



## Appeal Decision

Hearing held on 9 April 2014

Site visit made on 9 April 2014

**by Susan Holland MA DipTP MRTPI DipPollCon**

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

**Decision date: 11 June 2014**

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**Appeal Ref: APP/K2610/A/14/2212257**

**Oulton Airfield, The Street, Oulton, Norfolk**

- 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 Black Bridge Energy Ltd against the decision of Broadland District Council.
  - The application Ref 20130860, dated 28 June 2013, was refused by notice dated 6 November 2013.
  - The development proposed is an anaerobic digestion renewable energy facility, associated landscaping and vehicular access.
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### Procedural Matters

1. Notwithstanding the description of the proposed development as stated on the application form, the development is described on the Council's decision notice and on the Appeal form as a *biomass renewable energy facility*. It was confirmed at the Hearing that the development is designed and intended to process purpose-grown crops of maize and grass, and is neither designed nor adaptable to process food waste. The description given on the decision notice and on the notice of appeal is more accurately representative of the proposal, and the appeal is dealt with on the basis of the description as amended.

### Decision

2. The appeal is dismissed.

### Main Issues

3. The main issues are the effects of the proposed development (a) upon highway safety and convenience; and (b) upon the living conditions of neighbouring residents at The Old Railway Gatehouse with reference to noise and disturbance; in each case arising from the proposed vehicular movements to and from the site.

### Reasons

*Issue (a): Highway Safety and Convenience*

4. The appeal site is located on land to the rear (west) of an existing turkey farm comprising around a dozen large poultry houses, and to the south-west of a farm depot for crops (peas, beans, barley, wheat, potatoes, sugar beet, and carrots) grown on the surrounding agricultural land. These establishments have separate accesses to Oulton Street (the lane). The proposed biomass

- plant would have its own separate access to the lane, taken from an existing hard-surfaced track. Adequate new visibility splays at the access junction with the lane have recently been formed, by the repositioning of a hedge and fence.
5. In addition to the turkey farm and the agricultural depot, the lane serves the neighbouring residential settlement, also known as Oulton Street (Oulton Street), and the village of Itteringham to the north. For these settlements and for the existing enterprises, the lane serves as the means of access to the B1149 Holt Road. The appeal scheme would add, to the traffic generated by these sources, the traffic associated with the proposed biomass plant.
  6. The biomass plant would be fuelled principally by a purpose-grown maize crop – by a particular variety of maize grown for its properties as a fuel crop. Grass and rye would form alternative/additional feedstocks. This restricted range of material would ensure the required consistency of fuel input. The maize would take a place in the normal rotation of food and fodder crops grown on the 10 subscribing farms: the number sufficient to produce a regular harvest, each year, of the overall quantity required to fuel the anaerobic digestion plant. Harvested maize would be transported to the appeal site and stored in silage clamps. The by-products of the energy generation process, in the forms of solid digestate fertiliser and liquid fertiliser, would be returned to the subscribing farms and to the land.
  7. On an annual basis, 30,000 tonnes of input biomass would be delivered to the site, by tractor and 15-tonne trailer units. 17,500 tonnes of liquid biofertiliser would be transported from the site in 27-tonne tankers. Additional movements would be required for the removal of solid digestate fertiliser. Some removal of the solid digestate could take place in the empty trailers, so saving on movements; but the overlap would be limited, and outgoing movements would take place throughout the year. However, the maize harvest itself would be concentrated into a 2-month period of the year, in September-October, and the grass harvest, somewhat earlier, from June to early August. During the harvest period, tractor/trailer movements would be frequent, at about 8 trips per hour (4 in, 4 out) over a continuous 10hr-14hr day.
  8. Though 2 cars may pass each other, if driven with care, over much of the lane, the carriageway is not wide enough for a vehicle larger than a car to pass any other vehicle except at the existing informal 'passing places'. These have been formed over time by overrunning and consequent erosion of the low banks and grass verge. (There is no footway on the lane). Approximately halfway between the site access and the junction with Holt Road the lane bends sharply, preventing visibility between the passing places on either side of the bend. Elsewhere on this stretch, the lane runs straight and visibility is good. At the point where a former railway line crossed the lane, now marked by a broad elevation or 'hump' in the surface, stands the cottage known as The Old Railway Gatehouse.
  9. The proposal is to formalise several of the existing 'passing places', and to reposition and/or create others, to provide 6 individual passing places in all. The Highway Authority is satisfied that, subject to some repositioning, 6 passing places would meet the need; that opposing HGV tractor/trailer units would be able to pass each other at the new passing places; and that intervisibility between passing places would be adequate.

10. It is acknowledged that in this highly agricultural area, some movement of crops in large vehicles - tractor/trailer combinations, tankers, or other HGV – is 'normal' and to be expected by other road users. Nevertheless, the traffic movements generated by the appeal proposal would be problematic for the following reasons. Firstly, they would be very frequent and concentrated on this particular stretch of lane over a period of several months each year. Secondly, during that time the movements would continue at high frequency over a very long working day, extending from early morning until late evening, and into periods of dusk and darkness. Thirdly, the existing mix of traffic on the lane, revealed by the surveys submitted with the transport assessment, includes domestic cars, agricultural vehicles, tankers and other HGVs: the existing turkey farm and agricultural depot themselves generating HGV traffic.
11. Fourthly, each passing place proposed would not be long enough to contain more than 1 HGV at a time: so that the driver of any vehicle following one of the Appellant's tractor-trailer units would have to anticipate, accurately, the arrival of an opposing vehicle in order to avoid being left facing such a vehicle on the narrow part of the lane. In such cases the only option would be to reverse the length of the previous stretch, to gain refuge in the earlier passing place: a manoeuvre which would be difficult for some drivers and for the drivers of some large vehicles, including tractor-trailers, and particularly in conditions of poor light, dusk and darkness. The consequences of a mistake could be especially severe in the area around the passing place closest to the junction with the B1149 Holt Road. Here, northbound traffic positioned on the B1149 ready to turn right into the lane could be left stranded and exposed in that position while waiting for 2 HGVs to pass on the lane itself close to the junction, and would be unable to exit the B1149 whilst the first passing place was still occupied; or, worse, might turn into the lane unaware that a HGV was about to exit.
12. The proposed arrangement would markedly intensify and exacerbate the difficulties presented by the current arrangement, in which the drivers of vehicles are obliged to engage in a form of 'musical chairs' or 'running the gauntlet' on the narrow lane. The provision of more formal passing places would neither eliminate nor sufficiently ameliorate the consequences of the proposed increase in traffic movements of the most problematic form of vehicle and at the most problematic times.

*Conclusion on Issue (a)*

13. The conclusion is therefore that the proposed development would be likely to result in material harm to highway safety and convenience. The proposal would fail to comply with statutory saved Policy TRA14 of the Broadland District Local Plan Replacement 2006 in that it would *endanger highway safety [and] the satisfactory functioning of the highway network*; with companion Policy GS3(d) in respect of highway safety; and with the National Planning Policy Framework (the Framework) at paragraph 32, in that despite the proposed improvements to the highway network the cumulative impacts of the proposed development would be *severe*.

*Issue (b): Living Conditions at The Old Railway Gatehouse*

14. The current occupier of The Old Railway Gatehouse initially objected to the appeal proposal, but has since withdrawn her objections following receipt of an e-mail dated 4 April 2014, in which *Philipp Lucas, on behalf of Blackbridge*

*Renewable Energy Ltd, confirmed agreement to buying my property, should the above appeal be successful.* Firstly, however, no legal agreement has been submitted to ensure the purchase of the property, and it could not be made the subject of a condition on any planning permission that might be granted. Secondly, the factors relating to living conditions would apply no matter who might be the residential occupier of the property: and so the issue would be likely to continue to arise even after such purchase.

15. The Old Railway Gatehouse is a small, single-storey building positioned directly adjoining the verge at the carriageway edge, and immediately adjacent to the raised platform in the carriageway which marks the route of the former railway. The windows to all habitable rooms either, in the front elevation, face directly onto the carriageway or, in the side elevations to the dwelling, face up and down the lane at close quarters to the carriageway edge. The only window which faces the rear garden is a small window belonging to a bathroom. (There is also a skylight in the open roof to the main living-room/kitchen).
16. The existing windows are double-glazed. Even so, during the site visit the sound of each vehicle which passed the cottage was clearly audible indoors with the windows closed. These vehicles were cars. Sounds of the proposed tractor-trailer units, whether laden or not, would be likely to be louder and to be perceived as disturbances. Their frequent occurrence as separate bursts of loud sound, including vibration with passage over the 'hump' in the carriageway, over long periods of the day from early morning to late in the evening at harvest time, would be likely to be a source of genuine disturbance.
17. Whilst acknowledging that when superimposed upon the existing pattern of traffic movements on the lane, *noise from [up to 8 vehicle movements per hour] would be perceived as a series of separate events rather than a continuous noise*, the Appellant insists upon an approach which works by averaging surveyed noise levels over time. On the basis of an 18-hour average ( $L_{Aeq}$ ), the predicted increase is calculated to be 3dB(A) and so said to be 'minor'. The Council has followed an approach which emphasises peak flows, with the proposed 8 tractor-trailer movements per hour to be added to existing flows, and uses the  $L_{max}$  measure: in this way the Council calculates that there would be an increase of 7dB(A), which would be noticeable and intrusive. In assessing the magnitude of the noise impact, therefore, the Appellant and the Council disagree.
18. The Appellant's submitted noise evidence has been prepared using perfectly conventional measurements and numerical representations of noise. However, such representations inevitably incorporate some degree of statistical smoothing: and so in themselves understate the effects, upon the human receptor, of separate, sudden bursts of sound which conventional practice recognises to be potentially disturbing. Where such bursts of sound – as in the proposed passage of heavy tractor-trailer units – are not continuous but are frequent and regular, the human response is to expect, predict or anticipate the interruption, so that the anticipation itself adds to and prolongs the disturbance when it comes. Thus, the response is not only to the increased level of noise, but includes the anticipation of the increased noise. The presence of the hump in the road outside the Old Railway Gatehouse would intensify the bursts of sound and their suddenness.
19. Recently-issued national Planning Practice Guidance on noise does not rely upon numerical measures but on qualitative descriptors. *Noticeable* noise

ranges from *noticeable and intrusive* noise, which can be *mitigated*, to *noticeable and disruptive* noise, which should be *avoided*. The first *causes small changes in behaviour ... e.g. speaking more loudly; where there is no alternative ventilation, having to close windows for some of the time because of the noise*. The second *causes a material change in behaviour .. e.g. avoiding certain activities during periods of intrusion; where there is no alternative source of ventilation, having to keep windows closed most of the time because of the noise. ... Quality of life diminished due to change in acoustic character of the area*.

20. Having visited the interior of The Old Railway Gatehouse, listened to the sound of passing traffic on the lane, and observed the layout of the property, the nature and position of the windows, and the condition of the lane, I have no doubt that the levels and character of the traffic noise generated by the appeal proposal during periods of harvest would be at the very least *noticeable and intrusive*, and almost certainly, at times, *noticeable and disruptive* as perceived by any residential occupiers of the dwelling. The property already has double glazing: so that there is no mitigation which could be easily specified as part of a planning permission. It is possible that an alternative interior layout of the dwelling might provide appropriate mitigation: but such action is beyond the scope of conditions upon a planning permission and there is no evidence that it could be achieved.

#### *Conclusion on Issue (b)*

21. The conclusion is therefore that the proposed development would, on balance, be likely to result in material harm to the living conditions of residential occupiers of The Old Railway Gatehouse with reference to noise and disturbance. The proposal would fail to comply with the requirements of statutory saved Policy GS3(d) of the Local Plan that the surrounding highway network should be able to *accommodate the traffic likely to be generated without significant detriment to the amenity of nearby occupiers*.

#### **Other Matters**

##### *Noise (other sources) and Odours*

22. As part of the appeal site visit, the site of an existing biogas plant of similar construction, at Spring Farm, Taverham, was also visited. Odours are said to have been a problem at that site: however, it was not demonstrated that the biogas plant itself was the source. At the time of the visit the Spring Farm site was odour-free. The digestion process itself is contained within the dome of the tank; the gas produced is said to be odourless; and the silage clamps have a smell similar to other such installations on farms.
23. The turbines themselves are noisy, but they are contained within a well-insulated building. Extractor outlets also produce a noise which might carry; but the proposed layout would place buildings between these and any potential residential receptors in the settlement of Oulton Street.

##### *Character of the Area*

24. The surrounding area is rural and largely agricultural in character. The immediate surroundings include a number of extensive agricultural buildings, including the adjacent cluster of turkey sheds and, not far beyond, the buildings of the agricultural depot. From the site boundary, other large farm

buildings are visible. The proposed anaerobic digestion plant would be marginally higher than these, but any visual impact would be lessened by the adjacent tree belt and, from the available viewpoints, perspective would have the effect of reducing its apparent height.

25. The site occupies part of a former airfield. The National Trust claims that this is a heritage asset; and also cites links with the Grade 1 Listed Building of Blickling Hall. The Hall is separated from the site by several kilometres and by intervening woodland: so that the proposal would have no visual impact upon it. As for the airfield, though the turkey sheds have been built upon parts of it, the runway layout continues to be reflected in the arrangement of field boundaries and tracks, and is clearly visible in aerial photo representation. The appeal proposal would not interrupt that layout, but would occupy one of the fields. No evidence has been submitted sufficient to demonstrate that the appeal proposal would interfere irreparably with the historical authenticity of the airfield.

#### *Renewable Energy Policy*

26. The proposed biogas plant would generate clean, renewable energy from local biomass: sufficient energy (electricity) for around 4,000 homes. The Framework states clearly, at paragraph 97, that *to help increase the use and supply of renewable and low carbon energy, local planning authorities should recognise the responsibility on all communities to contribute to energy generation from renewable or low carbon sources;* and at paragraph 98 that *they should recognise that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions.*
27. In this case the Council has, in its approach to the proposal, complied with the requirements of the Framework, and has acknowledged the contribution of the proposal to providing renewable energy. The Council has granted planning permission for other such developments locally, including those put forward and operated by the current Appellant. However, in stating that *local planning authorities should ... approve the application (unless material considerations indicate otherwise) if its impacts are (or can be made) acceptable,* the Framework necessarily and appropriately qualifies its encouragement for renewable energy development. The Council's refusal of the current proposal is based upon the impacts of the traffic generated by it, and to that extent the proposal would not comply with the provisions of the Framework.

#### **Overall Conclusion**

28. Whilst some relevant matters are in favour of the proposal or at least neutral in their effect upon it, these are both individually and collectively insufficient to outweigh the conclusion based upon consideration of the main issues: which is, on balance, that the appeal should be dismissed.

*S Holland*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT:**

Mr Trevor Ivory	Solicitor, of Howes Percival, Norwich
Mr Alan Presslee	of Cornerstone Planning Consultants, Cringleford
Dr William Mezzullo	Associate Director, Project Development at Future Biogas
Mr Jon Myhill	of Future Biogas
Mr Adrian James	Noise Consultant, of Adrian James Acoustics Ltd, Norwich

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

Ms Ruth Sainsbury	Senior Planning Officer, Broadland DC
Mr Graham Parry	Noise Consultant, Accon UK Ltd, Aldermaston
Mr John Shaw	Senior Highways Engineer, Norfolk County Council
Cllr Claudette Bannock	Councillor (Taverham South ward), Broadland DC

### **INTERESTED PERSONS:**

Mr Paul Killingback	Chair, Oulton Parish Council
Ms Alison Shaw	Former Chair, Oulton Parish Council
Mr Sam Booker	Local resident, Oulton Street
Ms Anne Roy	Local resident, of The Old Railway Gatehouse

## **DOCUMENTS**

### **Documents submitted by the Appellant**

- 1 Appeal Decision APP/K2610/A/13/2195384 Reepham Road, Felthorpe
- 2 Completed S106 Planning Obligation by Saltcarr Farms Ltd and Black Bridge Energy Ltd