



Appeal Decision

Site visit made on 1 October 2024

by K Reeves BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 November 2024

Appeal Ref: APP/Y1138/W/23/3334670

Red Linhay, Crown Hill, Halbarton, Devon EX16 7AY

- The appeal is made under Section 78 of the Town and Country Planning Act 1990 (as amended) against a grant of planning permission subject to conditions.
 - The appeal is made by Mr John Clapp against the decision of Mid Devon District Council.
 - The application Ref 23/01141/FULL was approved on 24 November 2023 and planning permission was granted subject to conditions.
 - The development permitted is variation of condition 13 of planning permission 22/00868/MFUL (Removal of condition 13 of planning permission 17/01142/FULL - further noise assessments) relating to the submission of a noise assessment.
 - The condition in dispute is No 13 which states that: *The operator shall provide to the local planning authority a further noise assessment within 1 month of the date of this permission. The assessment shall be undertaken by a suitably qualified noise consultant, shall cover all site noise sources, and shall demonstrate whether the limits specified in Condition 12 are complied with. The assessment shall also include details of noise mitigation works already carried out, and of any further works necessary. Where the assessment findings show that any noise levels from the operation of the site are above the limits specified in Condition 12 of this decision notice, the operator shall, within 3 months of the noise assessment, carry out works to mitigate such effects to comply with Condition 12, details of which shall have first been submitted to and approved by the Local Planning Authority.*
 - The reason given for the condition is: *To minimise the potential for pollution and disturbance to local amenity, in accordance with Policy DM4 of the Mid Devon Local Plan 2013-2033.*
-

Decision

1. The appeal is allowed and planning permission is granted for the variation of condition 13 of planning permission 22/00868/MFUL for the erection of a 500kW anaerobic digester and associated works with two silage clamps at Red Linhay, Crown Hill, Halbarton, Devon, EX16 7AY in accordance with the terms of the application, Ref 23/01141/FULL, dated 24 November 2023, subject to the deletion of condition 13 and substitution for it with the following condition:

- 13) *Within 3 months of the date of this permission, a further noise assessment shall be submitted to, and approved in writing by, the Local Planning Authority. The assessment shall be undertaken by a suitably qualified noise consultant, shall cover all site noise sources, and shall demonstrate whether the limits specified in Condition 12 are complied with. The assessment shall also include details of noise mitigation works already carried out, and of any further works necessary.*

Where the assessment findings show that any noise levels from the operation of the site are above the limits specified in Condition 12 of this decision notice, the operator shall, within 3 months of the written approval of the further noise assessment, carry out works to mitigate

such effects to comply with Condition 12, details of which shall have first been submitted to, and approved in writing by, the Local Planning Authority.

Preliminary Matters

2. The wording of the permission being granted has been altered to include the description of the original permission as the description pertaining to the 2023 permission does not relate to an act of development under Section 55 of the Town and Country Planning Act 1990 (as amended).
3. My attention has been drawn to a planning appeal that relates to the same site¹. That appeal was allowed on 12 January 2024, and I shall have due regard to that decision where it is materially relevant to the appeal before me.
4. A revised National Planning Policy Framework (the Framework) was published on 19 December and updated on 20 December 2023. Whilst this made certain revisions to aspects of national planning policy, the provisions in respect of the matters relied on by the main parties are unchanged. Therefore, I did not need to consult with the main parties regarding the revised Framework.

Background & Main Issue

5. Planning permission for the erection of a 500kW anaerobic digester and associated works with two silage clamps was granted on 12 July 2016² (the original permission). Numerous subsequent amendments were made to the original permission through varying planning conditions and plans.
6. The subsequent amendments to the original permission included a permission granted in October 2017³ to vary condition 9 of an earlier permission for the anaerobic digester⁴ (the first varied permission). This permitted changes to parts of the condition 9 relating to the location and source of feedstock and the subsequent ultimate destination of digestate from the anaerobic digester.
7. The first varied permission included 23 planning conditions. Condition 13 of that permission is a noise condition and states:
8. *The operator is to provide a further noise assessment demonstrating that the screening and acoustic panelling/boxes are adequate and provides enough protection to ensure that the typical minimum background sound level 22dB (LA90 15min) is not breached from the operation of the plant. This assessment must be submitted to the planning authority within 5 months from the Operational commencement of the AD unit ("Operational" shall mean the first production of electricity to be exported to the grid confirmed as the 1st June 2017).*

A copy of the findings from the assessment and all recorded data and audio files obtained as part of the assessment shall be provided to the Local Planning Authority (in electronic form) within 28 days of completion of the analysis.

Where the assessment information confirms that the noise levels from the operation of the plant are above the typical minimum background sound level

¹ Appeal reference APP/Y1138/W/23/3323381

² Mid Devon District Council application reference 15/01034/MFUL

³ Mid Devon District Council application reference 17/01142/FULL

⁴ Mid Devon District Council application reference 16/01180/FULL

22dB (LA90 15min) within any amenity areas 3.5m from the façade of any noise sensitive properties, the operator shall carry out works to mitigate such effects to comply with the noise condition, details of which shall have first been submitted in writing and approved in writing by the local Authority.

The assessment and any such noise mitigation works shall be completed within 6 months from the date of notification and be so retained. The date of notification is the date the operator is informed in writing by the Local Planning Authority detailing the inadequate screening.

9. The appellant applied to remove condition 13 and whilst the Council approved the application on 8 December 2022, the condition was varied rather than removed⁵ (the second varied permission). Condition 13 of the second varied permission states:

The operator is to provide a further noise assessment demonstrating that the screening and acoustic panelling/boxes are adequate and provides enough protection to ensure that the typical minimum background sound level as set out in condition 12 above is not breached from the operation of the Anaerobic digester plant. This assessment must be submitted to the planning authority within 6 months from the date of this permission.

Should this assessment identify that suitable noise mitigation has not been provided the operator shall at its expense, within 21 days or such longer period as approved by the Local Planning Authority, undertake an assessment of the noise in accordance with the requirements of the Local Planning Authority.

Where the assessment information confirms that the noise levels from the operation of the plant are above the limits specified in Condition 12 of this decision notice, the operator shall carry out works to mitigate such effects to comply with the noise condition, details of which shall have first been submitted in writing and approved in writing by the Local Planning Authority.

10. A further application was submitted and approved by the Council on 24 November 2023⁶ (the third varied permission). Condition 13 attached to that permission states:

The operator shall provide to the local planning authority a further noise assessment within 1 month of the date of this permission. The assessment shall be undertaken by a suitably qualified noise consultant, shall cover all site noise sources, and shall demonstrate whether the limits specified in Condition 12 are complied with. The assessment shall also include details of noise mitigation works already carried out, and of any further works necessary.

Where the assessment findings show that any noise levels from the operation of the site are above the limits specified in Condition 12 of this decision notice, the operator shall, within 3 months of the noise assessment, carry out works to mitigate such effects to comply with Condition 12, details of which shall have first been submitted to and approved by the Local Planning Authority.

11. The planning condition disputed by the appellant is condition 13 of the third varied permission.

⁵ Mid Devon District Council application reference 22/00868/MFUL

⁶ Mid Devon District Council application reference 23/01141/FULL

12. Bearing in mind this background, the main issue in this appeal is whether disputed condition 13 is reasonable and necessary in the interests of living conditions of the occupiers of neighbouring properties, with particular regard to noise.

Reasons

13. The appeal site is part of an agricultural farmyard that is located between Tiverton and Halberton. The farmyard consists of numerous buildings and the appeal development, which is an anaerobic digester that is used to generate electricity converted from biogas via a combined heat and power unit. On the opposite side of the Great Western Canal is a group of residential properties.
14. Given the close proximity of residential properties to the appeal site, the disputed condition's requirement to carry out and submit a further noise assessment to demonstrate compliance with the specified noise limits in Condition 12 is reasonable and necessary to prevent an adverse impact on the living conditions of the occupiers of those properties. As such, the condition should not be removed.
15. The appellant's concern is that the time limit for carrying out and submitting that assessment is still unreasonable. Condition 13 requires a noise assessment to be carried out by a suitably qualified noise consultant within one month of the date of the permission and that it shall cover all the noise sources on site. There are potentially long lead times for commissioning a noise consultant and then them carrying out the assessment. Additionally, the assessment is weather dependent and given that the equipment would need to be positioned for a certain period of time to obtain accurate and robust results, a month is not a sufficiently long enough period of time to carry out the assessment. Particularly as the report would need to be subsequently compiled and submitted within the same time period.
16. For these reasons, I find that the time limit stipulated by disputed condition 13 for carrying out and submitting the further noise assessment is not reasonable. The variation of the time limit would result in the condition being reasonable and still ensure compliance with Policy DM4 of the Mid Devon Local Plan 2013 – 2033, insofar as it seeks, in part, to prevent negative noise impacts on the quality of the environment.
17. On this basis, I have varied the disputed condition to alter the time limit for the carrying out and submission of a further noise assessment from one month to three months. I have also considered the wording of the rest of the condition against the six tests set out in the Framework and Planning Practice Guidance and made changes to improve clarity, preciseness and enforceability as appropriate.

Conclusion

18. For the reasons given above, the appeal should be allowed, and the planning permission varied in the terms I have explained.

K Reeves

INSPECTOR