


Agenda Item No:	<b>8</b>	
Committee:	<b>Planning</b>	
Date:	<b>22 June 2016</b>	
Report Title:	<b>Appeal in relation to Application Ref F/YR15/0489/F, Anaerobic Digester and Associated Development, Land East of Fengrain, Hook Lane, Wimblington</b>	

### **1 Purpose / Summary**

The purpose of this report is to allow the Planning Committee to consider whether it wishes to contest all the reasons for the refusal of planning permission given in relation to planning application F/YR15/0489/F which was for an anaerobic digester facility and associated development. There is an appeal against the refusal of planning permission.

### **2 Key issues**

There is the risk of an award of cost as the planning permission was refused for reasons which it will be difficult to defend at the appeal

Even if Committee decides not to contest the some of the reasons for refusal it is anticipated that a partial award of cost against the Council may be applied for and may be successful

### **3 Recommendations**

That the refusal reasons relating to: odour, noise and highway / transport are not contested.

<b>Wards Affected</b>	Doddington / Wimblington
<b>Forward Plan Reference</b>	Not applicable
<b>Portfolio Holder(s)</b>	Cllr Sutton
<b>Report Originator(s)</b>	Nick Harding - Head of Planning
<b>Contact Officer(s)</b>	Nick Harding <a href="mailto:nharding@fenland.gov.uk">nharding@fenland.gov.uk</a> Tel 07920 160161
<b>Background Paper(s)</b>	Planning applications Ref

## 1.0 Background / introduction

- 1.1 The purpose of this report is to allow the Planning Committee to consider whether it wishes to contest all the reasons for the refusal of planning permission given in relation to planning application F/YR15/0489/F (to be referred to as the 2015 application / scheme) which was for an anaerobic digester facility and associated development. The reason why planning committee are being asked to consider the issue is because an appeal has been lodged.
- 1.2 The officer recommendation was for the application to be approved. However, Committee resolved to refuse the application and in doing so cited more reasons than it did for the previous application for the development Ref F/YR14/06753/F (to be referred to as the 2014 application / scheme) and which was subject to an appeal at that time). Prior to the decision being made, officers highlighted to Committee the risk of doing do in relation to an award of costs against the Council in an appeal situation on the grounds of unreasonable behaviour.
- 1.3 Since the Committee decision, the outcome of the appeal into the 2014 application has been published.

## 2.0 Appeal Outcome – The 2014 Application

- 2.1 The 2014 application was refused planning permission by the Council for the following reason:
- By reasons of the scale and the proximity of the development to the neighbouring residential properties, the proposal would appear visually intrusive and would result in an overbearing impact which would be to the detriment of the residential amenities of dwellings within the area and to the character and visual amenities of the locality. The application is therefore contrary to policies LP2, LP12, LP16 of the Fenland Local Plan 2014 and paragraphs 14, 17, 58 and 123 of the National Planning Policy Framework.*
- 2.2 It should be noted that the scheme was otherwise considered acceptable by the Council in relation to:
- Transport / highway impact and safety
  - Noise
  - Odour
- 2.3 The decision was appealed and dismissed by the Planning Inspector and the following observations were made in his report (a copy is attached):

### Landscape Impact

Views of the development from parts of Hook Lane would be **'...visually obtrusive [and] it would completely change the character of the byway. The close proximity of the storage tanks, the silage clamps and the sugar beet unit, their height and bulk and industrial appearance would be particularly harmful'**.

***‘...it would be by no means certain that they [the structures] would be completely screens. The development would significantly extend the existing complex into the open countryside and in this effect would be widely visible. This would be harmful to the overall character of the landscape in terms of reducing its openness ‘***

#### Impact on Living Conditions

***‘The industrial appearance, size and proximity of the tanks and the height of the associated fencing would detrimentally affect the outlook from the front of Ivy House.’***

#### Noise

In looking at objector concerns in relation to noise, the Inspector noted that ***‘...noise levels at night time in Ivy House would be within World Health Organisation’s recommended limits’*** but that the 5m high fence needed to provide the noise mitigation ***‘...would be visually intrusive and would add to the visual impact of the development on Hook Lane.’***

#### Odour

The Inspector had no concerns with regard to this stating that ***‘...odour levels at the nearest residential properties would be within acceptable limits.’***

#### Transport

The Inspector in looking at objectors concerns on the issue noted that the Highway Authority had the opinion that ***‘Provided that there is a realistic prospect of the road improvement works being undertaken, a ....condition could be imposed to secure the works.’*** and he took no issue with this.

#### Policy LP12

That the proposal is outside of the village of Wimblington and the proposal is not contrary top policy LP12 (i.e. there is no need for the proposal to have community support)

#### Conclusion

***‘There would be considerable harm to the character and appearance of the area and to the living conditions of nearby residents’.***

### **3.0 The 2015 Application**

3.1 The 2015 application was submitted to and determined by the Council prior to the outcome of the appeal on the 2014 application. In the context of the reasons for refusal given in respect of the 2015 application, the following should be noted:

- a) The proposed road access is the same for both schemes

- b) The anticipated number of traffic movements associated is the same for both schemes
- c) Storage tanks are located so that they are further away from the nearest residential property Ivy House (60m at closest point in the 2015 scheme) compared to the 2014 scheme
- d) 3m high acoustic mitigation (bund plus fence) in the 2015 scheme is smaller than the 5m proposed in the 2014 scheme
- e) The noise impacts will be no worse than the 2014 scheme
- f) The odour impacts are less than the 2014 scheme

3.2 The 2015 application was recommended for approval by officers as it was considered that the previous reason for refusal had been overcome by virtue of the revised layout and content of the proposal. Committee did not accept the officer recommendation taking to view that the visual impact of the proposal remained harmful. Committee went on and placed additional reasons for refusal relating to: highway access, noise and odour although they were advised that to add such reasons would risk an award of costs in an appeal as:

- a) these issues were not a concern to the Committee in relation to the 2014 application
- b) the 2015 scheme was no worse than the 2014 scheme in terms of highway impact, noise or odour and
- c) There were no concerns raised by consultees (Cambridgeshire County Council and Environmental Health) in relation to the highway, noise and odour impacts relating to the 2015 scheme.

Notwithstanding the advice, the 2015 application was refused for the following reasons:

*1 Policy LP15 requires new development to provide well designed, safe and convenient access for all and Policy LP2 requires new development to provide and maintain effective, sustainable and safe transport networks. The proposal will result in additional traffic movements along Eastwood End from and to the A141 and at the junction and it is considered that these additional traffic movements will have a detrimental impact on the highway network in terms of safety at the junction of these roads and on Eastwood End which is insufficiently wide to allow HGV's to pass each other. The application is therefore contrary to Policies LP2 and LP15 of the Fenland Local Plan 2014.*

*2 Policies LP2 and LP16 and paragraphs 17 and 58 of the National Planning Policy Framework require the promotion of high levels of residential amenity. LP14 requires renewable energy projects to take into account residential amenities and noise impact. Paragraphs 120 and 123 of the National Planning Policy Framework state that no adverse impacts should result from development by reasons of noise or odour pollution. Due to the location, scale and form of the development, the proposal will result in nearby residents being significantly impacted upon as a result of noise and odour emissions*

*from the facility and it will be visually dominant and overbearing. It is therefore considered that these impacts would be harmful to the general wellbeing of nearby residents. The application is therefore contrary to Policies LP2, LP14 and LP16 of the Fenland Local Plan 2014 and paragraphs 17, 58, 120 and 123 of the National Planning Policy Framework.*

*3 Policy LP2 requires new development to avoid adverse impacts and Policies LP14 and LP16 requires visual amenities to be taken into consideration and for there to be adverse impact on local distinctiveness or the character of the area. This is reiterated in paragraphs 17 and 58 of the National Planning Policy Framework. The proposal, by reason of its location, scale and form of development, is such that it would be visible from a wide area and would not add to the visual and landscape character of the area. The proposal would result in the further industrialisation of the locality which would be to the detriment of the rural appearance of the area. The application is therefore contrary to Policies LP2, LP14 and LP16 of the Fenland Local Plan 2014 and to paragraphs 17 and 58 of the National Planning Policy Framework.*

#### **4.0 Defence of the Reasons for Refusal at Appeal (2015 Application)**

##### Refusal Reason 1

- 4.1 The access proposal and traffic volumes / impacts of the 2014 and 2015 schemes are the same and in both cases the County Council as Highway Authority had no objection to either scheme. In the light of the likely appeal a second opinion on the highway impacts and mitigation proposals of the 2015 scheme has been sought from the Highway Authority at Peterborough City Council. Highway officers there have concluded that the proposal is acceptable and there is no reason to refuse the application. It is therefore recommended that the Council does not contest the issue at the forthcoming appeal.

##### Refusal Reason 2 (visually dominant and overbearing part)

- 4.2 Officers consider that the 'visually dominant and overbearing' element of refusal reason 2 can be defended at appeal without there being significant risk of an award of costs against the Council.

##### Refusal Reason 2 (noise and odour part)

- 4.3 The Fenland District Council Environmental Health Team did not object to the 2014 scheme and the Committee in refusing the 2014 application did not identify odour or noise as a concern and refer to the issues in the reasons for refusal. As in 2014, Environmental Health did not object to the

2015 application which is logical given that the 2015 proposal is does not have worse impacts in terms of noise and odour than the 2014 scheme (the odour impacts are actually less in the 2015 scheme). In addition, it should be noted that the Planning Inspector who looked at the 2014 proposal did not find fault with it. It is therefore recommended that the Council does not contest this point at the forthcoming appeal as there does not appear to be a case that the Council can put forward in the circumstances.

#### Refusal Reason 3 (visual impact)

- 4.4 Officers consider that this reason for refusal can be defended at the forthcoming appeal.

#### Residual Risk of an Award of Costs

- 4.5 Notwithstanding the potential for the Council to not defend some of the reasons for refusal at the forthcoming appeal regarding the 2015 application, it would not be unexpected for the appellant to apply for an award of cost because they would have had to spend time and money putting together the appeal to the Planning Inspectorate on the assumption that the Council was going to defend all of the reasons for refusal.

#### **5.0 Effect on corporate objectives**

None directly relating to the decision to be made in relation to this report

#### **6.0 Community impact**

None directly relating to the decision to be made in relation to this report.

#### **7.0 Conclusions**

- 7.1 Given the outcome of the appeal into the 2014 application in which the Inspector found no reason to reject the scheme on noise, odour or highway / transport grounds, coupled with the fact that the 2015 application has the same or less of an impact in terms of noise, odour and highway / transport, it is recommended that Committee decide not to contest these reasons for refusal in order to reduce the risk and scale of a potential award of costs against the Council.

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## Appeal Decision

Hearing held on 20 January 2016

Site visit made on 20 January 2016

**by Nick Palmer BA (Hons) BPI MRTPI**

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

**Decision date: 16 February 2016**

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**Appeal Ref: APP/D0515/W/15/3131913**

**Hook Lane, Wimblington, Cambridgeshire PE15 0QJ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Paul Randle of Fengrain Ltd against the decision of Fenland District Council.
  - The application Ref F/YR14/0653/F, dated 8 July 2014, was refused by notice dated 9 February 2015.
  - The development proposed is the erection of an anaerobic digester plant with 3 x silage clamps, construction of earth bunding surrounding an alligator tank for liquid storage and the formation of a lagoon.
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### Decision

1. The appeal is dismissed.

### Application for costs

2. At the Hearing an application for costs was made by Mr Paul Randle of Fengrain Ltd against Fenland District Council. This application is the subject of a separate Decision.

### Procedural matters

3. At the Hearing the appellant confirmed that the description of the development was amended with his agreement. I have used that description in the heading to this decision.
4. The proposal does not include the necessary pipeline connection to the national grid but the appellant states that this would be constructed under permitted development rights. Illustrative options for the proposed pipeline route have been provided and I have considered the proposal on this basis.

### Main Issues

5. The main issues in the appeal are the effects of the proposed development on:
    - i) the character and appearance of the area; and
    - ii) the living conditions of nearby residents.
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## Reasons

### *Character and Appearance*

6. The appellant company operates a large grain storage facility which is in the open countryside but close to the village of Wimblington. To the south of the grain store there are dwellings along Hook Road and Eastwood End. To the immediate west there is a small industrial estate served by a private road from Eastwood End. The grain store has accesses from that road and from Hook Lane, which becomes an unsurfaced byway past that facility. The proposed Anaerobic Digester (AD) plant would be sited on an agricultural field to the immediate east of the grain store complex and would be bounded on two sides by Hook Lane. There is a house on the other side of Hook Lane from the appeal site (Ivy House) and an adjacent property known as Greengates Farm which is also occupied as a residence.
7. The appellant company is owned by farmers, a number of whom would provide the feedstock for the AD plant. This arrangement would enable close management of the feedstock and traffic movements to and from the proposed facility. Sugar beet would be used to enable wider use of this crop in view of impending changes to the current quota regime in Europe and increased commercial competition in the UK sugar market. Other crops including rye would also be used and crops would be transported to the plant between May and early July and in October and November.
8. The access to the AD plant would be via a new road to the north of the grain store complex linking to the existing private road to the west of the grain store. Three silage clamps surrounded by bunds would be located on the northern part of the site away from the nearest residential properties. The storage tanks would be positioned closest to those properties and other items of plant would be between the tanks and the grain store. The alligator tank would store liquid digestate and would be surrounded by bunds in the southern part of the site. An existing belt of trees along the southern boundary and part of the eastern boundary would be retained.
9. The surrounding landscape is flat and open and the grain storage complex is visible from some distance away. I saw on my visit that the complex is clearly visible from Lambs Hill Drove (although there is a chicken farm in the foreground from that direction) and Hook Drove to the north, Horsemoor Road to the north-east and Manea Road to the south. It is also visible from a bridleway which follows the route of a disused railway line to the west. The proposal would be taller than the existing deciduous trees along the southern boundary and visible through those trees for much of the year. New tree planting would be provided as part of the proposal along the northern boundary of the site. The existing planting on the southern part of the site could also be strengthened by new planting.
10. Hook Lane is a public byway which adjoins the eastern boundary of the site. That route is used by pedestrians and horse riders recreationally as well as providing access to the two adjacent residential properties. The appellant's Landscape and Visual Impact Assessment demonstrates that the visual impact of the development when seen across the wider landscape would be limited. However that assessment does not include an analysis of the view from the



adjoining part of Hook Lane. From that direction the development would not only be visually intrusive it would completely change the character of the byway. The close proximity of the storage tanks, the silage clamps and the sugar beet unit, their height and bulk and industrial appearance would be particularly harmful.

11. Although the proposal could be screened from view in the wider landscape by new planting, until such planting is fully grown it would remain visible. Given the height of the structures it is by no means certain that they would be completely screened. The development would significantly extend the existing complex into the open countryside and this effect would be widely visible. This would be harmful to the overall character of the landscape in terms of reducing its openness.
12. For the reasons given I conclude that the proposed development would unacceptably harm the character and appearance of the area. The proposal would not accord with policy LP12 of the Fenland Local Plan (LP) (2014) which requires that development in rural areas does not harm the wide open character of the countryside and the character and appearance of the area. Policy LP16 of the LP has similar requirements and that development makes a positive contribution to local character and distinctiveness. Policy LP14 of the LP supports renewable energy proposals but requires consideration of the surrounding landscape. For the reasons given the proposal would not accord with that aspect of policy LP14 or with policy LP16.
13. It is also a requirement of policy LP12 that there is clear local community support for larger scale proposals within or on the edge of villages. Wimblington is identified in policy LP3 of the LP as a growth village but although the site is close to a group of dwellings at Eastwood End and Hook Road it is outside the village rather than on the edge of it. Local residents, their Member of Parliament and the Parish Council have expressed clear opposition to the scheme and I have considered those views in the balance. However I find that the proposal is not contrary to policy LP12 on this point.

#### *Living Conditions*

14. The basis of the Council's reason for refusal is that the proposal would be harmful to the amenities of the adjacent occupants on Hook Lane in terms of the outlook from those properties. The Council accepts that although visible from dwellings on Hook Road and Rhonda Park the proposal would not affect the living conditions of their occupants.
15. Ivy House is a two storey dwelling which has ground floor windows facing Hook Lane. Views of the development from those windows would be limited to some extent by the trees within the front garden of the property as well as the trees within the appeal site. However those trees are deciduous and would not screen the development from view during much of the year. The tanks would be tall and bulky and would be close to the front of Ivy House. A 4 metre high acoustic fence would be provided adjacent to the tanks. The industrial appearance, size and proximity of the tanks and the height of the associated fencing would detrimentally affect the outlook from the front of Ivy House.
16. At Greengates Farm there appeared on my visit to be a temporary residential unit. That unit is set back from the front boundary and would be separated from the proposed development to a greater extent than Ivy House. The

development would be generally intrusive and oppressive when seen from the land in front of the property but because the residential unit is set back further than Ivy House it is unlikely that the living conditions of its occupant would be directly harmed in terms of outlook.

17. For the reasons given I conclude that the proposed development would unacceptably harm the living conditions of a nearby resident in terms of outlook. The proposal would not accord with policies LP2 and LP16 of the LP which require the protection of residential amenity. Policy LP14 of the LP requires consideration of residential and visual amenity. The proposal would not accord with that aspect of the policy.

### **Other Matters**

18. A number of other concerns were raised by interested parties in writing and at the Hearing. Although other matters were raised, the principal matters of concern are noise, transport effects, odour and biodiversity.

#### *Noise*

19. The Council has no objection regarding the noise levels that would be generated. Mitigation measures would be provided, including acoustic enclosures and fencing. The appellant's noise assessments have demonstrated that noise levels at night time in Ivy House would be within the World Health Organisation's recommended limits.
20. The submitted plan indicates the provision of a 2 metre high fence along the eastern boundary of the site but the Supplementary Noise Assessment recommends that a 5 metre high acoustic barrier is provided along that boundary in order to achieve the necessary level of noise mitigation. A fence of this height would be visually intrusive and would add to the visual impact of the development on Hook Lane.

#### *Transport*

21. The Highway Authority is satisfied that the number of predicted vehicle movements could be accommodated within the highway network without adversely affecting highway safety. However, improvements to the private road from Eastwood End would be necessary to allow for two-way HGV traffic. The owner of the road is said to have agreed to the necessary works but no documentary evidence was presented to confirm this. Provided that there is a realistic prospect of the road improvement works being undertaken, a negatively-worded condition could be imposed to secure those works if the appeal were to be allowed.

#### *Odour*

22. Evidence has been presented to demonstrate that odour levels at the nearest residential properties would be within acceptable limits. A condition could be imposed to ensure compliance with an odour management plan to ensure those limits are not exceeded.

#### *Biodiversity*

23. Great Crested Newts are said to be present nearby but the site does not provide a suitable habitat for them. Mitigation measures could be used to prevent access to the site during construction works. A drainage ditch and

pond within the site have not been surveyed for water voles but a survey and necessary mitigation measures for those features and for the proposed pipeline route could be secured by conditions.

### **The Benefits of the Development**

24. The generation of renewable energy is supported by paragraphs 17 and 98 of the National Planning Policy Framework. The proposal would be beneficial in terms of reducing reliance on fossil fuels and consequent greenhouse gas emissions and in providing energy security. I attach significant weight in favour of the proposal in this regard.
25. The proposal would also be of benefit to the local economy. The grain store would benefit from the potential for power generation and the use of the gas generated. The farmers supplying the plant would benefit through diversifying the use of crops and it is envisaged that two new jobs would be created. The digestates produced by the process would be of benefit to soils as an organic fertiliser.
26. Interested parties in support of the proposal have pointed out that the distances over which sugar beet is transported would reduce in comparison to the current transport movements to the British Sugar facility at Wisington. The proposal would allow for efficiencies for local farmers.
27. I give moderate weight to the economic benefit of the proposal taking into account the modest number of extra jobs that would be created.
28. The proposal could potentially take waste wheat from the adjacent grain store but this process does not form part of the application and would require an Environmental Permit.

### **Conclusions**

29. I find that the proposal would meet the economic role of sustainable development. In terms of the environmental role, I find that the harm would outweigh the benefits. The improved economic position may be beneficial socially in some respects but the harms I have identified would have negative social effects. Considered as a whole, for the reasons given the proposal would not be a sustainable form of development.
30. For the reasons given above I find that there would be considerable harm to the character and appearance of the area and to the living conditions of nearby residents. I give considerable weights to those harms which are not outweighed by the significant and moderate weights I give in favour of the proposal.
31. I have taken into account the support for renewable energy expressed in policy LP14 of the LP. However I have found conflict in terms of the impacts of the proposal on the landscape and residential amenity and for these reasons there is overall conflict with that policy.
32. I have taken into account all other matters raised, including the wildlife benefits from sugar beet farming and avoidance of mud on the roads but those matters do not alter my conclusions on the main issues.

33. For the reasons given I conclude that the appeal should be dismissed.

*Nick Palmer*

INSPECTOR

**APPEARANCES**

FOR THE APPELLANT:

Mr Peter Brady	Solicitor, The Planning Law Practice
Mr Christian Smith	Director, GP Planning Ltd
Mr Paul Randle	Fengrain Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Mr Keith Hutchinson	Hutchinsons Planning Consultants
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INTERESTED PERSONS:

Mr David Connor	County and District Councillor and local resident
Mr Chris Hennen	Local resident and treasurer of Wimblington Against Anaerobic Digester (WAAD)
Mr Arthur Lamb	Local resident and acting Chairman of WAAD
Ms Maureen Davis	District Councillor and Chairman of Wimblington Parish Council
Ms Charlotte Graham-Cameron	on behalf of Stephen Barclay MP
Mrs Sarah Coulson	Farmer, Parish Councillor and member of WAAD
Ms Liz Wright	Parish Councillor and local resident
Ms Shelley Fowler	Local resident and member of WAAD
Ms Rachel Ryder	Local resident
Mr David Green	Local resident
Mr Mark Law MSc	Managing Director of Law Fertilisers Ltd
Mr Raymond Kilsby Dip TP FRTPI	Town Planning Consultant on behalf of Law Fertilisers Ltd

**DOCUMENTS SUBMITTED AT THE HEARING**

- 1 Signed Statement of Common Ground
- 2 Costs application by the Appellant
- 3 Rebuttal of Costs application on behalf of Fenland District Council
- 4 Letter from Mrs J E M Zelnick to Fenland District Council dated 2 December 2015 (submitted by Mr Kilsby)
- 5 Statement of Mr Law with attached plan, document and photograph
- 6 Cambridgeshire County Council: The Woodman's Way (submitted by Ms Fowler)
- 7 E-mail correspondence between Cambridgeshire County Council and appellant regarding road improvements dated 23 October 2015 (submitted by Mr Lamb)