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## Appeal Decision

Hearing held on 20 February 2018

Site visits made on 21 November 2017 and 20 February 2018

**by A Napier BA(Hons) MRTPI MIEMA CEnv**

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

Decision date: 17 April 2018

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**Appeal Ref: APP/X2600/W/17/3174764**

**Land at Cross Bank Road, King's Lynn PE30 2HD**

- 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 Michael Stollery (Mickram Limited) against the decision of Norfolk County Council.
  - The application Ref C/2/2016/2011, dated 17 August 2016, was refused by notice dated 3 April 2017.
  - The development proposed is described as 'Erection of anaerobic digestion facility (to process up to 14,000 tonnes of biomass/slurry) including reception/office building and workshop, two digesters, two storage tanks, combined heat and power plant, energy crop storage area, and ancillary plant'.
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### Decision

1. The appeal is allowed and planning permission is granted for erection of anaerobic digestion facility (to process up to 14,000 tonnes of biomass/slurry) including reception/office building and workshop, two digesters, two storage tanks, combined heat and power plant, energy crop storage area, and ancillary plant at Land at Cross Bank Road, King's Lynn PE30 2HD in accordance with the terms of the application, Ref C/2/2016/2011, dated 17 August 2016, subject to the conditions in the attached Annex.

### Applications for costs

2. Applications for costs were made by Mr Stollery against the Council and by the Council against Mr Stollery. These applications are the subject of separate Decisions.

### Preliminary Matters

3. The address of the appeal site in the heading above is that used by the Council on its decision notice and reflects that given on the appeal form. Compared to that originally provided on the planning application form, it was agreed that this alternative address provides a more accurate description of the location of the site and reflects the details provided. As a result, I have used it in the heading and formal decision above.
4. Additional information in support of the appellant's case was submitted in relation to the proposal during the course of the appeal. In addition, a subsequent planning application for a similar scheme on the site was determined by the Council during this time ('the subsequent scheme') and I understand that a further application for a similar scheme was recently

submitted to King's Lynn and West Norfolk Borough Council ('the latest scheme'). Opportunity for further comment has been provided in all these respects, through written submission and at the Hearing. I am satisfied that my intention to consider the appeal in light of this additional and updated information would not be prejudicial to the interests of any party.

5. Neither the subsequent nor the latest scheme is primarily before me as part of this appeal and the information available to me regarding the latest scheme is very limited. However, whilst the subsequent scheme appears broadly similar to the appeal proposal, the details before me indicate that the two proposed developments differ in a number of key respects. Amongst other matters, these include the potential use of a local field access, the inclusion of cable connection linkages within the appeal site, an increase in the amount of material proposed to be processed by the anaerobic digestion (AD) facility, the 'backloading' of delivery vehicles and improved access visibility.
6. It is argued by the appellant that some of these changes relate to matters that, potentially, could be addressed in this appeal by the subject of appropriately worded conditions. However, to my mind, the changes proposed have the potential to materially alter the operation of the appeal development. As such, notwithstanding the submission of additional information related to the subsequent scheme, but in the interests of natural justice, I have considered the appeal on the basis of the development proposed when the Council determined the application.
7. In relation to the Town and Country Planning (Environmental Impact Assessment) (EIA) Regulations 2017, the proposal has been considered by the Secretary of State, who has directed that it is not EIA development. There is nothing before me that would lead me to disagree with this assessment.
8. The appellant provided a draft unilateral undertaking at the Hearing, which was discussed during the event. A completed version was subsequently submitted and I am satisfied that my intention to consider this document would not be prejudicial to the interests of other parties.

### **Main Issues**

9. The main issues in this appeal are the effect of the proposal on:
  - Flood risk;
  - The safe and efficient use of the local highway network, including in relation to public rights of way; and
  - The living and working conditions of nearby residential occupiers and businesses, with particular regard to noise and disturbance, and dust during the construction phase of the development.

### **Reasons**

#### *Flood risk*

10. The appeal site is located to the north-west of King's Lynn town centre and it is not disputed that it is situated in the open countryside, outside the defined urban area. The site is located adjacent to agricultural fields, on the flood defence embankment adjacent to the River Great Ouse, to the east of Cross

Bank Road. In addition to nearby infrastructure, the site adjoins an industrial estate, which extends to the urban edge of King's Lynn.

11. National planning policy seeks to avoid flood risk, requiring a sequential approach to be followed in considering specific development proposals, to steer development to areas with the lowest probability of flooding. Furthermore, where development needs to be in locations where there is a risk of flooding, because alternative sites are not available, decision makers are required to ensure that development is appropriately flood resilient and resistant, safe for its users for the development's lifetime and will not increase flood risk overall.<sup>1</sup>
12. A site specific flood risk assessment (FRA) has been carried out to support the proposal. This indicates that the scheme has been designed to ensure no percolation or discharge to water courses, with no impact on groundwater. In addition, whilst the site is located within Flood Risk Zone 3a, it forms part of a flood defence bank. The details provided indicate that the proposed bund wall around the AD site would be materially higher than the existing flood defences. The Council does not contest that the FRA demonstrates that the proposal would not result in unacceptable flood risk within the development site or increase the risk of flooding elsewhere. I see no reason to take a different view in these respects.
13. Further information has been submitted with the appeal, in relation to the Sequential Test, which seeks to demonstrate that reasonably appropriate alternative land at a lower risk of flooding is not available elsewhere. In this respect, I am mindful of the advice in the Planning Practice Guidance (PPG), which indicates that for proposals on sites that have not been sequentially tested through the local plan process, or which are not in accordance with the development plan, the area for the Sequential Test will be defined by the local circumstances relating to the catchment area for the type of development proposed, taking a pragmatic approach to the availability of alternative sites.<sup>2</sup>
14. In terms of flood risk vulnerability and flood zone 'compatibility', it was common ground between the main parties that the appeal scheme would fall within the 'less vulnerable' category of flood risk classification. Notwithstanding the consideration of AD as a waste operation within the PPG,<sup>3</sup> the Statement of Common Ground (SOCG) between the Council and the appellant agrees that the primary purpose of the appeal proposal would be the production of renewable energy, rather than waste treatment. However, it was also agreed at the Hearing that, due to its scale and nature, the proposed scheme would not represent essential utility infrastructure that has to be located in a flood risk area for operational reasons. In this particular case, there is nothing before me that would lead me to a different conclusion in these regards.
15. The Sequential Test undertaken by the appellant contends that there are no areas outside flood risk zone 3 that would be suitable, given that the main driver for the proposal is to provide energy to two identified end users immediately adjacent to the site, KL Technologies and Dow Chemicals. Whilst formal power supply agreements are not yet in place with these two enterprises, given the current planning status of the proposal, this does not

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<sup>1</sup> PPG ID: 7-001-20140306

<sup>2</sup> PPG ID: 7-033-20140306

<sup>3</sup> PPG ID: 28-02-20141016



seem to me to be particularly unusual. It is not a matter of contention that both the intended end users have high energy requirements. I heard evidence that the proposal would make a clear and beneficial contribution to meeting those needs, in a manner that would be verified, to enable a continued improvement to the use of environmental resources by these companies to be demonstrated.

16. Both companies concerned have indicated a willingness to reach a formal power supply agreement with the appellant company and there is nothing substantive before me to suggest that this would not occur. Moreover, I have no reason to doubt the appellant's evidence that, without such agreement, the proposal would not be financially viable and the development would not proceed. As such, from the evidence provided, I am satisfied that a reasonable likelihood exists of an agreement being reached and I also consider that it would be entirely reasonable to require this to be in place before development commenced, which is a matter that could be controlled by condition.
17. In addition to the supply of electricity, it is also proposed to supply steam or hot water to the two neighbouring sites. Whilst the technical analysis of this element of the scheme was relatively limited, it is not disputed that the laying of thermally insulated cabling for transmission of steam or hot water is expensive and there is energy loss with distance. Taking this into account, I am satisfied that the specific locational requirements of the development proposed are such that alternative sites at a lower risk of flooding are not reasonably available, due to the need to be located in close proximity to the intended end users of the energy that would be produced. Taking these matters into account, I find that the proposal would pass the Sequential Test.
18. In this particular case, the appeal site would have the potential to use an existing connection from a nearby wind turbine to one of the adjacent industrial sites, through which a connection could also be provided to the national grid. Additional cabling would be needed for a connection to the other intended user, together with pipework for the supply of heat energy to both neighbouring sites. I understand that these aspects of the overall development formed part of the subsequent scheme and no fundamental concerns were raised with that aspect of the proposal. Furthermore, there is nothing substantive before me to demonstrate that such a connection would not be feasible or would be unlikely to receive permission. As such, for similar reasons to those above, I consider that a condition requiring such a permission to be in place before development commenced would be reasonable.
19. The PPG<sup>4</sup> indicates that in Flood Zone 3a, subject to the Sequential Test, less vulnerable development is considered to be appropriate and the Exception Test is not required. Nonetheless, the FRA confirms that the proposal would be designed and constructed so that it would remain operational and safe in times of flood. Moreover, subject to appropriate management, it is not disputed that the construction of the proposal could be undertaken without harm to the structural integrity of the existing flood defences.
20. Accordingly, overall and for the above reasons, I conclude that the proposal would not have a harmful effect on flood risk. It would not conflict with the *Norfolk Minerals and Waste Local Development Framework Core Strategy and Minerals and Waste Development Management Policies Development Plan*

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<sup>4</sup> PPG ID:7-067-20140306



*Document 2011* (CSDMP) Policies CS13, CS14 and DM4 and the *King's Lynn and West Norfolk Borough Council Core Strategy 2011* CS01 and CS08, where they collectively seek to manage development in flood risk areas, to limit new development to that which cannot be located on sites of lesser risk, would be safe and would not increase flood risk elsewhere. It would also meet the similar aims of paragraphs 17 and 100-103 of the National Planning Policy Framework (the Framework) in these respects.

*Local highway network*

21. Access to the site is from Cross Bank Road, which is an un-adopted private carriageway and, in part, a byway open to all traffic (BOAT) leading from the nearby port area. Access to Cross Bank Road from the adopted public highway requires the use of private roads through the port. From the evidence before me, including that given at the Hearing, the main area of dispute between the parties concerns the potential effect of the proposed development on the operations of the port, in both the construction and operational phases of the development, particularly during harvest.
22. The proposal was accompanied by a number of supporting documents, including a Transport Statement and Access Review, details of Access Arrangements and Proposed Improvements, and a Transport Management Plan. In addition, further details were submitted as part of the appeal, including a Road Safety Audit and Access Road Survey. The volume of heavy goods vehicle (HGV) traffic likely to be generated by the proposal is not disputed. The SOCG agrees that the proposal would generate an average of about 7 daily HGV movements during the harvest and some 4 movements outside of the harvest.
23. The submitted details have included only limited assessment of the existing conditions at the port. However, there are a number of other industrial and waste management uses within the area, in addition to the docks, which are served by these roads. The appellant contends that this results in relatively high volumes of traffic regularly using the roads within the port, including a significant proportion of HGVs. This accords with my observations during my visits to the area. Whilst I recognise that circumstances may be different at other times, the design and configuration of the road network, including signage and facilities, such as the weighbridge, indicate that significant use by HGVs could reasonably be expected. As such, I am satisfied that it is reasonable to consider that the existing road network within the area will accommodate a significant amount of traffic, including a relatively high proportion of HGVs.
24. Having regard to this context, including the existing parking within the area, I consider that the relatively limited volume of traffic likely to be generated by the proposal would be very unlikely to have a material effect on the operations of the port, both during construction and once in operation, including during harvest. Moreover, I note that the port authority has not objected to the proposal, although a road user agreement with the appellant is proposed, which would potentially control the timing of traffic serving the appeal site. This would provide additional reassurance that adverse impacts on the operation of the port, including the Fisher Fleet area, would be avoided.
25. The highway authority has not raised concerns about the potential impact of the additional traffic on the local highway network. Access arrangements for

the proposal to the public highway would make use of existing roads and junctions. For reasons similar to those above, I am satisfied that the appeal scheme would not have a significant effect on their operation or on highway safety.

26. Cross Bank Road serves a number of properties, including several non-residential buildings. Currently, it has a surface dressing of shells for part of its length, including past the appeal site. The submitted details indicate that it is proposed to upgrade the road to the appeal site, with the provision of both a loose surface dressing, designed to accommodate horses, as well as a bound surface, for vehicular use.
27. It is also proposed to increase the width of the road to 6 metres along most of its length, with two passing places of 6.5 metres in width, and the provision of turning areas within the appeal site. Having regard to the consultation responses, including the comments of the Public Rights of Way officer, I am satisfied that the alterations proposed would provide an acceptable means of access for vehicles, horses and pedestrians, including for the residential occupiers of dwellings to the north of the appeal site.
28. Separate mechanisms exist to control the diversion or stopping up of the public right of way, if required, to facilitate the construction works proposed. However, from the details available to me, there is nothing before me to demonstrate that such matters, or those relating to private rights of way, would not be capable of being appropriately addressed. As such, I consider that this issue would not represent a compelling reason to find against the proposal, in this case.
29. Concerns were expressed about the quality of the submitted Construction Management Plan (CMP) and the Traffic Management Plan (TMP). Some of these issues were addressed in later versions of these documents and I consider that the level of detail is sufficient to demonstrate that the construction of the proposal would be feasible and could be adequately managed, so as to maintain access and avoid unacceptable impacts, including in relation to construction traffic. However, given the sensitive location of the site, I consider that it would be necessary and reasonable to require a more detailed scheme to be produced before any works take place. This is a matter that could be adequately controlled by condition.
30. The bound surface part of the road would not be wide enough for two heavy goods vehicles to pass. However, I am mindful of the relatively low volume of traffic likely to be generated and the overall width of the road proposed, which would include provision for passing bays. Concerns have also been raised that an improvement to the road surface would encourage its use for anti-social activities. There is no substantive evidence before me in this regard and, in any event, other mechanisms exist to resolve such issues. As such, I consider that neither of these issues should count against the proposal.
31. The submitted details indicate that an alternative field access was proposed for the subsequent scheme and I understand that the latest scheme proposes a different access route to serve the appeal site, to address concerns raised in respect of the appeal proposal. However, neither of these alternatives forms part of the scheme before me. In any event, for the reasons given, I find the appeal proposal to be acceptable in this regard.

32. My attention has been drawn to a previous permission for industrial premises, which would have been accessed by Cross Bank Road. I do not have full details of that permission or the background to that decision, including the highway and planning policy context at that time. However, from the limited information available to me, the development proposed would not have been directly comparable to the appeal scheme, but materially different to it. I also understand that the permission has subsequently lapsed. As such, it is not a matter to which I have given any weight in my consideration of the proposal.
33. Accordingly, I conclude that the effect of the proposal on the safety and efficiency of the local highway network would be acceptable. It would accord with CSDMP Policy CS15 and DM10, where they seek to ensure development proposals do not generate unacceptable risks to road safety, unacceptable impacts on the physical condition, capacity and efficiency of the highway network and take into consideration other users. It would not conflict with the *King's Lynn and West Norfolk Borough Council Site Allocations and Development Management Policies Plan 2016* (SADMP) Policy DM20, where it seeks to ensure that highway impacts and those on rights of way are taken into account in relation to renewable energy proposals. It would also not conflict with the aims of paragraph 32 of the Framework, to avoid development with severe residual transport impacts.

#### *Living and working conditions*

34. In relation to this issue, concerns have been raised about the potential impact of the proposal with particular regard to noise, dust and odour. However, from the evidence provided, the Council is satisfied that, subject to appropriate conditions, the operational use of the proposed development would not be materially detrimental to the living and working conditions of nearby occupiers, including in these respects.
35. I have taken into account the comments of the specialist officers of King's Lynn and West Norfolk Borough Council in this regard, including in relation to air quality. Having regard to all representations made, the scale of the proposal, the context of the site, and the potential for control of the operation through the Environmental Permitting regime, there is nothing before me that would lead me to an alternative view in this regard.
36. As such, in relation to this main issue, the primary area of contention between the parties concerns the construction phase of the development. This would involve piling, excavation, the removal of materials, the installation of plant and its commissioning. Due to the extent and nature of the works required, it would have the potential to result in material impacts on local living and working conditions, in relation to both work within and access to the site.
37. The submitted CMP and TMP indicate that the proposal is anticipated to have a relatively lengthy construction period, which would last for several months. Concerns have been expressed at errors within these reports, as well as a perceived absence of detail and consideration of some issues, particularly dust. However, in addition to specific air quality and noise reports, an updated version of the CMP sought to address some of these concerns and provide more detail about how impacts could be effectively managed and reduced. Having regard to the discussion at the Hearing, I consider that a requirement for further specific detail would be unduly onerous at this stage, prior to the appointment of a contractor for the project.



38. The appeal site is located adjacent to an industrial estate and, although it is some distance from the nearest residential properties, the access road would pass in relatively close proximity to the Old Battery House and the dwellings in St Edmunds Terrace. However, these houses are set back from Cross Bank Road and are situated within an area that contains a wide mix of uses, including a variety of industrial uses and a sizeable timber yard. Furthermore, a bitumen surface dressing exists on Cross Bank Road adjacent to these properties and for some distance beyond them, including to the access with the Riverside Business Centre.
39. Given this context and with the use of appropriate conditions restricting hours of operation and deliveries, I consider that the additional traffic generated by the construction of the proposal would not result in any material change to the noise character of the area. For similar reasons and taking into account the configuration and nature of the road network, I consider that unacceptable vibration and dust impacts on neighbouring living or working conditions would be very unlikely and could be adequately addressed by appropriate construction techniques and traffic management. Furthermore, there is nothing before me to indicate that this phase of the development would be likely to generate unacceptable odour.
40. As such, overall, notwithstanding the issues raised with earlier versions of the documents, I consider that the level of detail provided is proportionate to the scale of development proposed and sufficient, at this stage of the development process, to indicate that potential issues would be capable of being resolved by a suitably updated and detailed construction management scheme. This matter could be satisfactorily addressed by condition.
41. Accordingly, for these reasons, I conclude that the proposal would not have an unacceptable effect on neighbouring living and working conditions. It would not conflict with CSDMP Policies CS15 and DM12 and SADMP Policies DM15 and DM20, where they seek to protect and enhance the amenity of the wider environment, including in relation to air quality, neighbouring uses and their occupants. It would also meet the aims of paragraph 17 of the Framework, to achieve a good standard of amenity for all existing and future occupants of land and buildings.

*Other matters*

42. The appeal site is some 800m from The Wash National Nature Reserve and less than 2km from the nearest European sites (The Wash Special Protection Area and The Wash and North Norfolk Coast Special Area of Conservation). I am mindful of my statutory duties in these regards. From the details provided, I am satisfied that the proposal would be unlikely to have a significant effect on these protected sites, their special interest features, or undermine their intrinsic scientific interest. As such, I concur with the Council's view that an Appropriate Assessment under the Habitat Regulations is not required in relation to the development proposed.
43. The Preliminary Ecological Appraisal that was carried out in support of the application identified some potential for reptiles to be present on the site. There is also considered to be some potential for the presence of other species, such as nesting birds and water voles. Having regard to the findings and recommendations of the document, I consider that the mitigation and reasonable avoidance measures proposed within the Appraisal would be

sufficient to overcome any adverse impact on these protected species. A requirement to incorporate these measures as part of the development proposed is a matter that could be addressed by condition.

44. The nearby dwellings in St Edmunds Terrace and the Old Battery House are grade II listed buildings and designated heritage assets. I am also mindful of my statutory duties in this regard. From the details available to me, I consider the significance of these buildings largely derives from their age, use, form, fabric and architectural details. The proposal would be separated from these buildings by some distance and existing intervening development. Concerns have been raised about potential noise, dust and vibration impacts of the proposal. However, taking into account the existing setting of the buildings and for reasons similar to those above in relation to living and working conditions, I consider that the appeal proposal would not result in any harm to the significance of these buildings and would not materially alter their setting.
45. There is disagreement between the main parties about the extent of waste product that would be processed by the proposal, due to the nature of the feedstock concerned. In this particular case, having regard to the arguments presented by the Council, I am not satisfied that it has been adequately demonstrated that it would be appropriate to consider the sugar beet by-product as waste. On this basis, the waste throughput of the proposal would be considerably less than that suggested by the appellant. Nonetheless, the proposal would involve the reuse of some waste product.
46. Some concerns have been expressed about the need for the proposal. However, for the reasons given, it would be in accordance with CSDMP Policy CS7, which supports the provision of new anaerobic digester (AD) facilities, subject to consideration of environmental, amenity and highways impacts. For the reasons given above, I am satisfied that the proposal would not be harmful in these regards. The appeal proposal would also meet the aims of National Planning Policy for Waste (NPPW), to encourage an increase in the use of waste as a resource, by driving waste management up the waste hierarchy. It would also support the aims of the National Anaerobic Digestion Strategy and Action Plan, to increase energy from waste through AD.
47. Furthermore, the appeal scheme would also meet the aims of CSDMP Policy CS13, where it encourages co-location with industrial users. The proposal would have the real potential to have significant benefits for neighbouring industrial uses, as well as environmental benefits. It would meet the aims of paragraphs 93, 97 and 98 of the NPPF, to support the delivery of renewable and low carbon energy, recognising that even small-scale projects provide a valuable contribution in this regard. Overall, notwithstanding the relatively modest scale of the proposal and the limited amount of waste involved, I accord these benefits significant weight.
48. In addition, the proposal would be situated immediately adjacent to a relatively sizeable farm, which would have the potential to supply the maize for the digester and receive the digestate. No formal agreement is in place in respect of the appeal proposal and concerns have been expressed about the long-term feasibility of such arrangements. However, I have no reason to doubt that an agreement in principle has been reached with the adjacent farm, or that a formal agreement forms part of the latest application. As such, I consider that the close proximity of the site to a potential source of feedstock and recipient

of the digestate is a matter that lends some limited further weight in support of the scheme.

49. Whilst a number of concerns have been expressed about the location of the site, the proposal would make productive use of land that is currently not in beneficial use and it is not disputed that the scheme would be deliverable. I am satisfied that, due to the design of the scheme, the proposal would not be visually intrusive and the landscaping approach proposed would be sympathetic to its context, including in relation to the public right of way. For the reasons given, I consider that any remaining locational issues would be able to be overcome by appropriate conditions. The site would therefore represent a suitable location for the development proposed, which would meet the aims of Appendix B of the NPPW.
50. The three roles of sustainable development are mutually dependent. Paragraphs 6-9 of the Framework indicate that 'sustainability' should not be interpreted narrowly. Elements of sustainable development cannot be undertaken in isolation but should be sought jointly and simultaneously. Sustainable development also includes 'seeking positive improvements in the quality of the built, natural and historic environment as well as in people's quality of life'.
51. The proposal would have a number of benefits. In addition, for the reasons given, it would not be harmful in relation to flood risk, the local highway network, or with regards to living and working conditions, either during the construction or operation of the proposal. As such, overall, I find that the proposal would represent sustainable development and would be in accordance with the development plan as a whole.

### **Conditions, Planning Obligation and Conclusion**

52. I have considered the Council's suggested conditions in the light of the Planning Practice Guidance and the Framework. For clarity and to ensure compliance with the Guidance, I have amended some of the suggested wordings. Otherwise than as set out in this decision and conditions, for certainty, it is necessary that the development be carried out in accordance with the approved plans.
53. It was agreed between the parties that separate permission would be required for the new infrastructure necessary to connect the appeal site to the intended end users of the power generated by the proposal. Following discussion at the Hearing and given my findings above, I consider that it would be essential to prevent development from taking place in respect of the appeal proposal unless and until such provision is in place and that this amounts to the exceptional circumstances necessary to apply such a condition.
54. Similarly, for the reasons given, before development takes place, I consider it essential that formal agreements exist with the intended users of the power that would be generated by the appeal development. The appellant has provided a planning obligation in relation to this matter, which undertakes not to commence the development without securing a power purchase agreement. However, the Council has suggested that this matter is capable of being addressed by condition and there is nothing before me to indicate otherwise. I therefore intend to apply a condition to this effect.



55. Accordingly, with reference to paragraphs 203 and 204 of the Framework, I am not satisfied that the planning obligation would be necessary. Therefore, having regard to Regulation 122 of the Community Infrastructure Levy Regulations 2010, I do not intend to take it into account in my consideration of the appeal.
56. For certainty and to protect nearby living and working conditions, it is necessary to define the principal uses of the development permitted, whilst making appropriate provision for associated operations, to provide a reasonable degree of flexibility.
57. For the reasons given above, the provision of a detailed construction method statement is necessary before development takes place. To protect neighbouring living and working conditions, in the interests of flood risk, ecology and to maintain an efficient and safe use of the highway, it is reasonable to require the statement to contain details, including the timescale for the construction phase, parking and loading details, the management and storage of materials and soils, the provision of wheel washing facilities, hours of operation and deliveries, the location of any fixed machinery, reasonable ecological avoidance measures, and those to prevent of noise and disturbance and dust.
58. In the interests of local living and working conditions and to ensure appropriate access is maintained along Cross Bank Road, it is necessary to control details of the improvement works proposed to the road and ensure that the additional width of the road is dedicated as a BOAT. To prevent an increased risk of pollution and flooding, it is necessary to require the development to be carried out in accordance with the submitted FRA and to control details of the foul and surface water drainage on the site. In the interests of the character and appearance of the area, it is necessary to control details of the external facing materials and cladding colour of the buildings, structures and boundary treatments on the site. For similar reasons and to ensure ecological mitigation measures are provided, it is necessary to control landscaping details and ensure provision for their establishment.
59. It is not disputed that the proposal would require an Environmental Permit, which would control operations on the site. I am mindful that these controls are likely to address issues such as noise, dust and odour, amongst other matters. However, there is nothing before me to indicate that a Permit has been issued and, in any event, I am not satisfied that it has been demonstrated that it would provide an appropriate mechanism to control activities beyond the AD site. Consequently, I consider that it is both reasonable and necessary to require a scheme for the management of deliveries to, collections from and storage on the site to be approved before the development is brought into use, to protect neighbouring living and working conditions and minimise the potential for odour and dust from the transportation of stock materials.
60. Similarly, to protect local living and working conditions, it is necessary to require details of noise levels and attenuation measures to be approved and to require parking and servicing areas to be provided. In the interests of the character and appearance of the area, it is reasonable to limit the location and height of storage of materials on site. For similar reasons and in the interests of biodiversity and ecology, it is appropriate to control external lighting.

61. To protect local living and working conditions, and control the scale of the development, it is necessary to limit the tonnage of materials imported. For flexibility in operations, the appellant requested that any such condition include some scope to increase the limit proposed. However, as this would materially alter the details of the appeal scheme, I consider this would not be appropriate.
62. Having regard to the nature of the development, to protect the character and appearance of the area and facilitate the beneficial re-use of the site, it is reasonable to require details of the cessation of use to be provided and for details of decommissioning to be approved. However, taking into account the particular circumstances of this case, I have amended the wording suggested, as I consider that a requirement to reinstate the site to its current condition would be unreasonable and unnecessary.
63. The requirement to provide a comprehensive transport appraisal and survey of the existing road network, together with the identification of mitigation measures, has been suggested by the Council. However, for the reasons given, I consider that this would be unnecessary and the suggested requirements would be unacceptably imprecise. As such, the condition would not meet the relevant tests within the PPG or the Framework.
64. The Council has also suggested a condition to require the construction traffic access route to be specified and for abnormal wear and tear to the highway to be addressed. Given the location of the site, its access arrangements and taking into account the likely impact of such traffic on the public highway, together with the requirements of other conditions applied, I consider that such a condition would be unnecessary in this case.
65. I consider the suggested condition requiring the site to be maintained in an orderly state to be unacceptably imprecise and unnecessary, given the requirements of other conditions. It has been suggested that a condition restricting the use of 'permitted development rights' should be applied. However, having regard to the development proposed and the characteristics of the site, I am not satisfied that the exceptional circumstances necessary to justify such a condition have been demonstrated in this case.
66. For the above reasons and having regard to all other matters raised, I conclude that the appeal should be allowed.

*A Napier*

INSPECTOR

## Annex

### Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) Other than as required by the conditions below, the development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan, 0809-16/02 Rev A, 0809-16/03 Rev A, 0809-16/03-1 Rev A, 0809-16/04 Rev A, 0809-16/05 Rev A, 0809-16/08, E16809-TLP-001, 151/15/001, 151/15/009, 151/15/010, 151/15/011, and the Topographic Level Survey.
- 3) No development hereby permitted shall take place unless and until:
  - a) provision has been secured for necessary infrastructure connections to the identified users of the power to be generated by the development hereby permitted;
  - b) formal mechanisms for the purchase of the power to be generated have been completed with the identified users of that power; and
  - c) documentary evidence of these infrastructure provisions and power purchase agreements has been submitted to the county planning authority.
- 4) The uses of the site shall be restricted to:
  - a) The anaerobic digester process and associated operations, including the receipt, handling and storage of maize and beet pulp and the receipt and handling of animal waste, with no animal waste to be stored on site; and
  - b) The generation of electricity and heat and other ancillary operations associated with the above activities.
- 5) No development shall take place, including any works of site clearance, until a Construction Method Statement has been submitted to and approved in writing by the county planning authority. The Statement shall provide details of the management of the construction phase of the development, including:
  - i) the management of construction traffic, including any provision for vehicles waiting to gain access to the site;
  - ii) the parking of vehicles of site operatives and visitors;
  - iii) the loading and unloading of plant and materials;
  - iv) the storage of plant and materials used in constructing the development;
  - v) provision for the containment of accidental spills and leaks;
  - vi) the management and handling of soils and reinstatement of the site compound;
  - vii) the location of any fixed machinery and details of any external lighting;
  - viii) wheel washing facilities;



- ix) measures to control noise and the emission of dust and dirt during construction, including from vehicles accessing the site;
- x) specific reasonable avoidance measures, as identified in the submitted Preliminary Ecological Appraisal, Ref TE/SB/2016\_353, dated March 2016, to protect species on site during the construction phase; and
- xi) delivery and construction working hours and the timescale for the construction period.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 6) Notwithstanding the details indicated on the submitted drawings, no works shall take place on site, including any site clearance, until a detailed scheme for improvement works to Cross Bank Road Byway Open to All Traffic (BOAT) has been submitted to and approved in writing by the county planning authority. The scheme shall specify:
  - (i) the surfacing and other materials to be used at all stages during the construction period, including the commissioning phase of the development;
  - (ii) the surfacing materials that shall be in place before the development hereby permitted is first brought into use;
  - (iii) the arrangements proposed for access during the improvement works to the BOAT, which shall clearly identify whether or not closure of the road is required during these works and, if so, the mechanism proposed to achieve this; and
  - (iv) the mechanism proposed to dedicate the resulting additional surfaced width of Cross Bank Road as a BOAT.

The development shall be carried out in accordance with the scheme as approved and retained as such thereafter.

- 7) The development hereby permitted shall be carried out in accordance with the submitted Flood Risk Assessment and Addendum. The height of the bund and flood gate shall be a minimum of 300mm above the adjacent access track.
- 8) No development shall take place until a scheme for the provision and implementation of pollution control to the water environment, which shall include foul and surface water drainage and provision for the containment of accidental spills and leaks, has been submitted to and approved in writing by the county planning authority. The scheme as approved shall be provided and implemented before the development hereby permitted is first brought into use, including the commissioning phase, and retained as such thereafter.
- 9) No development shall take place until further details of the landscaping of the site, to supplement the approved plan Ref E16809-TLP-001, have been submitted to and approved in writing by the county planning authority. The scheme shall include:
  - (i) indications of all existing trees and hedgerows on the land, identify those to be retained, including confirmation of the extent of site access and any implications for the retained hedgerow, and set out

measures for the protection of the trees and hedges to be retained throughout the course of development;

- (ii) planting details, including species, specification, origin, method, density of planting, with these details to specify the extent of verge available for hedgerow planting and the use of climbing species for the external feedstock clamp wall;
  - (iii) specific reptile habitat mitigation measures identified in the submitted Preliminary Ecological Appraisal, Ref TE/SB/2016\_353, dated March 2016; and
  - (iv) an implementation programme.
- 10) The approved landscaping works shall be carried out in accordance with the agreed implementation programme. Any trees or plants which within a period of 5 years from the completion of the development die, are removed, or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species.
- 11) No works for the construction or installation of the anaerobic digester units, associated buildings, structures and boundary treatments shall take place until specifications and details of all external facing materials and surface treatments, including cladding colour, have been submitted to and approved by the county planning authority in writing. The relevant works shall be carried out in accordance with the approved details.
- 12) The development hereby permitted shall not be brought into use, including any commissioning phase, until a scheme for the management of deliveries to, collections from and stockpiles within the site has been submitted to and approved in writing by the county planning authority. The scheme shall:
- (i) include all measures proposed to minimise odour and dust emissions from the transportation of stock material to and from the site, including the use of covered vehicles, and the management of yard surfaces, circulation areas and stockpiles within the site; and
  - (ii) specify that no animal waste shall be imported to the site other than in covered loads or tankers.

The development shall thereafter be operated in accordance with the scheme as approved.

- 13) The development hereby permitted shall not be brought into use, including any commissioning phase, until a noise attenuation plan has been submitted to and approved in writing by the county planning authority. The plan shall specify:
- (i) noise levels from the operation of plant on site, including in relation to night time background noise levels; and
  - (ii) noise attenuation measures to be applied during the operation of the site, including in relation to vehicles, mechanical plant, machines and ancillary plant and in relation to reversing alarms.

The development shall thereafter be operated in accordance with the plan as approved.

- 14) The development hereby permitted shall not be brought into use, including any commissioning phase, until on-site parking, servicing, loading, unloading, turning and waiting areas have been laid out, demarcated, levelled, surfaced and drained in accordance with the approved plan Ref 0809-16/08, and made available for use and these areas shall be retained as such thereafter.
- 15) The development hereby permitted shall not be brought into use, including any commissioning phase, until an external lighting scheme has been submitted to and approved in writing by the county planning authority. The scheme shall include details of the location, specification and intensity of any lights, and measures to prevent light spillage and glare. No external lights shall be installed within the site unless in accordance with the scheme as approved.
- 16) Except as otherwise detailed within the Construction Method Statement, no storage of materials, including feedstock materials, shall take place within the site except within the storage clamp, as shown on the approved plan Ref 0809-16/08, and any materials stored shall not exceed the height of the site bund wall.
- 17)
  - a) The maximum tonnage of materials imported to the site in any calendar year (1 January – 31 December) shall not exceed 14,000 tonnes.
  - b) The site operator shall maintain a record of the tonnage of materials delivered to the site, including energy crops, animal waste and beet pulp, and the numbers and types of associated vehicles. The record shall be made available to the local planning authority upon prior written request. A written report of the total tonnage of feedstocks imported to the site in each successive calendar year shall be provided to the local planning authority within one month of the year end.
- 18) Not less than 2 weeks prior written notice shall be provided to the county planning authority of the permanent cessation date for the operation of the development hereby approved, or for any temporary cessation of operations in excess of one month.
- 19) Not less than 6 months prior to the planned date of any permanent decommissioning of the development hereby approved, proposals for decommissioning the development within an agreed timescale shall be submitted by the operator to the county planning authority for approval and shall make provision for the reinstatement of the site.



## **APPEARANCES**

### FOR THE APPELLANT:

Mr Grahame French	The Planning Group
Mr Michael Stollery	Appellant, Mikram Limited
Mr Tony Doyle	Kingdom TP
Mr Ben Hornigold	Flood Risk Consultant
Mr Philip Greenaway	Lutra
Mr Julian Beresford-Peirse	Dow Chemicals
Mr John McRitchie	Dow Chemicals

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Ralph Cox	Principal Planner, Norfolk County Council
Mr Neil Campbell	Senior Planning Officer, Norfolk County Council

### INTERESTED PERSONS:

Mr Terry Pither	Local Resident
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### DOCUMENTS SUBMITTED AT THE HEARING

- 1 Draft unilateral undertaking
- 2 Copies of the Norfolk Minerals and Waste Development Framework Core Strategy and Minerals and Waste Development Management Policies Development Plan Document 201, Policies DM8 and DM12
- 3 The Council's costs application
- 4 Amended schedule of suggested conditions

### DOCUMENT SUBMITTED AFTER THE HEARING

- 1 Completed unilateral undertaking

