - Local Plan Strategy.

4 No feedstock shall be used in the development hereby approved other than that sourced from the following locations:

- Smaws Farm, Tadcaster, LS24 9LP
- Landmoth Hall, Kirby Sigston, DL6 3TF
- High House Farm, West Harsley, DL6 2PR
- Goosecroft Farm, East Harsley, DL6 2DW
- North Lowfields Farm, Kirby Fleetham, DL7 0SY
- Gravel Pit Farm, Sand Hutton, Y041 1LN

Reason: In the interests of highway safety and to protect nearby occupiers and to satisfy Policy SP20 of the Ryedale Plan - Local Plan Strategy.

5 The annual input of feedstock into the development hereby approved shall not exceed the following, unless otherwise agreed in writing by the Local Planning Authority:

- Cattle FYM - 12,150 tonnes

- Chicken Manure - 900 tonnes
- Grass Silage - 20,000 tonnes

Records, including weights, of all feedstock brought to the site in association with the proposed development shall be retained for at least two years and be available for inspection by the Local Planning Authority upon request.

Reason:- In the interests of highway safety and to protect nearby occupiers and to satisfy Policy SP20 of the Ryedale Plan - Local Plan Strategy.

- 6 No digestate resulting from the development hereby approved shall be exported from Gravel Pit Farm unless otherwise agreed in writing by the Local Planning Authority.

Reason:- In the interests of highway safety and to satisfy Policy SP20 of the Ryedale Plan - Local Plan Strategy.

- 7 No feedstock and/or digestate associated with the development hereby approved shall be stored on site other than in the feedstock clamps, main and secondary digestion tanks, and digestate storage lagoon.

Reason:- In order to comply with the development hereby approved and to prevent mal odour, pollution of the local environment and to protect the character and appearance of the area. The condition is thereby required to meet the requirements of Policies SP17 and SP20 of the Ryedale Plan - Local Plan Strategy.

- 8 The landscaping of the site shall be carried out in accordance with the approved landscaping plan reference 148.01 and all landscaping shall be maintained in accordance with the approved landscaping plan for the lifetime of the development hereby approved.

Reason:- In order to protect the character and appearance of the area and to satisfy Policy SP20 of the Ryedale Plan - Local Plan Strategy.

- 9 Unless otherwise approved in writing by the Local Planning Authority, the development hereby approved shall only be undertaken in accordance with the construction vehicle routing details submitted and agreed to discharge Condition 09 of approval APP/Y2736/A/14/2226293 by virtue of application 15/00655/COND.

Reason:- In the interests of highway safety and to satisfy Policy SP20 of the Ryedale Plan - Local Plan Strategy.

- 10 All mitigation measures set out in the Phase 1 Ecology Report Rev.2 prepared by Naturally Wild Consultants Ltd dated 13/01/15 shall be implemented and retained in accordance with the details set out in the Report for the lifetime of the development hereby approved.

Reason:- In order to take full accord of protected species that may be using the site and to satisfy Policy SP14 of the Ryedale Plan - Local Plan Strategy.

- 11 No gas resulting from the development hereby approved shall be tankered offsite unless otherwise agreed in writing by the Local Planning Authority.

Reason:- In the interests of highway safety and to satisfy Policy SP20 of the Ryedale Plan - Local Plan Strategy.

- 12 No development shall commence until a Digestate Management Plan has been submitted to and approved in writing by the Local Planning Authority. This shall include details on the

storage of digestate, locations for the spreading of digestate and quantities of digestate to be spread, a soil sampling schedule, digestate sampling and analysis and measures to ensure adherence to Nitrate Vulnerable Zone regulations. Thereafter the development hereby approved shall be carried out in accordance with the agreed Digestate Management Plan.

Reason:- In order to minimise potential odour and to satisfy Policy SP20 of the Ryedale Plan - Local Plan Strategy.

- 13 Details of the location, height, design, hours of operation and luminance of external lighting for the development hereby approved (which shall be designed to minimise the potential nuisance of light spillage on neighbouring properties and highways), shall be submitted to and approved in writing by the Local Planning Authority before any external lighting is used on site. Any scheme that is approved shall be implemented for the lifetime of the development hereby approved and retained in a condition commensurate with the intended function.

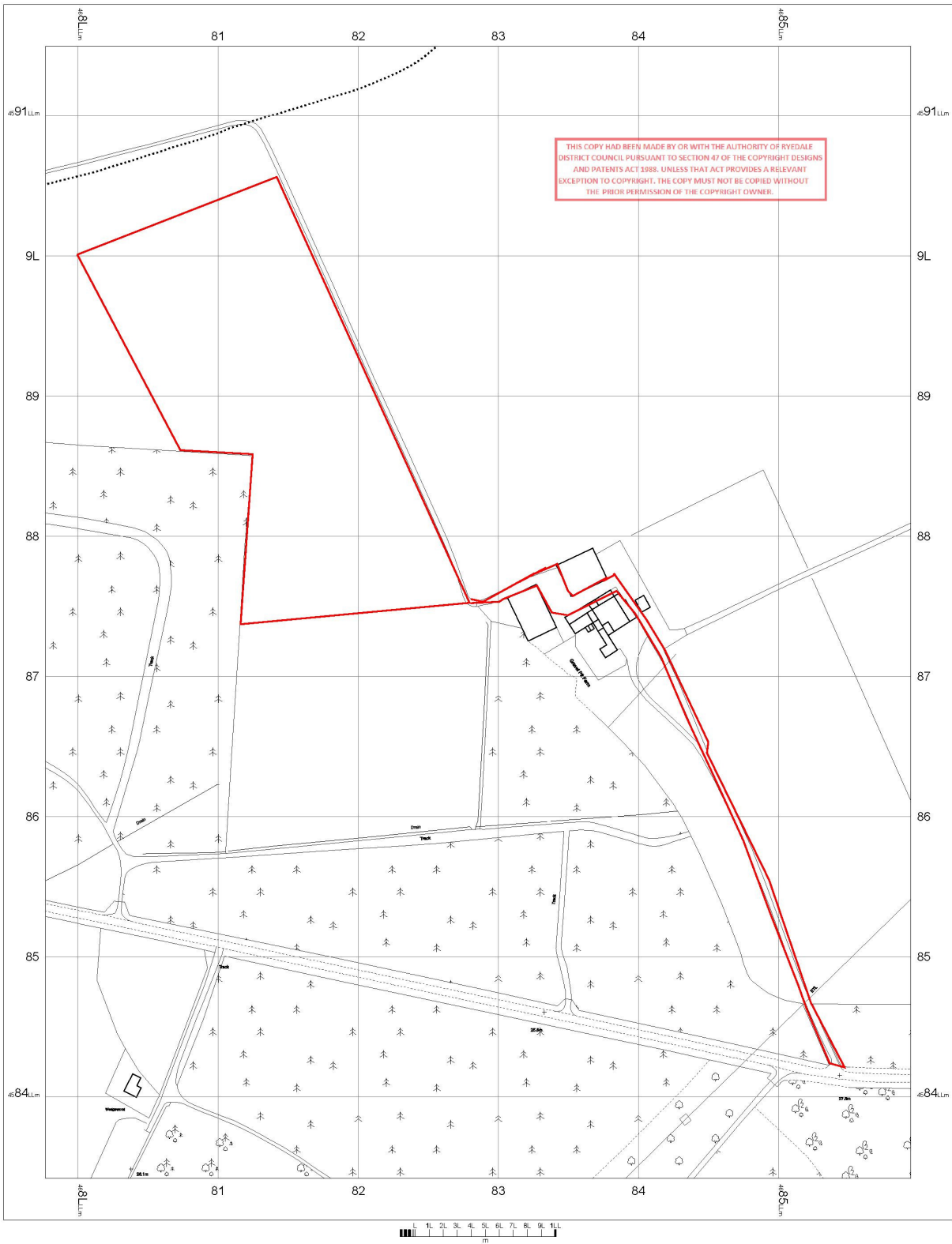
Reason:- In order to protect the character and appearance of the area and to satisfy Policy SP20 of the Ryedale Plan - Local Plan Strategy.

- 14 Within 25-years of the completion of construction of the development, or within 6-months of the cessation of gas production from the development, whichever is the sooner, the development hereby approved shall be dismantled and removed from the site in its entirety. 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 3-months from the cessation of power production.

Reason:- To protect the character and appearance of the area and to ensure that the development is only retained when it is operationally required and to satisfy Policy SP20 of the Ryedale Plan - Local Plan Strategy.

Background Papers:

Adopted Ryedale Local Plan 2002
Local Plan Strategy 2013
National Planning Policy Framework
Responses from consultees and interested parties



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DATE VALID
03/07/15





Our Ref SGB/AB

Mr G Housden
Head of Planning
Ryedale District Council
Old Malton Road
Malton
North Yorkshire
YO17 7HH

3rd July 2015

Dear Mr Housden

Re: S73 Application - change to Condition 5, Gravel Pit Farm, Sand Hutton, Reference APP/Y2736/A/14/2226293

Further to the Planning Inspectorate decision notice, this letter accompanies a planning application under Section 73 of the Town and Country Planning Act 1990 to vary conditions 5 on the Inspectors decision notice.

Specifically the application seeks to allow for the input of an additional 6,500 tonnes of grass silage to be grown at Gravel Pit Farm and used in the facility.

Paragraph 23 of the Inspectors decision notice sets out the process to agree such a proposed change by way of a schedule, allowing the Council to accept the proposal having given consideration to the implications. Specifically the Inspector stated:

'This would allow the Council to either accept the change having considered the implications or decline to accept the change by informing the Appellants that it would constitute a material change in the permission.'

It is clear that the Inspector put this forward in an effort to provide both parties with a way forward without having to lodge formal applications for minor changes that he considered unnecessary in straightforward situations such as this.

The Council officers have expressed the informal view that the proposed tonnage increase, exceeds what they would be prepared to allow as a minor variation and hence have requested a formal S73 application.

Since the initial planning application, discussions with Northern Gas Networks have identified an increase in the minimum demand for gas in the area. Furthermore, detailed discussions with the providers of the technology to be used have indicated that the plant can easily accommodate an additional throughout of feedstock, without requiring any alteration to the plant design or storage requirements.



The reasoning behind Condition 5, as set out within the Authority's original decision, and subsequently supported by the Planning Inspectorate's decision notice, was to protect 'the interests of highway safety, local occupiers and to satisfy Policy SP20.' The Inspector specifically sets out the need to maintain this position in Paragraph 22, stating;

'That uncontrolled changes to the feedstock type and quantity of each would again deliver harmful changes to the transport type and quantity of each...'

In consideration of this, we have approached the Local Highway Authority and discussed the proposal with them. Although we expressed our intention to produce all the additional feed stock at Gravel Pit, they have assessed the proposal on a worst-case scenario in that all the additional tonnage is to be imported to Gravel Pit Farm. They have concluded that even if this were the case, it would not have an adverse impact upon the safety or capacity of the local highway network. To put the worst case scenario into context, 6,500t would equate to less than one additional HGV movement on the network every day. By way of supporting corroboration, I have attached the views of the Local Highway Authority.

The proposal has also been discussed with Highways England to address any perceived impacts upon the strategic highway network. Their view is that even if the additional tonnage was imported to the site that the increase in tonnage would have an insignificant impact and as such they have no objections. Again, their corroboration is attached to this letter.

The LPA will appreciate that the current farming operations involve crops being grown on the farm exported off the farm –the pattern of operation at virtually every farm in the country. If, as a result of these proposals, crops grown on the farm are being used on the farm there will be a reduction in movements on the local highway network and this is surely the most sustainable of development proposals, aligned with the 'Golden Thread' running through the Framework.

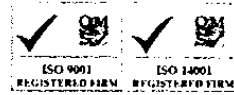
The storage of these additional feedstocks will not require any physical works to take place on site over and above those already permitted. The clamps are sized sufficiently to store the additional material in accordance with Environment Agency requirements.

Turning to the outputs of the AD process, the additional tonnage would result in an increase in total digestate of approximately 1,625 tonnes per annum. This reason for the apparent discrepancy between the tonnage input and the digestate output is that approximately 75% of the grass silage is composed of water. For the avoidance of doubt, along with the input of the grass silage would be a corresponding reduction in the amount of raw water used in the facility.

Of this 1,625 tonnes, approximately 1,220 tonnes will be liquid and just 400 tonnes dry matter.

Again for the avoidance of doubt this material will remain on the Gravel Pit site and will be used as a locally derived organic fertiliser on the holding. It will help to reduce the demand for imported artificial fertiliser and there is more than sufficient capacity on the farm to absorb the additional digestate resulting from this proposal. This will be demonstrated in a revision to the digestate management plan submitted in response to Condition 12, should the revised grass silage tonnage be approved. To assist consideration of this request, we have attached the revision.

The key information I would highlight is that having regard to NVZ, digestate characteristics etc., the theoretical tonnage of liquid digestate that could be applied at Gravel Pit is 100,938 tonnes. Allowing for the increase of 1,220 tonnes of liquid digestate set out in the report, the total output from the AD



plant would be 37,635 tonnes. There is therefore a theoretical ability to spread a further 63,000 tonnes of digestate before environmental capacity would be reached.

For all of these reasons, the proposals are not considered to have any significant impacts upon highway safety or issues of amenity. No changes are proposed to the physical appearance of the site or plant.

If I can be of any further assistance to the Council, please do not hesitate to contact me.

Yours sincerely

Steve Barker BSc (Hons) MRTPI DMS
Managing Director
Prism Planning

Gravel Pit Biogas Ltd – Sandhutton, York YO41 1LN

Appeal Ref: APP/Y2736/A/14/2226293 - Condition 12 – Digestate Management Plan Revision 1.

Revised Feedstock Impact. – Additional 6,500t of Grass Silage

The proposed increase of 6,500t per annum in grass silage will have little effect on the quantities of digestate produced by the AD plant. The initial proposal required the addition of greater quantities of recirculated liquid digestate / water. Much of this will be replaced by the additional volumes of grass silage which in itself is made up from approximately 75% water at a Dry Matter (DM) content of 25%. The additional volume of Dry Matter at approximately 1,625t per annum (6,500t @ 25%) will further be broken down during the digestion process when the biogas is released. The additional material will pass through the separator, described in further detail below, where approximately 75% (1,220t per annum) will go to the storage lagoon and 25% (400t per annum) will be a dry fraction to be stored in the silage clamps prior to application to the land .

The additional 1,220t liquid fraction is approximately 95% liquid and equivalent to approximately 1,220m³ by volume. This additional material will effectively reduce the storage capacity of the 18,000m³ lagoon by 2 weeks from 26 weeks or 6 months to 24 weeks or 5.5 months, which is still within the storage requirements recommended by the Environment Agency.

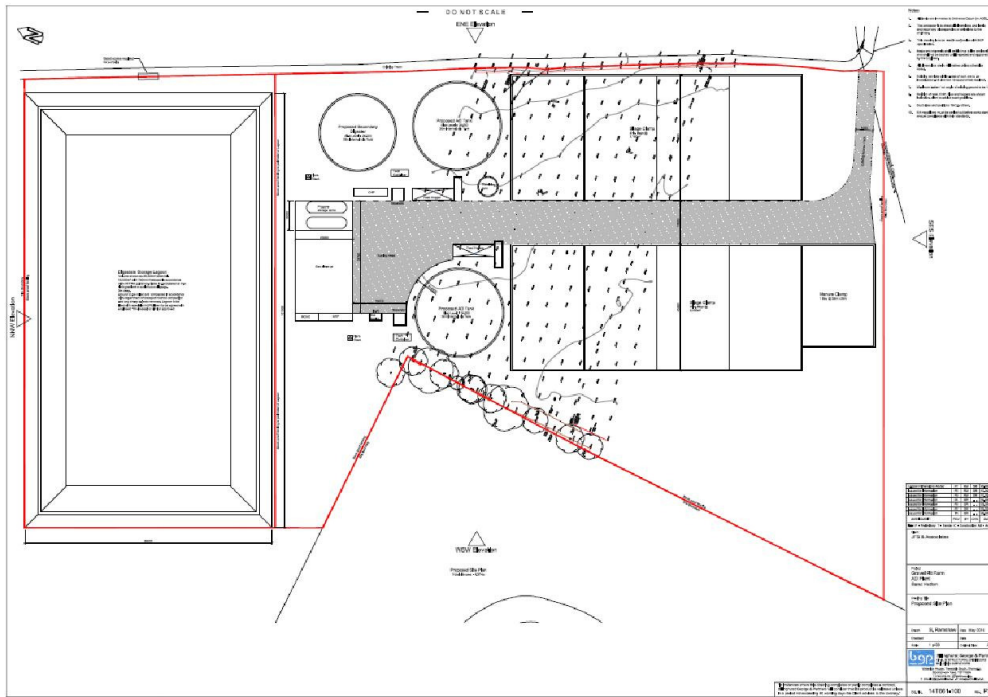
Following the process outlined below the Digestate Management Plan will demonstrate on an on-going annual basis, the ability to spread all of the digestate produced from the AD facility on the land holding at Gravel Pit Farm.

Storage of Digestate

The digestate generated from the AD process will pass through a screw press separator. This process involves the screw mechanically pressing the digestate through a cylindrical screen. Liquid is mechanically pressed leaving a solid dry fraction, typically 25% DM that resembles a compost type structure with the liquid fraction typically around 5% Dry Matter.

Advantages of separation allow the liquid fraction to be stored easily in a lagoon with any floating layer being minimised, the separation process having removed the majority of the dry matter. This liquid fraction is also recirculated back through the process to maintain the required dry matter levels within the tanks. The dry fraction is captured within a concrete silo beneath the separator, from where it will be regularly moved by the operator, to the clamps for storage prior to spreading to land as a soil conditioner.

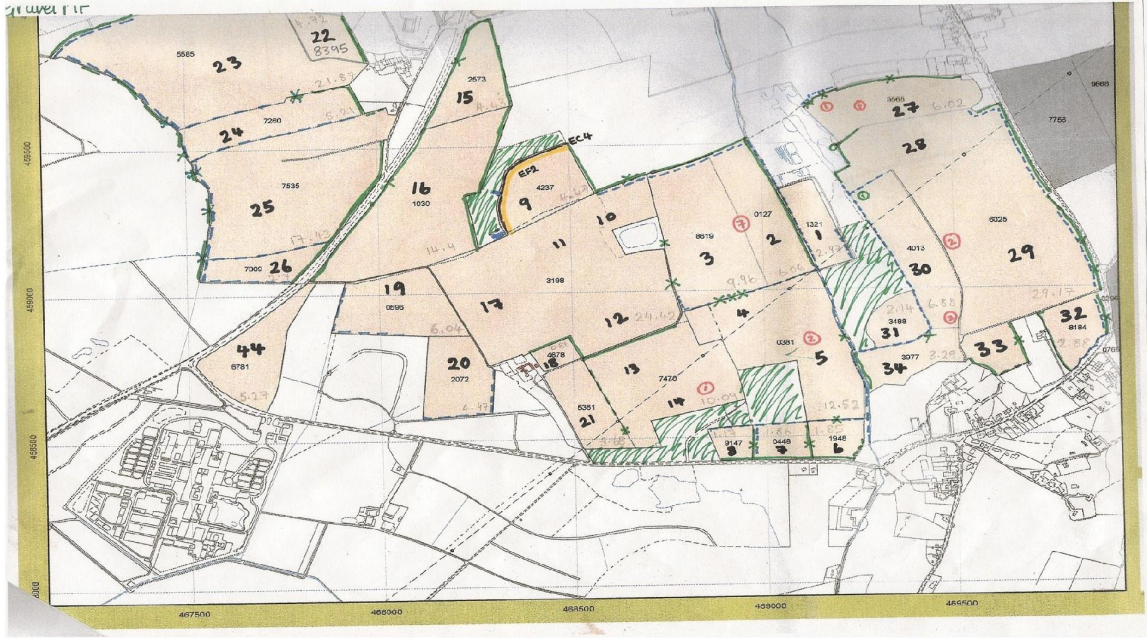
The lagoon shown on planning drawing 14T661-100 Rev P7 is sized to hold 18,000m³ with 750mm additional freeboard (26,000m³ gross) as required by the Environment Agency, providing 5½ months storage for the liquid fraction.



Planning Drawing 14T661-100 Rev P7

Gravel Pit – Environment Agency Field Map and Spreading Plan.

The plan below is the Environment Agency Field Map for Gravel Pit Farm. It shows the field numbers, ditches, buffer strips and spreading restrictions imposed by the Environment Agency. These fields will be used to spread the digestate arising from the AD plant. The quantities spread and the locations will vary annually depending on the crop rotation and the rainfall levels experienced during the year.



The Gravel Pit Field Map

Digestate Quantities

The AD plant will generate approximately 37,625t of digestate annually. This digestate will be spread entirely on the Gravel Pit holding shown above, in the necessary quantities required by the crops being planted and within the restrictions imposed and monitored by the Environment Agency. Each crop has different nutrient requirements as is documented in the DEFRA publication RB209. Rainfall levels, soil type and previous cropping all influence the levels of nutrients required. From the analysis available from similar plants (see example below) all the digestate produced by the AD facility is comfortably accommodated by the land holding at Gravel Pit Farm.

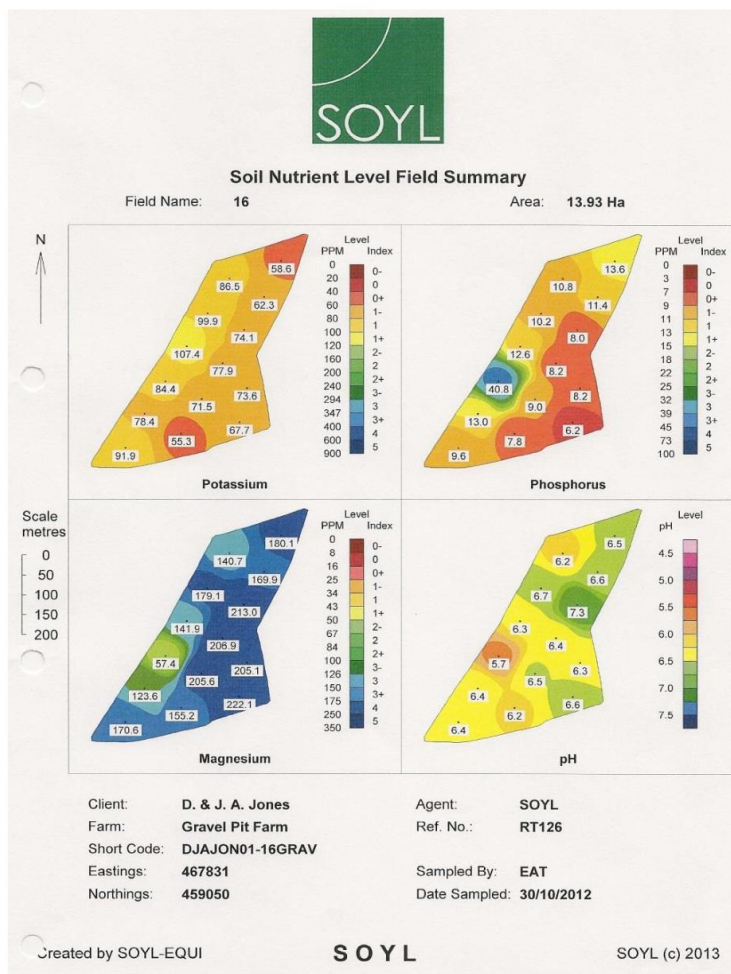
Indicatively the maximum level of Nitrogen (250kg/ha) that could be spread at Gravel Pit Farm which is approximately 323Ha, equates to 80.75t ($323\text{ha} \times 250\text{kg} = 80,750\text{kg}$ or 80.75t). At the levels of Nitrogen per tonne of liquid digestate derived from the analysis below (taken from a farm that uses very similar feedstocks), to achieve the maximum 250kg/ha of Nitrogen, 312.5t of liquid digestate could be applied to every hectare. This is termed the Equivalent Field Application Rate.

Using the analysis example below, the maximum tonnage that could be applied at Gravel Pit Farm would equate to 100,938t ($323\text{ha} \times 312.5\text{t per Ha}$).

Soil Sampling

As part of the Nutrient Management Plan employed at Gravel Pit Farm, soil tests are carried out every 3 years with samples as needed sent through an agronomist and the SOYL analysis for phos and potassium is undertaken every 5 years. Testing Nitrogen levels in soil is difficult to do in a laboratory and therefore the 'field assessment method' is commonly used and accepted. This is where rainfall, soil type and previous cropping are used to estimate what Nitrogen is left in the soil and therefore what needs to be added to support plant growth. PLANET a software package developed by ADAS and recognised by the Environment Agency and DEFRA as one of the best ways to keep records and make recommendations is used to calculate Nitrogen requirements as it contains all the historic aforementioned information.

In addition SOYL testing is carried out regularly to check the actual levels of other nutrients in the soil. Results are again input into PLANET which helps with recommendations for future years.



An historic SOYL analysis report for Gravel Pit Farm.

Digestate Sampling and Analysis

Regular digestate sampling will be carried out in January and June of each year by an independent laboratory to determine the nutrient content. In conjunction with the Nutrient Management Plan prepared by the farm, this analysis will be used to determine the quantities of digestate required to provide the necessary nutrients to the crop in the ground, without compromising the maximum levels governed by the Environment Agency.



JFS & ASSOCIATES
2 ELLERBECK COURT
STOKESLEY
NORTH YORKSHIRE
TS9 5PT

P663

Please quote above code for all enquiries

HOME FARM
NEWLY WISKE
NORTHALLENTON

DIGESTATE

DIGESTATE (Metric Units)

Sample Reference : LIQUID DIGESTATE

Sample Matrix : DIGESTATE

The sample submitted was of adequate size to complete all analysis requested.

The sample will be kept under refrigeration for at least 3 weeks.

Laboratory References

Report Number 65497
Sample Number 32686

Date Received 08-APR-2015

Date Reported 14-APR-2015

ANALYTICAL RESULTS *on 'as received' basis.*

Determinand on a fresh weight basis	Units	Result	Amount per fresh tonne or m3	Amount applied at an equivalent total Nitrogen application of 250 kg N/ha	Units
pH [1:6]		3.70			
Oven Dry Solids	%	12.3	123.00	38438	kg DM
Total Nitrogen	% w/w	0.080	0.80	250	kg N
Ammonium Nitrogen	mg/kg	116	0.12	36.25	kg NH4-N
Nitrate Nitrogen	mg/kg	<10	< 0.01		kg NO3-N
Total Phosphorus (P)	mg/kg	2283	5.23	1633.77	kg P2O5
Total Potassium (K)	mg/kg	4344	5.21	1629.00	kg K2O
Total Magnesium (Mg)	mg/kg	136	0.23	70.55	kg MgO
Total Sulphur (S)	mg/kg	4198	10.49	3279.69	kg SO3
Total Copper (Cu)	mg/kg	<0.2	< 0.01		kg Cu
Total Zinc (Zn)	mg/kg	26.4	0.03	8.25	kg Zn
Total Sodium (Na)	mg/kg	6518	8.79	% 2745.71	kg Na2O
Total Calcium (Ca)	mg/kg	657	0.66	205.31	kg Ca
Equivalent field application rate		—	1.00	312.50	tonnes or m3 / ha

The above equivalent field application rate for total nitrogen of 250 kg/ha has been provided purely for guidance purposes only. Organic manures should be used in accordance with the Defra Code of Good Agricultural Practice and where required within the specific regulatory guidance for the spreading of that material to land. To get the most benefit from your organic manures it is recommended that you follow the principles as set out in Defra's Fertiliser Manual (RB209) or as directed by a FACTS qualified adviser.

Released by Andy Chase

Date 14/04/15

NRM Coopers Bridge, Braziers Lane, Bracknell, Berkshire RG42 6NS

Tel: +44 (0) 1344 886338 Fax: +44 (0) 1344 890972 Email: enquiries@nrm.uk.com www.nrm.uk.com

NRM Laboratories is a division of Cowood Scientific Ltd, Coopers Bridge, Braziers Lane, Bracknell, Berkshire RG42 6NS Registered Number: 05655711

A typical digestate analysis report.

Adherence to Nitrate Vulnerable Zones (NVZ).

Gravel Pit Farm currently lies within a Nitrate Vulnerable Zone which has dictated the soil management of the farm from the beginning of the tenure by D & JA Jones. Gravel Pit Farm has its own in house FACTS qualified advisor, Joanne Jones to manage the Nutrient Management Plan of the farm via PLANET. As well as the commercial advantages of carefully managing fertiliser, compliance with the Environment Agency regulations is an absolute necessity to ensure the subsidies received by the farm are maintained.

The NVZ legislation covers all Nitrogen (N) applied to land of which there are several regulations, the main ones being:

- The livestock manure N Farm Limit (Farm Limit).
- Limits on N applied from organic manures / slurry etc. (Field Limit).
- The 'N' max – the maximum level of Nitrogen which can be applied to each crop.

All the farm records are kept on PLANET which stores the following information (not exhaustive):

- Field numbers and names.
- Areas of each field including the area which can have fertiliser / FYM etc. spread on it and those areas which are to avoid.
- Cropping information.
- Which fields are within NVZ's.
- Previous years cropping information.
- Crop recommended levels of Nitrogen, Phosphorus, Potassium and Sulphur.
- Planned fertiliser applications which are then combined with actual fertiliser applications.
- Planned manure / digestate applications which are then combined with actual manure / digestate applications.
- Numbers of livestock to ensure that one of the critical NVZ rules is complied with.
- Records of types and concentrations of fertilisers used.

This information is used in conjunction with the Environment Agency Field Map (see earlier) which shows location of ditches, buffer strips and manure heaps to use as a reference point when fertiliser / manure spreading. This is also necessary to comply with farm assurance schemes of which the farm is a member.

Current Methodology

- In autumn and spring each year decisions are made as to which crops are planted in which fields. This information is input into PLANET.
- In January/February each year fertiliser applications are planned for both winter and spring planted crops. This is input into PLANET against the field numbers and PLANET calculates the nutrient requirements. These requirements are then checked against RB209.
- As the software contains previous years information and nutrient applications, the recommendations which it generates takes into account any nutrients which are still left in the soil.
- The programme also contains all the NVZ rules and so when planning applications, the data input is constantly checked to ensure compliance with the regulations.
- In June each year planned applications of nutrients are confirmed as having been applied and this is used to help next year's recommendations.

Both the EA and DEFRA can conduct inspections of the farm records at any time and penalties can be levied against the farm for failure to comply with the necessary regulations.

Proposed Methodology

In addition to the current Environment Agency compliant methodology explained above, the following additional steps will be implemented.

Just as the nutrient levels in farm yard manure can vary dependent upon the diet fed to the, nutrient levels in the digestate can vary slightly due to the variability of the feedstock. Digestate analysis will be carried out bi-

annually by an independent laboratory. Analysis will be carried out in January of each year when the fertiliser applications are planned and June when the planned applications are confirmed on PLANET. This June analysis will act as a check on the nutrient levels from the January analysis. This analysis information will be uploaded onto PLANET for use in planning future spreading and nutrient requirements.

Digestate Management Plan

On an annual basis the Local Planning Authority can be provided the following information if required. This information will also be input into the PLANET software for review by the Environment Agency and DEFRA;

- Digestate analysis from an independent laboratory. The first analysis is expected 3 months after initial operation of the plant. This analysis will then take place in January and June each year to inform the planned digestate applications and to act as a check for the actual digestate applications.
- In February of each year the planned digestate applications (quantities and locations.)
- In February of each year soil analysis data for the fields tested in the previous year.
- In June each year confirmation of the nutrients applied.

Your ref:

Our ref: TD/D4/986

Contact: James Kennedy

Ext: 2502

Transport & Land Use Strategy

Highways North Yorkshire

County Hall, Northallerton

North Yorkshire DL7 8AH

Tel: 08458 727374

E-mail: james.kennedy@northyorks.gov.uk

www.northyorks.gov.uk

23 June 2015

Dear Paul,

GRAVEL PIT FARM, SAND HUTTON
ANAEROBIC DIGESTION & COMBINED HEAT AND POWER PLANT

Further to your recent enquiry regarding the annual input of feedstock for the above development I can confirm on the basis of the information provided, the proposal to increase the annual tonnage of silage would be supported by the highway authority. The production of additional silage on site is likely to have a relatively minor highway impact and even if some transfer of silage from other farms within the group was required to meet the additional tonnage, the number of new trips generated would be relatively small. It is assumed there would be some concentration of traffic movements around harvest times and perhaps a peak trip per week figure rather than the average per week over a 52 week operation would be a better reflection of the worst case scenario. However it also accepted that should there be movements between farms, to some extent some of these trips may simply replace existing operations and be redistribution of traffic rather than completely new traffic to the road network.

Yours sincerely

JAMES KENNEDY
Transport and Development

Paul Cornfoot
Fore Consulting Ltd
2 Queen Street
Leeds
LS1 2TW

Jonathan Helmn

From: Hardie, Chris <Chris.Hardie@highwaysengland.co.uk>
Sent: 24 June 2015 10:17
To: 'Paul Cornfoot'
Cc: Steve Barker; Jones, Simon
Subject: RE: Anaerobic Digestion & Combined Heat and Power Plant: Gravel Pit Farm, Sand Hutton, York - Planning Application Reference No. 14/00709/MFUL

Hi Paul

Sorry to have been incommunicado over the last couple of days.

I am happy to confirm that highways England will have no objection to the proposal to increase the total volume of grass silage by 6,500 tonnes.

I shall also happily confirm this when I receive the formal consultation.

I should also say that our team at HE has reverted to looking after our patches, so, strictly speaking this area (North Yorks/East Riding) is Simon's patch, hence, he is copied in. So he will be pleased to deal with future applications in this area but of course I will be happy to help if he is not immediately contactable.

I hope that helps.

Best regards

Chris

Chris Hardie, Asset Manager
Highways England | Lateral | 8 City Walk | Leeds | LS11 9AT
Tel: +44 (0) 113 2836248 | **Mobile:** + 44 (0) 7769 282441
Web: <http://www.highways.gov.uk>
GTN: 5173 6248

From: Paul Cornfoot [mailto:paul.cornfoot@foreconsulting.co.uk]
Sent: 22 June 2015 07:50
To: Hardie, Chris
Cc: Steve Barker
Subject: Anaerobic Digestion & Combined Heat and Power Plant: Gravel Pit Farm, Sand Hutton, York - Planning Application Reference No. 14/00709/MFUL

Hi Chris

Hope you are well. I tried to call you last week regarding the above.

Please find attached a letter relating to the above planning permission – which is hopefully self-explanatory.

I appreciate that you will be formally consulted by Ryedale District Council in due course, but I would be pleased to have your early confirmation that you have no highway objection to the variation of Condition 5.

If you wish to discuss the matter, please give me a call (happy to pop over the Lateral if necessary).

Many thanks for your time.

Paul

Paul Cornfoot
Director

t 07979 248 316



Fore Consulting Limited
2 Queen Street
Leeds
LS1 2TW

www.foreconsulting.co.uk

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Our Ref SGB/AB

Alan Hunter
Senior Development Management Officer
Ryedale District Council
Ryedale House
Malton
North Yorkshire
YO17 7HH

4th September 2015

Dear Mr Hunter

Re: Variation of Condition 5 of application 14/00709/MFUL as allowed by appeal APP/Y2736/A/2226293 dated 26.05.2015 to allow an increase of 6,500 tonnes of grass silage feed stock per annum to give a total 20,000 tonnes of grass silage feedstock per annum in addition to the 12,150 tonnes of Cattle FYM and 900 tonnes of chick manure per annum.

I write in response to your letter sent on 27th August which asked a series of questions and made statements indicating your position to the S73A application made at Gravel Pit Farm (15/00781/73AM). I have broken up our responses into the same points headings as your letter for clarity.

Point 1 – Ownership of the land.

We have already sent an email (2nd September 2015) discussing the issue. The attachments included a revised copy of Certificate B along with a letter from Mr C Jones stating that he was aware of the Section 73 application, given that he is acting as the liaison between the farm and JFS on the AD scheme. We include copies of all correspondence. His mother, Mrs A Jones was already notified of the application by an earlier letter from Prism, a copy of which is attached.

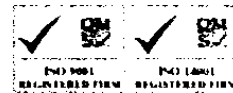
We trust this brings an end to a debate which by the Council's own admission is a trivial matter.

Point 2 -Request for an odour report for Mr Paul Hunt in relation to grass silage.

Please find attached a letter from REC, our odour consultants, confirming the use of extra grass will not increase the odour from the site. You will appreciate that there are no changes to feedstocks as a result of this application.

Point 3 – Third party concern that maximum amount of feedstock that could be handled by the AD plant has changed.

The quantities of material debated at the hearing were based upon delivering a scheme which produced the quantity of gas and power that it was believed the infrastructure network could accommodate. It will be appreciated that there is no point in producing excess gas or electricity that cannot be accommodated in the local network.



Since the Appeal Hearing (Appeal ref [APP/Y2736/A/2226293](#)) our clients have been in discussions with Northern Gas Networks and a Detailed Network Study has been undertaken. This has indicated a greater consumption of gas locally than was previously identified. There is therefore greater local need for consumption of gas and our clients are simply trying to help meet that need. It is assumed that this will be recognised as a highly sustainable situation?

Point 4 - Has the farm acquired land in the area?

The application site remains unchanged, and we can only suggest that the Council approach the third parties for details of whatever transaction they believe is being referred to. The application was correctly submitted to the Council and there is no need for any of it to be changed.

We are not sure what relevance this line of debate has to the application, or to the legitimate operations of the farmer and his family. It is surprising and concerning to us that the LPA appear to consider this intrusive and unwarranted 'investigation' by third parties into the personal affairs of the Jones family to be material to the application.

We would refer the LPA back to the determination of the previous application which was clouded by a series of erroneous and patently incorrect assertions made by some third parties that were manifestly intended from a position of malice. Despite the financial impact it had on the application and subsequent appeal, my clients are deeply concerned that such deliberately misleading statements made by third parties are being acted upon by officers who appear not to have undertaken appropriate and due diligence.

Point 5 – Third party comments in relation to development creep resulting from the AD Plant.

Prism Planning has not been instructed to carry out any further amendments to Gravel Pit farm in relation to application 14/00709/MFUL. Were any future application to be submitted I am sure that the Council would deal with them on their individual merits at the time they were submitted.

It is not at all unusual or even sinister for approved schemes to be amended. I simply refer you to the procedures the government have introduced over the last few years in recognition of this fact to enable the speedy amendment of applications post approval as well as the recognition of this fact by the Planning Inspector.

Point 6 –Farm site hectares and nitrogen levels claims made by third parties.

With respect to the Council and the objector, the applicants have submitted an initial Digestate Management Plan and an amended Digestate Management Plan, neither of which have been objected to by the Environment Agency, the body with statutory responsibility for assessing this area.

The first DMP has now been formally approved by the LPA.

The farming practice are well aware of their statutory responsibilities and have for a number of years been submitting information on this subject area to the EA. They have a specialist member of staff who is FACTS qualified, uses specialist PLANET software recognised by the EA and has access to SOYL analysis for the farm by individual field. We therefore consider that the applicants have a robust and scientific basis for their analysis and plan preparation. Furthermore the already approved DMP is based upon laboratory analysis of digestate which considers total Nitrogen, Ammonium Nitrogen and Nitrate Nitrogen. The matter is more complex than the objector seems to suggest but our advisors are FACTS qualified to advise on these matters. Our client is not aware that the objector has a similar competence.

It is respectfully suggested that the LPA consider whether any third party objecting to the proposals has access to the same robust scientific data and training. In particular, it is suggested that without corroboration of their concerns by the Environment Agency, only very limited weight should be accorded to their views on this matter.

Point 7 - Will storage capacity increase resulting from the increase in grass silage?

The plant will not require an increase in storage capacity to facilitate the proposed change to condition 5, a point made in the planning submission.

Point 8 - Comments made by third party in relation to Gravel Pit Farms ability to produce grass silage in the quantity specified.

To the best of our knowledge, the third party is not a land use consultant qualified to give credible evidence on this matter and certainly is not familiar with the farm as it currently operates or its ability to grow grass.

The applicants are satisfied that they can grow the crops required on the farm and would not have put the proposal forward had this not been the case.

If reference is made to authoritative agricultural handbooks, the position of the objector is readily exposed as being incorrect. Westerwold ryegrass for example is cited by ABC as being capable of producing 75 tonnes per hectare.

We can only advise the authority and members to decide the application based on the evidence we have provided through accredited specialists, having regard to the fact that the Jones family are experienced farmers with a proven track record of growing crops on their farm without any record of environmental pollution or concern.

In simple terms if we cannot grow the grass we estimate that we can grow, then it will not be available to put into the digester and the risk is entirely borne by the applicant. It is not a concern of local residents and should not be a concern of the Local Planning Authority.

Point 9 - Vehicle movements relating to increased grass silage tonnage.

To be absolutely clear we are proposing using additional grass silage grown on Gravel Pit Farm as shown in the submission. **There will be no increased traffic movements to the farm as a result of this proposal.** The Highway Authority and Highway Agency are both satisfied on this point.

Point 10 - Statement that the council has concerns on approving a revised Digestate Management Plan (DMP).

In relation to this concern could you please provide Prism with the full legal response in relation to the point? We say this because your statement does not seem to accord with the clear advice contained within the Practice Guidance. In support of our view, we have found that relevant guidance from the National Practice Guidance offers a solution to your issue:

"To assist with clarity, decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. In granting permission under section 73 the local planning authority may also impose new conditions – provided the conditions do not materially alter the development that was subject to the original permission and are conditions which could have been imposed on the earlier planning permission."

So although the condition for a DMP condition has already been discharged, the guidance allows you to leave this condition off on approval and simply impose a new condition simply requiring compliance with the revised DMP plan we have provided you. The new condition could simply state that all Digestate needs to be disposed of in accordance with the revised DMP which is based upon a DMP already approved by the LPA. We trust you will consider this point and the national advice most carefully.

Point 11 - Ownership of field 44 and other land. (see DMP)

Field no 44 is not owned by either the applicants or the Jones family but is rented through a secure rolling 5 year agricultural tenancy and has been farmed by the Jones family on this basis since they took over the farm in 2010. This is intended to be a long terms arrangement between the two parties.

We are advised that the other fields referred to are in the ownership of the Jones family and it is not understood why this is being questioned. It appears to be yet another example of a seemingly malicious campaign of erroneous mis-information being supplied to the Planning Authority.

Point 12 - Land at Gravel Pit farm is to be shown on a blue line map.

We note your reference to requiring plans of Gravel Pit farm as part of this S73 application. We would respectfully refer you to the provisions of Statutory Instrument 2015 No 595, Part 3, para 7(c) which sets out the general requirements for the submission of valid applications. This paragraph specifically excludes S73 applications from the requirements to provide plan. I would therefore respectfully suggest that the LPA can proceed to determine the planning application as submitted and would advise that the information previously submitted was sufficient for the Planning Inspector to determine the original application and for the Council to determine and approve the Digestate Management Plan.

On behalf of my client, I must express some surprise and a degree of disappointment that the application is being subjected to such a forensic and disproportionate degree of scrutiny by officers of the Council which is putting my clients to an unnecessary amount of work and attendant cost.

This is a simple proposal to use an additional amount of grass, grown on the farm to produce more gas for the local network, following rising local demand in the area. The principle of this development has already been exhaustively and forensically scrutinised in public via the appeal process with the in principle objections of some local residents has been set aside. With the greatest respect to officers and those residents this application does not represent an opportunity to try to re-examine or call into question matters that have already been settled and the nature of the investigation into this application could be considered to be unreasonable. I hope that it will not be necessary to explore this issue once more in the context of another appeal.

Yours sincerely

Steve Barker BSc (Hons) MRTPI DMS
Managing Director
Prism Planning

Enc

**Claxton & Sand Hutton
Parish Council**

The Byre
Field House Farm
Thornton-le-Clay
YORK
North Yorkshire
YO60 7QA



OBJECT

Fiona Hill
Clerk to the Council

Peter Stott
Chairman

Angela Steele
Vice Chairman

Tel: 01904 468773
Email: clerk@claxton-sandhutton.org.uk

Date: 29 July 2015

Ryedale District Council
Ryedale House
Malton
North Yorkshire

RYEDALE DM

30 JUL 2015

DEVELOPMENT
MANAGEMENT

gy
30/7.

Dear Sir / Madam

APPLICATION NO : 15/00781/73AM
APPLICANT : JFS Gravel Pit Farm Biogas Ltd
DESCRIPTION : Variation of Condition 05 of application 14/00709/MFUL as allowed by appeal APP/Y2736/A/14/2226293 dated 26.05.2015 to allow an increase of 6,500 tonnes of grass silage feed stock per annum to give a total of 20,000 tonnes of grass silage feed stock per annum in addition to the 12,150 tonnes of Cattle FYM and 900 tonnes of chicken manure per annum.
LOCATION : Gravel Pit Farm, Sand Hutton, York YO41 1LN

Claxton and Sand Hutton Parish Council are opposed to this application.

The ink is barely dry on the Planning Inspectorate Appeal Decision, a process on which many hours and money were spent, and already a variation is being sought.

The feed stock tonnage figures were those **given by the applicant**, (Appeal Decision Ref APP/Y2736/A/14/2226293, paragraph 21 and 22), not imposed. Were their figures wrong or is this a deliberate tactic to erode or alter properly considered decisions? The Applicant stated their figures were the maximum feed stock quantities for the AD plant yet suddenly they wish to exceed them. Both previous applications stated that feed stock would be "farmyard manure **occasionally supplemented** with grass / maize / corn etc". In condition 5, grass silage is already more than FYM and yet they are seeking to increase the amount.

There is also the issue of adverse impacts upon traffic, storage and the environment. Over 2,000 tractor movements would be required to spread this total volume of digestate and over 2,000 tractor movements to harvest this tonnage of feed stock. Both would occur in very restricted periods of the year and many would pass through the villages.

**Claxton & Sand Hutton
Parish Council**

The Byre
Field House Farm
Thornton-le-Clay
YORK
North Yorkshire
YO60 7QA



Fiona Hill
Clerk to the Council

Peter Stott
Chairman

Angela Steele
Vice Chairman

Tel: 01904 468773
Email: clerk@claxton-sandhutton.org.uk

We have looked carefully at this application and would request and expect that all figures and claims are checked by independent AD experts.

Yours faithfully

A stylized, handwritten signature in black ink, appearing to be the initials 'PS'.

Peter Stott
Chair of Claxton and Sand Hutton Parish Council

AH

recommnd odour assessment.

Lorraine Merrett

From: Alan Hunter
Sent: 28 August 2015 10:50
To: Development Management
Subject: FW: 15/00781/73A Gravel Pit Farm

RYEDALE DC

28 AUG 2015

DEVELOPMENT
MANAGEMENT

28/8/15
LN

From: Paul Hunt
Sent: 28 August 2015 10:47
To: Alan Hunter
Subject: RE: 15/00781/73A Gravel Pit Farm

Dear Alan

Further to our discussion yesterday, the proposal does not involve any additional plant or change to the plant specification and the extant planning consent for the AD Plant does not include any operating hours restrictions.

When the noise impact of the proposed development was considered it was assumed that gas production would be a continuous operation. Therefore I agree with you that it does not follow that the proposal to increase the annual grass silage input means that a revised noise assessment is necessary.

With regard to the assessment of odour, the report submitted with the AD Plant planning application predicts that the development will not result in a significant odour impact at any sensitive receptor locations. A number of worst case or conservative assumptions were made and incorporated into the odour impact assessment, including for example the use of maize odour emission rates for silage materials because maize is considered to be the most odorous silage material. It is understood that in practice grass will make up the greatest proportion of the silage materials processed in the AD plant.

In view of the predicted odour concentrations at sensitive receptors, which in all cases are well below the significant impact thresholds, I think it is unlikely that the proposal to increase the grass silage throughput by 6,500 tonnes a year would give rise to significant impact at any sensitive receptors. Notwithstanding this, as a precaution it may be prudent to request that the applicant provide an updated version of the odour assessment that takes account of any increases in odour emissions that may arise from the proposal.

I anticipate that the odour sources potentially affected by the proposal would include:

- Silage transfer route between the silage clamp and feed hopper (this was assessed on the basis of being carried out for 2 hours a day in the original assessment); and
- Agitated silage within feed hopper (this was also assessed as a 2 hours a day activity)

Best regards

Paul Hunt
Environmental Protection Officer
Ryedale DC
Ryedale House
Old Malton Road
Malton
YO17 7HH

Tel: 01653 600666 EXT 257
E-Mail: paul.hunt@ryedale.gov.uk
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Appeal Decision

Hearing and site visit made on 19 March 2015

by **J S Nixon BSc(Hons) DipTE CEng MICE MRTPI MCIHT**

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

Decision date: 26 May 2015

Appeal Ref: APP/Y2736/A/14/2226293

Gravel Pit Farm, Sand Hutton, York, YO41 1LN.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against the failure of Ryedale District Council to issue a decision within the prescribed timescale.
- The appeal is made by JFS Gravel Pit Biogas Ltd.
- The application Ref. No: 14/00709/MFUL, dated 24 June 2014.
- The development proposed is for a farm scale anaerobic digestion and combined heat and power plant facility.

Decision

1. For the reasons given below, this appeal is allowed and planning permission granted for a farm scale anaerobic digestion and combined heat and power plant facility at Gravel Pit Farm, Sand Hutton, York, YO41 1LN in accordance with the terms of the application, Ref. No: 14/00709/MFUL, dated 24 June 2014, and the plans submitted therewith, subject to the conditions contained in the attached Schedule.

Costs

2. At the hearing, applications for awards of costs were lodged by the Appellants against the Council and the Council against the Appellants. The decisions on these applications are issued under separate cover.

Clarification

3. In this case, following the appeal against non-determination, the Appellants submitted an almost identical application for an anaerobic digestion (AD) plant to the Council. This was granted planning permission by the Council, subject to conditions, and, thus, becomes the fall-back position and a material consideration in deciding this appeal. Paradoxically, in considering the appeal proposals at the same time as the second application, the Council cited a putative reason for refusal. This was on the basis that this is what it would have decided with the information that was available to it at the time the appeal was lodged. This reason states that *"The Local Planning Authority is in receipt of insufficient information regarding the existing and proposed vehicular movements associated with Gravel Pit Farm and is, therefore, unable to determine that there would not be a significant detrimental impact on highway safety contrary to Policy SP1 and SP20 of the Ryedale Local Plan Strategy 2013"*.

Policy overview

4. The National Planning Policy Framework (the Framework) identifies the creation of renewable energy as a core planning principle (paragraph 17). In addition, it establishes the presumption in favour of development that is sustainable (paragraphs 11-16) and gives very strong encouragement to projects that would lead to a reduction in greenhouse gases (paragraph 95), including small scale projects (paragraph 98). There are several more references in the Framework to sustainable development and meeting the challenge of climate change. The Planning Practice Guidance (PPG), which was first published in March 2014 is a living document attracting regular updates, and puts flesh on the Framework policies.
5. More specifically, in the Government's National Anaerobic Digestion Strategy and Action Plan (the Strategy), published in 2011, there is a commitment to increasing energy from waste through anaerobic digestion and, at the time of publication, more than half the active schemes were located on farms. The hearing was informed that numbers had increased since then. In summary, Government evinces very strong support for the types of process proposed at Gravel Pit Farm.
6. The Development Plan policies relied upon by the parties at the hearing flow from the Ryedale Local Plan Strategy 2013 (LP) and include Policy SP19 that reflects the presumption in favour of sustainable development evinced by the Framework and Policy SP18, which registers broad support for proposals that generate renewable and/or low carbon sources of energy. In addition, Policy SP9 looks to sustain and diversify the land-based economy. This support is tempered by LP Policy SP20, which delivers requirements in respect of pollution/amenity and highway safety and traffic movement.

Main Issue

7. Having regard to the fall-back position, and from the evidence presented to the hearing, the written representations and visits to the appeal site and surroundings, it follows that the main issue to be decided in this appeal is the implications the proposed development would have for environment interests, especially with regard to pollution, highway safety and local amenity and whether any concerns could be addressed satisfactorily by the imposition of appropriately worded conditions.

Reasons

Overview

8. As planning permission has been granted for an almost identical scheme, the Appellants could implement that at any time. However, they have expressed concern about some of the conditions attached to that extant permission. Under these circumstances, this appeal is essentially one which would allow the planning permission for the appeal scheme to be executed, without complying with some of the conditions imposed on the earlier consent. Five of the conditions attached to the extant permission are challenged by the Appellants and details and reasons are contained in a letter dated 18 February 2015. The five conditions are examined in turn.
9. In addition, I have also looked at the remaining conditions to ensure they accord with the latest Policy in paragraphs 203 and 206 of the Framework and

the guidance in the PPG. These establish the tests for when conditions can be imposed and advice on the circumstances when they should not be used.

Condition 4 – Sourcing of Feedstock

No feedstock shall be used in the development hereby approved other than that sourced from the following locations:

- *Smaws Farm, Tadcaster, LS24 9LP*
- *Landmoth Hall, Kirby Sigston, DL6 3TF*
- *High House Farm, West Harsley, DL6 2PR*
- *Goosecroft Farm, East Harsley, DL6 2DW*
- *North Lowfields Farm, Kirby Fleetham, DL7 0SY*
- *Gravel Pit Farm, Sand Hutton, YO41 1LN*

Reason: In the interests of highway safety and to protect nearby occupiers and to satisfy Policy SP20 of the Ryedale Plan - Local Plan Strategy.

10. The appeal site lies on the existing agricultural holding of Gravel Pit Farm (Home Farm) within the open countryside, and is one of six of farms that comprise a business group (the Group). The intention is that the anaerobic digester would serve all six farms and take produce and bi-product from them, with Home Farm operating as the hub. However, the digestate produced would only be spread over Home Farm, to improve the land quality from its current poor condition.
11. In this context, the Appellants argue that Condition 4 is unnecessary. They submit that the current circumstances permit manure to be transported to Home Farm from other locations, pointing out that they may be nearer than other farms in the Group, some of which are a considerable distance from Home Farm. They add that conveying feedstock from nearer farms would offer a benefit in travel and safety terms and that there are no nearby residents that would be affected by the proposals. As such, there would be no breach of the generic management issues embodied in LP Policy SP20. Consequently, the condition is unnecessary and would inhibit flexibility in the way the enterprise is managed.
12. The Council says that the condition reflects what was identified by the Appellants in their application documents. The locations from which the importation of feedstock would come are all farms within the Group and it is because it would be the by-products from these farms that the anaerobic digester is considered to be 'farm-scale'. This was the basis the application was submitted and considered by the Council. If the origin of the feedstock was expanded to farms outside the Group then this could have implications for traffic, storage of material on site and the potential for a worse environmental regime.
13. It was always understood by the Council that the by-products from the Group's farms would be adequate to feed the digester and so there is no reason to expand the sources. Whereas it is accepted that if the condition was relaxed some feedstock could come from closer locations, it could just as easily come from much further afield and become a less sustainable enterprise. Finally, it

was something the Appellants were amenable to during the course of the application and is a condition they have accepted on various other similar schemes, with no identified downsides.

14. On the proposal approved on 17 February 2015 for an anaerobic digester on the Home Farm, Condition 4 did omit reference to Gravel Pit farm, which was clearly an error. This has been rectified in the present draft, but apart from a revision to cover this point I am satisfied the suggested condition meets the tests in the PPG and is justified for sound planning reasons.
15. In the first place, the permission runs with the land and, although the current owner and operator intend to run the anaerobic digester utilising product and by-product from the Group's farms, this may not always be the case. Successors in title for Home Farm may not have the extensive holding of the present incumbent and would wish to operate under a much more commercial regime. While there may be no problem with this, it does represent a materially different operation from the 'farm-scale' undertaking currently proposed. In response to this, the Condition 4 would allow the Council to exercise the necessary control in the interests of highway safety and movement, amenity and the wider environment.
16. Next, having read the submissions, it seems to me that the condition reflects what was proposed by the Appellants in their application submission. The assessments on the interests of acknowledged importance undertaken by the Council in appraising the appeal project are based on these parameters. As such, it does not seem onerous for the operator to apply for a variation to the condition, should the Group holding change or if they wish to materially alter the origins of the feedstock. If the change did not adversely affect the interests embraced by LP Policy SP20 then there would be no grounds to resist the application.
17. However, if the implications were materially adverse and problems manifested themselves, the Council would have left itself vulnerable by not adopting the precautionary principle. The sort of relaxation envisaged could necessitate changes to the transport regime, the feedstock type and the length of time it would have to be stored on Home Farm prior to being deployed, with the potential for visual and odour concerns.
18. All these could have adverse effects on the aims of the policies and, therefore, I support the retention of this draft condition unchanged.

Condition 5 – restrictions on feedstock tonnage

The annual input of feedstock into the development hereby approved shall not exceed the following, unless otherwise agreed in writing by the Local Planning Authority:

- *Cattle FYM – 12,150 tonnes*
- *Chicken Manure – 900 tonnes*
- *Grass Silage – 13,500 tonnes*

Records, including weights, of all feedstock brought to the site in association with the proposed development shall be retained for at least two years and be available for inspection by the Local Planning Authority upon request.

Reason: In the interests of highway safety and to protect nearby occupiers and to satisfy Policy SP20 of the Ryedale Plan - Local Plan Strategy.

19. By restricting the tonnage of feedstock, the Appellants submit that the intention is to restrict traffic to the site, again invoking LP Policy SP20. They contend this is unnecessarily prescriptive and suggest that the matter could be addressed more simply by seeking to restrict total tonnages rather than limiting individual feedstock types. Once again, the Appellants argue that whereas the tonnage limits may reflect the existing operations of the business, this could change and the restrictions are unnecessarily onerous.
20. From the Council's perspective the arguments are similar to those advanced in defence of Condition 4. Allowing the flexibility requested by the Appellants means that much more of one particular type of feedstock could be deployed and this could have adverse impacts on traffic, storage and environmental considerations. Without guarantees, the precautionary principle should be adopted and to that end the condition is necessary, directly related to planning and fairly and reasonably proportionate to the scale and kind of development.
21. For my part, like the Council the arguments in support of this condition are very similar to those advanced in defence of Condition 4. I have considered possible revisions that could facilitate crop rotation and similar. However, the figures contained in the draft condition were expressed by the Appellants as maximum feedstock quantities for the AD Plant. Moreover, I am mindful that the variation of feedstock beyond cattle farmyard manure, chicken manure and grass silage would be precluded by draft Condition 3, which is not a condition in dispute.
22. The problem with removing the condition entirely or inserting a maximum overall tonnage is that uncontrolled changes to the feedstock type and quantity of each would again deliver the potential for harmful changes to the transport regime, the feedstock type and the length of time it would have to be stored prior to being deployed. While one can be confident that the present operator would not abuse the system, the same cannot be guaranteed for successors in title.
23. As it stands, the condition permits the submission of a schedule to the Council for approval in writing, when a change is proposed. This would allow the Council to either accept the change having considered the implications or decline to accept the change by informing the Appellants that it would constitute a material change in the permission. On balance this seems a sensible approach, though I accept it does not offer the flexibility the Appellants would like and it would mean a little extra work for both main parties. Again, I am satisfied that the draft condition would meet the tests espoused in the PPG and is appropriately worded.

Condition 9 – the deposition of mud on the highway

There shall be no access or egress by any vehicles between the highway and the application site until details of the precautions to be taken to prevent the deposit of mud, grit and dirt on public highways by vehicles travelling to and from the site have been submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority. These facilities shall include the provision of wheel washing facilities where considered necessary by the Local Planning Authority in consultation with the Highway

Authority. These precautions shall be made available before any excavation or depositing of material in connection with the construction commences on the site and be kept available and in full working order and used until such time as the Local Planning Authority in consultation with the Highway Authority agrees in writing to their withdrawal.

Reason: In the interests of highway safety and to satisfy Policy SP20 of the Ryedale Plan - Local Plan Strategy.

24. In contesting this condition, the Appellants point out that the drive to the farm is some 400m long and is already appropriately surfaced between the public highway and the Home Farm complex. This drive is used currently by HGVs and tractors and this use has not attracted any complaints about mud being deposited on the public highway. The seeming intention of the condition is to require wheel washing facilities and this is not necessary for other farms and would impose unjustifiable burdens on the Appellants. As a result, this condition would be both unnecessary and unreasonable.
25. The Council counters this by saying that the condition is necessary to prevent mud and dirt being deposited on the public highway, which could pose a risk to traffic using the network. The fact that there have been no complaints during the last three years is not compelling. The journeys originating at Home Farm would start from agricultural fields and these have the potential to be muddy, especially during the construction period. The dangers would be contrary to LP Policy SP20 and the condition meets the tests of paragraph 204 of the Framework.
26. Whereas it is appreciated that HGVs and farm vehicles have been using the access for some time without attracting any complaints, this cannot be guaranteed for the future. However, it is necessary to take a balanced view of the potential for mud to be deposited on the public highway and to cause danger for other road users. On balance, and bearing in mind the distance vehicles would travel along a metalled drive before reaching the public highway, I do think that the provision of a full blown wheel washing facility would be excessive in both construction costs and operational terms. Even when installed, they can be difficult to operate during cold weather and, crucially, would place the Appellants at a competitive disadvantage, when compared to other operators in a similar situation.
27. The bottom line is that it is the Operator's responsibility to ensure that mud is not deposited on the highway and this is dealt with by the Local Highway Authority under highway law. Under certain circumstances, the Local Highway Authority could suspend the site operation until matters were resolved. This is usually the appropriate method of addressing this problem and not the use of planning legislation. Where the access to the public highway is very short and mud very likely to be deposited then conditions could be invoked, not least as the wheel washing facility would be part of the permission. However, on balance, I am not convinced this would be necessary here.
28. Having said this, it may be in the Operator's best interest to be aware that the business could be suspended if there was a problem. Faced with this prospect, the Operator may well be advised to introduce a 'rumble strip' at the top of the drive that should shake off any residual mud etc attached to the wheels of vehicles well before they reach the public highway. In my view, if sensibly designed this would prove cheap and effective and keep everyone happy.

However, as a matter of fact and degree, I do not think the likelihood of transgression justifies the expense of installing a wheel washing facility. I have therefore, deleted draft Condition 9.

Condition 10 – HGV routing proposals

Unless otherwise approved in writing by the Local Planning Authority, there shall be no development until details of the routes to be used by HGV traffic associated with the development have been submitted to, and approved in writing by, the Local Planning Authority in consultation with the Highway Authority. Thereafter the approved routes shall be used by all vehicles connected with construction and operation of the development.

Reason: In the interests of highway safety and the protection of amenities of nearby properties and to satisfy Policy SP20 of the Ryedale Plan - Local Plan Strategy.

29. The Appellants opine that material is already brought to the site from a series of farms and there is no intention to change the present pattern of traffic movements. The Appellants had understood the intention of the Condition was to avoid the nearby village of Sand Hutton and this objective is supported. However, there are longstanding practices to avoid the village already in place. As a consequence, the condition is unnecessary and should be replaced by one that seeks to achieve more clearly defined planning objectives.
30. In the Council's opinion, the Appellants have misunderstood the condition insofar as they see it as pertaining to all vehicles associated with the farm. This is not the case, as the Council accepts that this could cause distinct problems especially for movements within Home Farm. The intention is to control the movement of HGVs to and from the appeal site during the construction period only.
31. This is always a difficult call, owing to the obvious problems of enforcement when the vehicles affected are outside the direct control of the Appellants. However, I believe the Council is adopting a sensible approach to cover the period of the construction. It will be something the appointed contractor will have to take into account when pricing the contract. Having regard to the location of the site, I think it is unlikely that this would represent a significant on-cost or that much disruption would be caused, even allowing for the traffic volumes on the nearby A64 at certain times of the year. Notwithstanding, it is much better that the traffic is accommodated on an A-class route rather than trying to forge an alternative along extensive, narrow country lanes and through rural villages and hamlets.
32. If the routing agreement only applies to the construction phase, then it would not affect the on-going operations and serving the anaerobic digester once it has been constructed. Under these circumstances, I am content that an appropriately worded condition is justified and would meet the PPG tests. The draft condition has been amended to make the situation more clear.

Condition 13 – requirement for a Digestate Management Plan (DMP)

No development shall commence until a Digestate Management Plan has been submitted to and approved in writing by the Local Planning Authority. This shall include details on the storage of digestate, locations for the spreading of digestate and quantities of digestate to be spread, a soil sampling schedule,

digestate sampling and analysis and measures to ensure adherence to nitrate vulnerable zone regulations. Thereafter the development hereby approved shall be carried out in accordance with the agreed Digestate Management Plan for the lifetime of the development hereby approved.

Reason: In order to minimise potential odour and to satisfy Policy SP20 of the Local Plan Strategy.

33. The Appellants are opposed to this condition because it is intended to prevent or minimise odour. However, digestate is odourless, but more importantly, this condition would be duplicating other legislation and regulatory regimes. It would, therefore, be infringing and duplicating the controls already in place for spreading digestate on the land, which is administered by the Environment Agency. Consequently, it is unnecessary and unjustified.
34. The Council adopts a contrary view, saying that the Appellants did not provide information about how the digestate would be managed. There are three possible areas of concern, namely the content of the digestate, where it would be stored and in what quantities and where would it be spread. It is necessary to ensure that all the digestate produced is deployed on Home Farm and not on other holdings within the Group or externally, where the vehicle movements required in the transport could have highway and environmental impacts that have not been evaluated. These are all factors that could have direct and indirect implications for the highway and amenities of the surrounding area. As such, the condition is necessary, directly related to the development and proportionate.
35. While acknowledging that the Appellants wish to retain flexibility, I do not see this as an onerous condition. What the Council is concerned about is the potential for export and the visual consequences of long term storage on Home Farm. It is appreciated that odour and some other matters would be monitored by another Regulator, but the aspects referred to clearly fall to be addressed under the planning regime. Incidentally, the fact that the digestate produced would be odourless is one of the key advantages of this process over conventional muck-spreading. Consequently, I am satisfied that the condition is sensible and pragmatic to serve the objectives of LP Policy SP20 and meets the tests embodied in the PPG.

Other material considerations

36. As explained when opening the hearing, granting permission for an 'identical' anaerobic digester on the appeal site fundamentally limited the issues that were open for consideration at the hearing. Whereas I might have treated certain aspects of the proposal differently, the fall-back situation makes this impossible. Put simply, any new permission cannot be more onerous than the extant one. As such, the third parties were advised that for the issues to be expanded, the arguments advanced must be 'game changing'.
37. In this context, two arguments were advanced in objection. These pertain to a claimed 'cordon sanitaire' and covenants on some of the land at Home Farm that would prevent the proposed use. Clearly any legal force that precludes the development could be invoked and prevent the Appellants exercising their permission. However, these are not material considerations that should be weighed in the planning balance. In a nutshell, they fall outside the planning remit. It is also worth bearing in mind that the planning permission that has

been granted would still remain extant and has not been challenged on legal grounds.

38. In the representations by third parties, three other topics featured regularly. These pertain to noise, smell and visual impact. Although a noise assessment was not provided initially, this has now been done and the Council's Environmental Health Officer is content that no sensitive receptors and/or external locations would be adversely affected to any marked degree. This certainly applies to the AD itself and, of course, many of the HGV movements are already taking place or could be introduced irrespective of this scheme. As for smell, if the same amount of muck was spread on Home Farm without first being processed in the AD, the odour is likely to be very much more agricultural. The key point is that the final digestate is odourless.
39. Finally, the visual impact of the project was assessed from nearby public vantage points. However, those offering views of the plant are distant and with the existing silos acting as references, I am convinced that the new AD silos would not stand out in the pleasant landscape. Exterior views are generally presented with mature trees as a backdrop, though it is accepted that not all of these are in the control of the Appellants. The final colour of the silos could also help the scheme settle into the landscape. Additional landscape planting could have been required and the silos could have been sunk a little way further into the ground. However, these are not matters that can be furthered at this stage, having regard to the fall-back situation. Having said this, agreement about the colour would not seem onerous and I am sure that an amicable agreement between the Appellants and the Council could be reached on that, without the need for a formal condition.

Summary

40. In summary on the main issue, the implications the proposed development would have for environment interests, especially with regard to pollution, highway safety and local amenity, could arguably be judged as detrimental. However, on no particular topic would the adverse effects be inordinate and through the judicious use of conditions would be mitigated satisfactorily, without undermining the objectives of the LP policies and especially Policy SP20. Against this background, the project attracts the presumption in favour of sustainable development as divined by the Framework. It also gains substantial policy support through the Framework and the Government's Strategy on ADs, including on agricultural holdings. Last, but not least, this is a sound example of farm diversification as encouraged by LP Policy SP9 and national policy.

Conditions

41. During the hearing the set of conditions attached to the earlier permission was available for consideration. With one minor change to the wording of condition 4, the draft conditions advanced by the Council in this case are the same. I have looked at each in turn and some minor textural amendment has been made to ensure conformity with advice in the PPG. The numbering has changed to reflect the omission of Condition 9. The reasoning behind Conditions 4, 5, 10 and 13 are given in the main body of the decision, but are essentially all in the interests of highway safety and the protection of amenities of nearby properties and/or to satisfy the environmental factors covered by Policy SP20 of the Ryedale Plan - Local Plan Strategy.

42. As for the remainder, the first draft condition is the standard start date condition to comply with s.91 of the Act. The second is necessary to ensure the development is carried out in accordance with the approved drawings. The third and sixth are again necessary in the interests of highway safety and to protect nearby occupiers and to satisfy Policy SP20 of the Ryedale Plan - Local Plan Strategy. Moving to Condition 7 this is required to prevent malodour and Conditions 8, 13 and 14 are necessary in order to protect the character and appearance of the area and to satisfy Policy SP20 of the Ryedale Plan - Local Plan Strategy. Conditions 9 and 11 are again necessary in the interests of highway safety and to protect nearby occupiers and to satisfy Policy SP20 of the Ryedale Plan - Local Plan Strategy. Finally, Condition 10 is required in order to take full account of protected species that may be using the site and to satisfy Policy SP14 of the Ryedale Plan - Local Plan Strategy

Formal decision

43. Having regard to the evidence presented to the hearing, the written representations and visits to the appeal site and surroundings, there are no cogent reasons why the appeal scheme should be resisted. This is especially so having regard to the fall-back position. The concerns raised by the Council and third parties would not be inordinate, could be mitigated by conditions and are far outweighed by the encouragement and policy direction evinced by Government through the Framework and the Strategy, especially on the lines of sustainability and farm diversification. Thus, none of the national or local policies referred to above would be unduly compromised. Accordingly, and having taken into account all other matters raised, this appeal succeeds.

J S Nixon

Inspector

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall be begun on or before 3 years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the following approved plans, details and documents:
 - Site Location plan received by the LPA on 30/09/14
 - Landscaping Plan (File Ref. 148 Drg.01) received by the LPA on 06/01/15
 - 14T661-100 Rev P7 received by the LPA on 30/09/14
 - 14T661-600 Rev P6 received by the LPA on 30/09/14
 - Design and Access Statement received by the LPA on 30/09/14
 - Planning Statement received by the LPA on 30/09/14
 - Noise Assessment received by the LPA on 30/09/14
 - Odour Assessment received by the LPA on 30/09/14
 - Flood Risk Assessment received by the LPA on 30/09/14
 - Phase 1 Ecology Report Rev 2 dated 13/01/15
3. No feedstock shall be used in the development hereby approved other than farmyard manure, chicken manure and grass silage.
4. No feedstock shall be used in the development hereby approved other than that sourced from the following locations:
 - Smaws Farm, Tadcaster, LS24 9LP
 - Landmoth Hall, Kirby Sigston, DL6 3TF
 - High House Farm, West Harsley, DL6 2PR
 - Goosecroft Farm, East Harsley, DL6 2DW
 - North Lowfields Farm, Kirby Fleetham, DL7 0SY
 - Gravel Pit Farm, Sand Hutton, YO41 1LN
5. The annual input of feedstock into the development hereby approved shall not exceed the following, unless otherwise agreed in writing by the Local Planning Authority:
 - Cattle FYM – 12,150 tonnes
 - Chicken Manure – 900 tonnes
 - Grass Silage – 13,500 tonnes

Records, including weights, of all feedstock brought to the site in association with the proposed development shall be retained for at least two years and be available for inspection by the Local Planning Authority upon request.

6. No digestate resulting from the development hereby approved shall be exported from Gravel Pit Farm unless otherwise agreed in writing by the Local Planning Authority.
7. No feedstock and/or digestate associated with the development hereby approved shall be stored on site other than in the feedstock clamps, main and secondary digestion tanks, and digestate storage lagoon.
8. The landscaping of the site shall be carried out in accordance with the approved landscaping plan reference 148.01 and all landscaping shall be maintained in accordance with the approved landscaping plan for the lifetime of the development hereby approved.
9. Unless otherwise approved in writing by the Local Planning Authority, there shall be no development until details of the routes to be used by HGV traffic associated with the construction of the development hereby approved have been submitted to, and approved in writing by, the Local Planning Authority in consultation with the Highway Authority. Thereafter the approved routes shall be used by all vehicles connected with the construction phase of the development.
10. All mitigation measures set out in the Phase 1 Ecology ReportRev.2 prepared by Naturally Wild Consultants Ltd dated 13/01/15 shall be implemented and retained in accordance with the details set out in the Report for the lifetime of the development hereby approved.
11. No gas resulting from the development hereby approved shall be tankered off-site unless otherwise agreed in writing by the Local Planning Authority.
12. No development shall commence until a Digestate Management Plan has been submitted to and approved in writing by the Local Planning Authority. This shall include details on the storage of digestate, locations for the spreading of digestate and quantities of digestate to be spread, a soil sampling schedule, digestate sampling and analysis and measures to ensure adherence to Nitrate Vulnerable Zone regulations. Thereafter the development hereby approved shall be carried out in accordance with the agreed Digestate Management Plan.
13. Details of the location, height, design, hours of operation and luminance of external lighting for the development hereby approved (which shall be designed to minimise the potential nuisance of light spillage on neighbouring properties and highways), shall be submitted to and approved in writing by the Local Planning Authority before any external lighting is used on site. Any scheme that is approved shall be implemented for the lifetime of the development hereby approved and retained in a condition commensurate with the intended function.
14. Within 25-years of the completion of construction of the development, or within 6-months of the cessation of gas production from the development, whichever is the sooner, the development hereby approved shall be dismantled and removed from the site in its entirety. 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 3-months from the cessation of power production.

APPEARANCES

FOR RYEDALE DISTRICT COUNCIL:

Mr Jason Whitfield	Planning Officer, Ryedale District Council
Mr Anthony Winship	Solicitor, Ryedale District Council

FOR THE APPELLANTS:

Mr S Barker Dip TP MRTPI	Prism Planning
Mr Matthew Flint	JFS
Mr David Jones	D and JA Jones
Mr John Helm	Prism Planning

INTERESTED PERSONS

Councillor Eric Hope	Local District Councillor
Councillor Shane Collinson	Local Ward Councillor
Councillor C Goodrich	Local Councillor on Planning Committee
Professor Colin Garner	Resident
Ms Lynne Pearce	Resident
Mr John Short	Resident
Mr Peter Scott	Chair, Claxton and Sand Hutton Parish Council

DOCUMENTS HANDED IN AT THE HEARING

Document 1 - Attendance List (not included)

Document 2 - Letter of notification

Document 3 - Submissions by third parties

Document 4 - Costs application by Appellants and rebuttal of Council's application

Document 5 - Costs application by the Council

Document 1 - Rebuttal of Appellants' costs application

Costs Decision

Hearing and site visit made on 19 March 2015

by **J S Nixon BSc(Hons) DipTE CEng MICE MRTPI MCIHT**

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

Decision date: 26 May 2015

Appeal Ref: APP/Y2736/A/14/2226293

Gravel Pit Farm, Sand Hutton, York, YO41 1LN.

- The appeal is made under sections 78, 322 and Schedule 6 of the Town and Country Planning Act 1990 (the Act), and section 250(5) of the Local Government Act 1972.
 - The application is made by Ryedale District Council for a full award of costs against JFS Gravel Pit Biogas Ltd.
 - The application Ref. No: 14/00709/MFUL, dated 24 June 2014.
 - The development proposed is for a farm scale anaerobic digestion and combined heat and power plant facility.
-

Decision

1. For the reasons given below, the application of a full award of costs is refused.

General

2. The guidance on Costs Applications is now contained within the Planning Practice Guidance (PPG). This reiterates the long standing advice that the parties involved in planning appeals are normally expected to meet their own expenses. Even when an application for costs is made in a timely manner, as was the case here, and irrespective of the outcome of the appeal, costs may only be awarded against the party whom the award was sought if it has behaved unreasonably and, thereby, caused the party applying for costs to incur unnecessary, or wasted expense in the appeal process.

The submissions for Ryedale District Council

3. The application was made in writing at the appropriate time and relates to the unnecessary expense incurred by the Council stemming from the unreasonable behaviour of the Appellants in their resistance to and delay in providing the necessary information to allow the Council to evaluate the appeal proposal and reach a balanced and reasoned decision. Thereafter, the Appellants were unreasonable in pursuing the appeal despite the grant of planning permission for an identical scheme, albeit subject to conditions. Moreover, the information submitted by the Appellants as part of the application was misleading about whether it complied with the definition of 'farm-scale', and in particular the fact that the application maintained that all the feedstock would come from Gravel Pit Farm, even though this did not reflect the number of cattle said to be on the Farm.

4. The appeal was made 1-day after the expiration of the statutory 13-week period and while negotiations with the Appellants and the North Yorkshire County Council were progressing and the Council was still seeking to clarify the exact nature and quantum of the proposal. Under these circumstances, even had it accepted at that stage that it was a district matter, the Council was not in possession of the necessary information to enable it to reach a decision, other than to refuse the application.
5. As such, the Appellants have behaved unreasonably and not observed good practice, by appealing immediately after the 13-week statutory timescale. This left the Council unable to properly exercise its development management responsibilities and put the Council to additional time and unnecessary expense that ought to have been avoided.

Response by JFS Gravel Pit Biogas Ltd

6. The Council kept the Appellants in the dark about the discussions between it and North Yorkshire County Council that were on-going at the time the appeal was made. However, the Council should have known that legal precedent had established the principle of jurisdiction over this type of application. As such, this is not relevant to any legitimate claim for costs. The appeal was lodged after 13-weeks because the Appellants had no idea what was happening to the application.
7. As for the outstanding information the Council says it was waiting for before it could reach a decision, this does not amount to unreasonable behaviour. In the first place, the Council's requirement for noise and odour reports is inconsistent with another site, where it granted planning permission and required no similar reports, despite the location of the anaerobic digester (AD) being closer to sensitive receptors than occurs at Gravel Pit Farm.
8. In relation to highway matters, the Appellants have always been clear that the feedstock for the AD plant would be sourced from Gravel Pit Farm, whether from crops grown or from manure already on the Farm. Under these circumstances the Council did not need any further information and the Appellants were certainly not aware that the lack of information was causing a delay in issuing a decision.
9. Throughout the application procedure the Appellants behaved more than reasonably, going above and beyond what might have legitimately been required of them. On the other hand, the Council put a series of spurious obstacles in the way of this application, because it did not want to accept responsibility for deciding the application. In this regard, it was paying undue attention to the misguided views of a few local Objectors. The Council's claim that the appeal should have been withdrawn following the decision on the second application is outrageous. The Council only acknowledged validity of the second application after it was forced to do so by compelling legal argument.
10. With respect to the planning permission granted on the second application, the submission by the Council that failure to withdraw the appeal and pursue any challenges to the conditions attached thereto as a separate exercise is irrelevant. This of course remains a possibility, but should not preclude a sensible and proper debate about the imposition of conditions on the appeal

application. All conditions on either permission must meet the tests embodied in the PPG guidance.

11. Thus, the Council's claim for costs is refuted totally. The Inspector is asked to recognise the Council's actions for what they are - a smokescreen to cover up its own inadequacies - and dismiss its claim for costs, and instead justly award costs to the Appellants.

Reasons

12. The claim for costs by the Council and the Appellants rebuttal are interesting, but seem to stem more from poor communication on both sides, rather than unreasonable behaviour. The jurisdiction question by the Council and the detail in the supporting information for the appeal scheme by the Appellants both support this view. However, in concentrating on these matters, it seems to me the parties miss several fundamental points. The first of these is that I was unable to determine the appeal *de novo*, as the fall-back position of the extant planning permission precluded this and only allowed a permission no more onerous than that already issued.
13. The second and key point is that, irrespective of the pre-hearing exchanges between the main parties, or lack of it, there can be no doubt that the Council would have issued the same decision for the appeal application as it did for the second application. Thirdly, the Appellants made clear at the hearing that they would be most unhappy with five of the conditions the Council intended to impose and would have appealed against them. They could, of course, have appealed the conditions attached to the second and extant planning permission. Crucially, however, under either scenario there would have been an appeal and a hearing and the costs would have been the same.
14. The only other matter that merits consideration is whether the imposition of the conditions intended by the Council was unreasonable, because the disputed conditions failed to meet the required tests in the PPG. I am not convinced. In the case of four of the five conditions I have supported the Council, with a minor amendment.
15. With the fifth disputed condition, pertaining to the 'requirement' for a wheel washing facility, the Appellants seemed to be taking the view that one was essential. In actual fact, the draft condition did not actually say that, but only that it should be provided if considered necessary. Even then, my conclusion is not clear cut, relying on the balance of probability and the fall-back position that the local highway authority could take action in the event that mud is transferred from the site to the public highway, thereby causing a safety hazard. In any event, had I judged the circumstances of the access such as to require a wheel washing facility, the draft condition meets the obligation evinced by the PPG advice. As such, this is more a matter of opinion rather than unreasonable behaviour.
16. One crucial point missed by the Appellants is that any permission will run with the land and not be limited to the Appellants. Under these circumstances, the Council is fully justified in adopting a more precautionary approach. If it did not and problems arose, it would be criticised for not doing so. Consequently, it is necessary to take a balanced view in the wider public interest, albeit against the background of the tests in the PPG.

17. On the matter that seems to have caused particular angst, namely that the Council prevaricated about its responsibility to determine the application and the delays this caused, this counts for nothing. Even if I conclude that the Council was unreasonable during this period, this does not affect where we are today, with the Council wishing to grant planning permission subject to conditions and the Appellants disputing several conditions. Equally, even if the Council is correct about the lack of necessary information to reach a balanced view on the proposal at the date the appeal was lodged, this does not change matters. It might be by way of a slightly unorthodox route, but there was always going to be permission for the AD subject to conditions, followed by an appeal against some of those conditions and, thus, costs that both main parties incurred.
18. In summary, the nub is that there was always going to be an appeal and a hearing. Thus, this is essentially a conventional appeal scenario, where each party is expected to meet its own costs. Consequently, I find that in the application for an award of costs by the Council against the Appellants is not justified.

Conclusion

19. The application for a full or partial award of costs by the Council against the Appellants does not demonstrate that the latter's behaviour was unreasonable, and, irrespective of this, did not result in unnecessary or wasted expense, as described in the planning guidance.

J S Nixon

Inspector

Costs Decision

Hearing and site visit made on 19 March 2015

by **J S Nixon BSc(Hons) DipTE CEng MICE MRTPI MCIHT**

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

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Decision

1. For the reasons given below, the application of a full award of costs is refused.

General

2. The guidance on Costs Applications is now contained within the Planning Practice Guidance (PPG). This reiterates the long standing advice that the parties involved in planning appeals are normally expected to meet their own expenses. Even when an application for costs is made in a timely manner, as was the case here, and irrespective of the outcome of the appeal, costs may only be awarded against the party whom the award was sought if it has behaved unreasonably and, thereby, caused the party applying for costs to incur unnecessary, or wasted expense in the appeal process.

The submissions for JFS Gravel Pit Biogas Ltd

3. The application was made in writing at the appropriate time and relates to the unnecessary expense incurred by the Appellants in being forced to pursue an appeal in circumstances where the Council should have determined the application within the prescribed period, avoiding the necessity of lodging an appeal against non-determination and the costs the Appellants incurred. In particular the appeal could have been avoided if the Council had acknowledged legal precedent and accepted it had jurisdiction over the application.
4. It is also an appeal that could have been avoided if the Council had behaved reasonably in terms of the controls it imposed on a second identical application and by extension to the conditions it now argues are necessary on this original application.

5. In failing to determine the application, the Council breached the most fundamental example of unreasonable behaviour, namely *"preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations."* Moreover, by ignoring European case law the Council showed unreasonable behaviour by acting contrary to, or not following, well-established case law.
6. As such, the Council has behaved unreasonably, putting the Appellants to additional time, trouble and unnecessary expense that ought to have been avoided.

Response by Ryedale District Council

7. The Council submits that at the time the appeal was lodged, it was in discussion with the North Yorkshire County Council over the jurisdiction of the case and could not move to a decision without its agreement. In any event, the Council was not in possession of the necessary information to make a full assessment of the proposal and determine the application. At the time the appeal was lodged there was outstanding information on a number of topics raised by the Local Highway Authority and the Council's Environmental Health Officer, including details about transport, feedstock and digestate quantities, management of the site and noise.
8. As for the conditions attached to the planning permission granted for the second application the Council is satisfied that they all fulfil the tests evinced by the Planning Practice Guidance (PPG). As such, the imposition of the same conditions on the appeal application is fully justified. Accordingly, no award of costs against the Council should be forthcoming.

Reasons

9. Irrespective of whether the Council was unreasonable in failing to accept responsibility for the determination of the case, I do not think the Appellants were put to unnecessary or wasted expense. The simple fact is that had the Council both accepted that jurisdiction fell to it for the decision and had been satisfied that it had the necessary information to decide the application it would have granted planning permission, subject to the very same conditions that were attached to the later application. In my view there can be no doubt that the Appellants would have been unhappy with these and lodged an appeal against the conditions that formed the basis of the examination at the hearing.
10. As for whether the conditions proposed by the Council were unreasonable or failed any of the other tests contained in the PPG, I am not convinced. In the case of four of the five conditions I have supported the Council, with a minor amendment.
11. In respect of the fifth disputed condition pertaining to the requirement for a wheel washing facility, the Appellants seemed to be taking the view that one was essential. However, the condition did not actually say that, but only that it should be provided if considered necessary. Even then, my conclusion is not clear cut, relying on the site specific layout, balance of probability and the fall-back position that the Local Highway Authority could take action in the event that mud is transferred from the site to the public highway. In other

circumstances, I may well have felt that a condition such as this was necessary and would have worded it very similarly to the Council's draft.

12. The one crucial point missed by the Appellants is that the permission will run with the land and not the Appellants. Under these circumstances, the Council is fully justified in adopting a more precautionary approach. If it did not and problems arose, it would be criticised for not doing so. Consequently, it is necessary to take a balanced view, albeit against the background of the tests in the PPG, in the wider public interest.
13. However, the arguments aired at the hearing stem from the conditions the Council advocated, even after all the information was provided. Much of the difficulty does seem to have stemmed from poor communication on the part of both main parties. The failure of the Council to appraise the Appellants about the stage the application had reached and the Appellants ambiguity in the supporting documentation about feedstock supply etc. Even if either was judged to have been unreasonable, this would not have prevented the costs incurred by the Appellants associated with the appeal and subsequent hearing.
14. In summary, bearing in mind the information available to it, I doubt that the Council was unreasonable in not delivering a decision within the prescribed period. This is irrespective of the jurisdiction arguments. As for the contention that the conditions the Council wished to impose were unreasonable, in four out of five of the conditions I disagree and in respect of the fifth disputed condition, this was very finely balanced. Thus, this is essentially a conventional appeal scenario, where each party is expected to meet its own costs. Consequently, I find that in the application for a full or partial award of costs by the Appellants against the Council is not justified.

Conclusion

15. The application for a full or partial award of costs by the Appellants against the Council does not demonstrate that the latter's behaviour was unreasonable, and, irrespective of this, did not result in unnecessary or wasted expense, as described in the planning guidance.

J S Nixon

Inspector

