The Planning Inspectorate

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, 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.

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, Y041 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

The Planning Inspectorate

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 where 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 that 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 that 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

The Planning Inspectorate

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 JFS Gravel Pit Biogas Ltd for a full or partial award of costs against Ryedale District Council.
- 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 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