



Appeal Decision

Site visit made on 25 September 2020

by **John Woolcock BNatRes(Hons) MURP DipLaw MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 26 November 2020

Appeal Ref: APP/U1105/W/19/3234261

Enfield Farm Biodigester, Oil Mill Lane, Clyst St Mary, EX5 1AF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the 1990 Act) against a refusal to grant planning permission under section 73 of the 1990 Act for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr David Manley Ixora Energy Limited against the decision of East Devon District Council (EDDC).
- The application No.18/2173/VAR, dated 19 October 2018, was refused by notice dated 4 June 2019.
- The application sought planning permission without complying with conditions attached to planning permission No.17/0650/VAR, dated 1 November 2017 (more details are set out below in the Preliminary matters section of this Appeal Decision).
- The application form states that the conditions in dispute are Nos. 5, 7 and 10 of permission No.17/0650/VAR which state that:

Condition 5

"The development hereby permitted shall be carried out in full accordance with the Odour Management Plan (Version 3) dated October 2015 and shall be complied with in perpetuity."

Condition 7

"i) The feedstock and feedstock delivery for the anaerobic digester shall be as set out in the supporting information submitted with the application and shall comprise slurry, farmyard manure, maize silage and wheat in the proportions listed within Volume 1 of the report prepared by E4environment dated 10th June 2014 approved under 14/0858/MFUL. For the avoidance of doubt the proportions per annum are: Pig slurry - minimum of 6000 tonnes (or all of their slurry if less than 6000 tonnes) per year produced on Enfield Farm. Farmyard manure - 1000 tonnes. Maize silage - 16,537 tonnes. Wheat - 3000 tonnes. The principal uses of the site shall thereafter be restricted to: The anaerobic digestion process and the associated receipt, handling and storage of agricultural wastes and crop products; Generation of electricity and heat and other ancillary operations associated with the above activities.

ii) The feedstock for the anaerobic digester shall be sourced from the sites named in Table 5.2 of the Transport Statement prepared by Hydrock dated May 2014 named as: Shepherds 41.8 ha, Enfield 21.7 ha, Burrowton 28.03 ha, Crealy Barton 68.09 ha, Burrowton 1 15.14 ha, Lions 72.75 ha, Hayes 82.43 ha, Collyhead 63.82 ha and as shown on the plan/aerial photos drawing no's 13546/T03A, 13546/T04B, 13546/T05A, 17/0650/VAR Page 3 13546/T06A, 13546/T07A and 13546/T08A as set out within Appendix F of the Transport Statement dated May 2014 and on pages 8 and 9 of the SLR Transport Statement March 2017 named as: Upton Pine, Poltimore, Wood Farm, Sidbury, East Hill Strips, Exton, Peamore Farm, Higher Bagmores, Yellowford, Matford, Ide, Combe, Gulliford, venmoor, Houndbeare and Atlantis.

iii) The ultimate destination for the digestate from the anaerobic digester shall be to the sites named in Table 5.3 of the Transport Statement

prepared by Hydrock dated May 2014 named as Shepherds 41.8 ha, Enfield 21.7 ha, Burrowton 28.03 ha, Crealy Barton 68.09 ha, Burrowton 1 15.14 ha, Lions 72.75 ha and as shown on the plan/ aerial photos drawing no's 13546/T04B, 13546/T05A, 13546/T07A, 13546/T08A as set out within Appendix F of the Transport Statement dated May 2014 and on pages 8 and 9 of the SLR Transport Statement March 2017 named as: Upton Pine, Poltimore, Wood Farm, Sidbury, East Hill Strips, Exton, Peamore Farm, Higher Bagmores, Yellowford, Matford, Ide, Combe, Gulliford, venmoor, Houndbeare and Atlantis.

iv) A log book shall be maintained and completed detailing where and when the feedstock(s) for the AD plant have come from and where, when and mode of transport of the digestate leaving the site. The log book shall record the name of the farm, plot, supplier, number and gross and net weight of vehicles along with the date and time of feedstock delivery/ digestate distribution.

v) No other sites are to be utilised for either feedstock source or digestate destination. Such log book records shall be submitted to the Local Planning Authority quarterly or within any other frequency as requested by the Local Planning Authority.

vi) Records of feedstock input into the digester by weight from the hopper shall be kept and submitted to the Local Planning Authority in writing quarterly or within any other frequency as requested by the Local Planning Authority."

Condition 10

"Notwithstanding the submitted details, any plant (including ventilation, refrigeration and air conditioning units) or ducting system to be used in pursuance of this permission shall be so installed, retained and operated that the noise generated at the boundary of the nearest neighbouring property shall not exceed Noise Rating Curve 25, as defined in BS8233:2014 Sound Insulation and Noise Reduction for Buildings Code of Practice and the Chartered Institute of Building Service Engineers Environmental Design Guide when considered in combination with other equipment on the site. Details of any mitigation scheme shall be submitted to and approved by the Local Planning Authority within 2 months of the installation of any such plant and the development shall thereafter be carried out in accordance with the mitigation measures which shall be retained in perpetuity."

- The reasons given for the conditions are:

Condition 5 – "To comply with the requirements of Policy EN14 (Control of Pollution) to protect the amenity of local residents in terms of the control and management of odour, noise, traffic management and construction management and Policy D1 (Design and Local Distinctiveness of the East Devon Local Plan 2013-2031 and the guidance within the National Planning Policy Framework."

Condition 7 – "To define the type, sources and delivery of materials permitted to be managed and handled at the site; to ensure that storage of feedstocks for the anaerobic digester are controlled and can be adequately accommodated within the overall site layout; and as the application is only considered to be acceptable and sustainable in this location on the basis that the destination for digestate being processed is sourced locally, in the interests of general and visual amenity in accordance with Policies EN14 (Control of Pollution), TC7 (Adequacy of Road Network and Site Access) and D1 (Design and Local Distinctiveness) of the East Devon Local Plan 2013-2031 and the guidance within the National Planning Policy Framework."

Condition 10 – "To protect the amenity of local residents from noise in accordance with Policies D1 (Design and Local Distinctiveness) and EN14 (Control of Pollution) of the East Devon Local Plan 2013-2031."

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr David Manley Ixora Energy Limited against East Devon District Council. This application is the subject of a separate Decision.

Preliminary matters

Site location and surroundings

3. The digester is located about 500 m to the east of the village of Clyst St Mary. It adjoins a pig farm from which slurry is pumped directly to the digester. Vehicular access to the digester and pig farm is via a rural lane (referred to as the 'Access Road' in this Appeal Decision) off Oil Mill Lane at Oil Mill Cross. The Access Road also provides access to a residential dwelling known as Enfield Bungalow. Oil Mill Lane joins Sidmouth Road (A3052) about 75 m to the north of Oil Mill Cross. Notwithstanding the presence of a transport depot located to the north of the digester, which is also accessed from Oil Mill Cross, the area has a predominantly rural character, with scattered dwellings set within agricultural land.
4. There are residential dwellings located in the vicinity of Oil Mill Cross that are about 100-250 m to the west of the digester, with other dwellings about 100 m to its south and 100-250 m to its north. The dwelling at Enfield Bungalow is about 78 m from the digester. There are other dwellings in Clyst St Mary and other residential properties about 500 m to the north-east of the digester that are located off the A3052.

Planning history

5. Planning permission for application 14/0858/MFUL was granted on 24 July 2014 for; "Construction of agricultural anaerobic digester plant for production of renewable energy" at Enfield Farm, Oil Mill Lane, Clyst St Mary.¹
6. Permission for application 15/1473/VAR was granted by EDDC on 23 August 2016 for the "Variation of condition 2 (plans condition) of planning permission 14/0858/MFUL to alter infrastructure and layout of an Anaerobic Digester Plant". The decision does not specifically say so, but it had the effect of creating a new planning permission subject to 16 conditions.
7. EDDC approved permission for application 17/0650/VAR on 1 November 2017 for "Variation of condition 7 (ii) of planning permission 15/1473/VAR to allow alternative site for feedstock source and variation of condition 7 (iii) to alternative destinations for digestate, and variation of condition 2 (plans condition) to replace approved transport statement." This again created a further new planning permission for the same development, which is subject to 16 conditions.
8. Given that section 73 of the 1990 Act deals only with conditions, the description of the development remains the same for the new permissions granted as that set out above for the original 2014 permission, namely the

¹ The site edged red is shown on Figure 1: Site Location drawn on 31 March 2014.

construction of an agricultural anaerobic digester plant for production of renewable energy. The site boundary edged in red for 14/0858/MFUL applies to permissions 15/1473/VAR and 17/0650/VAR. It also applies to the appeal application 18/2173/VAR and so is the appeal site for the purposes of the current appeal. The planning permissions referred to in the next 2 paragraphs of this Appeal Decision apply to different site boundaries. For the avoidance of doubt, references to the 'Appeal Site' in this Appeal Decision are to the site edged in red for permission 14/0858/MFUL. The 'AD Plant' refers in this Appeal Decision to the anaerobic digester plant permitted for the Appeal Site by permission 14/0858/MFUL.

9. Planning permission for application 15/1512/FUL was granted on appeal in June 2017; "for extension to anaerobic digester plant to provide new site entrance, weighbridge, gas upgrade plant, proposed tanks, digestate storage lagoon and underground leachate tank, turning circles, surge wall, drainage channels and chambers with associated landscaping and earth bunds" at Enfield, Oil Mill Lane, Clyst St Mary.² Two sites edged in red that are the subject of that permission lie outside the Appeal Site. That permission is subject to 11 conditions. These are different to the conditions later imposed for 17/0650/VAR. The provisions of 17/0650/VAR Condition 7 i) are included except for different wording for the proportion of pig slurry, which is expressed in permission 15/1512/FUL as follows; "For the avoidance of doubt the proportions per annum are: (i) Pig slurry - 6000 tonnes". The provisions of Condition 7 ii) – vi) of 17/0650/VAR are not included in the 2017 appeal decision for application 15/1512/FUL.
10. In June 2019 planning permission for application 18/2437/MFUL was granted by EDDC for the "Installation of a roof and roller shutter door to existing storage clamp; installation of dome to collect residual gas and installation of digestate processor unit".³ This was subject to four conditions concerning the implementation period, approved plans, surface water drainage and the colour of the roof/dome.⁴

Environmental Permit

11. Enfield Anaerobic Digester operates with the benefit of an Environmental Permit (EP) issued by the Environment Agency (EA), which was varied and consolidated in May 2017. The EP includes controls on emissions to air and water, with conditions concerning odour and noise/vibration emissions. The EA stated that it has no in principle objection to the appeal application, but confirmed that if it was successful, the EP would need to be varied.

Appellant's proposal

12. The current appeal relates to Conditions 5, 7 and 10 on permission 17/0650/VAR. The application sought to increase the tonnage of feedstock from 26,537 tonnes to approximately 66,000 tonnes per annum (tpa) and consequently to increase the annual tonnage of digestate exported from the site from 21,354 tpa to about 56,000 tpa, to include additional dairy and agricultural industry by-products and farmyard manure to facilitate an increase

² Appeal Ref:APP/U1105/W/17/3167903.

³ If the appeal is allowed the appellant considers that a condition should be imposed to prevent the importation of chicken litter until the alterations to the silage clamp were completed in full.

⁴ The site plan submitted with application 18/2437/MFUL defines the red line boundary in the same position as shown on Document Reference 1687_P032 rev A, which is the plan submitted with application 18/2173/VAR.

in the production of renewable energy from agricultural waste.⁵ The intention is to include chicken litter as a feedstock. The application also sought to allow revised noise and odour control management plans to reflect current practice and ongoing agreement with the EA.

13. The site boundary submitted with the appeal application is shown on Document Reference 1687_P032 rev A. The boundary edged red on that drawing includes the Appeal Site, along with adjoining land that is the subject of the 2017 appeal decision (15/1512/FUL) and the Access Road that extends from the Appeal Site to Oil Mill Lane. The appellant's Statement of Case suggested the imposition of several other planning conditions if the appeal were to succeed, including that the development be carried out in accordance with 1687_P032 rev A.
14. The appeal application 18/2173/VAR is described by the parties as an application to 'vary' conditions. However, if the appeal were to succeed a new permission for the Appeal Site, with different conditions, would be granted for the construction of an agricultural anaerobic digester plant for production of renewable energy. Permissions 14/0858/MFUL, 15/1473/VAR, 17/0650/VAR, 15/1512/FUL and 18/2437/MFUL would remain extant and unaltered, and subject to the conditions that apply to each permission.

Appeal procedure

15. Objectors to the proposal submitted representations requesting that the appeal be dealt with by means of a Hearing. I have considered these having regard to The Planning Inspectorate's procedural guidance. I am satisfied that the planning issues here can be clearly understood from the appeal documentation and my site inspection and that the appeal should continue to proceed by the written representations procedure.

Main issues

16. I consider that there are two main issues in this appeal.
 - (1) The effect of the proposed planning conditions on the living conditions of nearby residents.
 - (2) The effect of granting a new permission pursuant to section 73 of the 1990 Act on the integrity of the planning system, given that it would result in different permissions subject to different conditions for overlapping sites. This is not an issue that is contested by EDDC and I invited comment from the parties. Their respective written submissions have been taken into account in dealing with this issue.

Reasons

Administration of the planning system

17. I deal with the second main issue first. Section 73(2) of the 1990 Act makes it clear that the decision maker "shall consider only the question of the conditions subject to which planning permission should be granted." The National Planning Practice Guidance (NPPG) provides that in deciding an application under section 73, decision makers must only consider the disputed condition/s

⁵ The appellant's addendum proposed that the tpa should apply to a calendar year, and proposed deleting reference to "maize silage and wheat" from Condition 7 i) and adding "crops and agricultural and dairy waste".

that are the subject of the application. In granting permission under section 73, new conditions can be imposed if they do not materially alter the development that was subject to the original permission and are conditions that could have been imposed on the earlier planning permission.

18. Parts of the existing facility lie outside the Appeal Site. These include additional plant, lagoon and bund. As such, in determining the current appeal, a condition could not be imposed to require compliance with Document Reference 1687_P032 rev A as suggested by the appellant. This would materially alter the development that was subject to the original permission by significantly extending the site to which that permission applies.
19. EDDC states that it may seem inappropriate that it accepted a plan indicating the layout of the site covered by both permissions on an application concerning variation of condition on only part of the site. Nevertheless, EDDC considers it necessary for any new development, or changes in the site layout, to be seen in the context of the whole site and its surroundings. The appellant argues that no permission needs to be granted within the current appeal for anything outside the Appeal Site and so, where the red line remains the same as the original permission, it does not affect the ability to grant permission on the appeal.
20. However, if the appeal were to succeed it would result in different planning permissions with different conditions applying to different site boundaries for the digester. It seems to me that there are potential difficulties here concerning the practicalities of enforcing the provisions of the various permissions. The appellant does not argue that the facilities that lie outside the Appeal Site are not necessary for the operation of an anaerobic digester processing 66,000 tpa of feedstock. These facilities benefit from planning permission but are subject to planning conditions. The appellant acknowledges that should the appeal be allowed it would be necessary to make a section 73 application to amend the conditions of the 2017 appeal decision to ensure that there would be consistent conditions across the Appeal Site and the adjoining land that contains development permitted by permission 15/1512/FUL. Any variation of these conditions would be a matter for EDDC.
21. The overlapping permissions could create uncertainty about which permission was being implemented. Enforcement of planning conditions would be problematic if allowing the appeal granted a planning permission for an AD Plant that on its face could not be implemented within the confines of the Appeal Site. This could have implications for the effective administration and integrity of the planning system. In my judgement, this is a consideration that weighs heavily against granting permission. However, in the event that I am wrong about this, I have considered the likely effects of the AD Plant, without compliance with Conditions 5, 7 and 10 of 17/0650/VAR as proposed by the appellant, on those living nearby, as the first main issue in this appeal.

Condition 7

22. Volume 1 of the report prepared by E4environment dated 10 June 2014, which is cited in Condition 7, provides that; "The proposed facility would treat approximately 26,537 tonnes of feedstock per annum. Feedstock for the process of anaerobic digestion would be in the form of pig slurry, farmyard manure, wheat and maize silage in the following proportions (per annum) – slurry (pig) – 6,000 tonnes, farmyard manure – 1,000 tonnes, maize silage –

- 16,537 tonnes, wheat – 3,000 tonnes”. The change proposed by the appellant would alter the proportions to 32,064 tonnes of crop, 3,285 tonnes of various agricultural and dairy industry by-products (e.g. lactose, whey etc.), 18,822 tonnes farm manure (farm waste) and 12,000 tonnes of pig slurry (farm waste).
23. The appeal application seeks to increase the feedstock to approximately 66,000 tonnes per annum. This would be a significant increase in the scale of the permitted operation. However, I am satisfied that the planning and pollution control regimes would be capable of imposing and enforcing conditions on the AD Plant to limit odour and noise emissions from the Appeal Site to acceptable levels. However, the Access Road by which feedstock would arrive and digestate would leave is outside both the Appeal Site and the site map that is attached to the existing EP. EA guidance states that, when considering planning and EP applications, the range of environmental issues is generally wider for planning than it is for permitting and cites, for example, that the planning authority must also usually take into account off-site traffic implications.
24. The Access Road is located close to the side boundary of Enfield Bungalow. The side of the bungalow is about 5 m from the Access Road. The front and rear amenity areas for Enfield Bungalow are also located close to the Access Road. This part of the Access Road is curved and slopes down towards Oil Mill Cross. Given the proximity of the bungalow and its private amenity space to the Access Road a significant increase in vehicles using the Access Road would have the potential to impact adversely upon the living conditions of the residents of Enfield Bungalow. In considering the likely effects of noise and disturbance I have had regard to the appellant’s noise assessment and the draft Noise Management Plan dated July 2019, noting that deliveries to and from the Appeal Site would only be permitted between 0800 and 1800 hours on Mondays to Saturdays.
25. The appellant’s traffic assessment indicates that two-way daily movements for Tractor/Trailer vehicles would decrease from 80 to 71 during the 30-day harvest period but would increase from 10 to 33 for the 313-day non-harvest period. For HGVs two-way daily movements would increase from 2 to 6 in both the harvest and non-harvest periods. Based on these changes the appellant’s noise predictions indicate that the $L_{Aeq,10hr}$ would decrease from 51.0 dB to 50.4 dB in the harvest period and increase from 42.0 dB to 47.1 dB in the non-harvest period. In July 2019 the appellant’s measurements near to Enfield Bungalow recorded noise levels from a HGV and a Tractor/Trailer on the Access Road. The 1-minute L_{Aeq} was 56.9 dB for a HGV and 59.7 dB for a Tractor/Trailer.
26. The appellant acknowledges that during the short time a vehicle was passing Enfield Bungalow the noise level would increase above that of the ambient noise level, but does not consider that this would significantly impact on overall noise levels during more typical assessment periods such as 1-hour or 16-hour (daytime period in accordance with WHO). The World Health Organisation document relied on is not specified, but these assessment periods are used in the 1999 Guidelines for Community Noise. These Guidelines provide that $L_{Aeq,T}$ should be used for measuring continuing sounds, but add that when there are distinct noise events, measures of individual events such as maximum noise level ($L_{A,max}$) should also be obtained. WHO Environmental Noise Guidelines for

the European Region 2018 notes that in many situations average noise levels indicators may not be the best to explain a particular noise effect. It adds that different noise sources can be characterised by different spectra, by different noise level rise times of noise events, by different temporal distributions of noise events and by different frequency distributions of maximum levels. The 2018 guidance states that single-event noise indicators such as maximum sound pressure level and its frequency distribution are warranted in specific situations.

27. The appellant refers to the 1-minute L_{Aeq} for HGVs and Tractor/Trailers but does not indicate $L_{A,max}$. It seems to me that it would usually take less than 60 seconds for a HGV or Tractor/Trailer to pass Enfield Bungalow, and so the maximum sound pressure level at the bungalow and its amenity space is likely to be higher than 56.9/59.7 dB. HGVs and Tractor/Trailers have large diesel engines that in my experience emit noise with a high energy content in the low frequency range. Low frequency noise can be particularly intrusive, and an 'A' weighting often means that its likely adverse impact on receptors is not adequately reflected in the indices used to describe such noise. These large vehicles need to accelerate up the incline away from Oil Mill Cross towards the Appeal Site to deliver feedstock. Large vehicles exporting digestate coming down the incline would often need to brake approaching Oil Mill Lane and then accelerate across Oil Mill Cross. Given the type of vehicles involved, the movements made, and the proximity of sensitive receptors, I consider that the appellant has understated the likely impact of noise and disturbance from each HGV and Tractor/Trailer passing Enfield Bungalow.
28. The appellant's traffic assessment indicates a reduction in the two-way daily movement of large vehicles from 82 to 77 in the 30-day harvest period, and an increase from 12 to 39 in the 313-day non-harvest period. As explained above, Tractors/Trailers and HGVs associated with the AD Plant using the Access Road near to Enfield Bungalow are likely to be heard as a single noise event, rather than continuous road traffic noise which has different characteristics. Background noise from the A3052 would not have much of a masking effect on the distinctive and intermittent noise from Tractors/Trailers and HGVs passing close to Enfield Bungalow. On that basis, and in the particular circumstances that apply here, the likely change in $L_{Aeq,10hr}$ is not very helpful in assessing the likely effect of the cumulative impact of discrete noise events from HGVs and Tractor/Trailers using the Access Road on the living conditions of the occupiers of Enfield Bungalow.
29. The revision to Condition 7 sought by the appellant would, over a year, significantly increase the use of the Access Road by HGVs and Tractors/Trailers than would otherwise be likely to occur. Whilst the proposal may result in a slight reduction in the noise level at Enfield Bungalow for the 30-day harvest period, extending the harm I have identified, albeit at a lower level than during the harvest period, for 313 days a year would have an enduring and adverse effect on the residential amenity of Enfield Bungalow given its proximity to the Access Road. The net effect over the year would be significant and harmful.
30. I find that the proposed terms of Condition 7 would be at odds with provisions in the National Planning Policy Framework (NPPF) concerning planning decisions, which seek to ensure that development created places that promote well-being with a high standard of amenity for existing and future users. I recognise that the proposal would facilitate the use of more pig slurry in the

feedstock, which would have environmental benefit. I have also taken into account that the increase in the scale of the operation would generate more renewable energy. For these reasons, the operation of the AD Plant subject to the terms of Condition 7 as proposed by the appellant would gain some support from the NPPF. However, I consider that these benefits would not outweigh the harm I have identified to the living conditions of the occupiers of Enfield Bungalow. Within the context of Government policy on sustainable development and control of noise, the proposal would not avoid significant adverse impacts on the quality of life for the residents of Enfield Bungalow. The proposal would be at odds with the noise policy aims of the Noise Policy Statement for England and the provisions of the NPPG concerning noise.

31. The development plan for the area includes the East Devon Local Plan, which was adopted in 2016 (EDLP). I have found that the proposal would harm the amenity of the location. There would be conflict in this regard with EDLP Strategy 7 concerning development in the countryside. It would also conflict with Policy EN14, which provides that permission will not be granted for development that would result in unacceptable levels of noise for residents. The proposal does not gain support from EDLP Strategy 39 for renewable energy projects because the appellant has not demonstrated that the suggested terms for Condition 7 would ensure an acceptable balance between harm and benefit.

Conditions 5 and 10

32. The appellant considers that Conditions 5 and 10 are unnecessary given that the EP would address noise and odour emissions. If this appeal were to succeed, the appellant considers that neither Conditions 5 and 10, nor their intended replacements as discussed with EDDC, would need to be repeated in the decision notice. The NPPG notes that an EP will aim to prevent pollution through the use of measures to prohibit or limit the release of substances to the environment to the lowest practicable level. Paragraph 183 of the NPPF provides that the focus of planning decisions should be on whether proposed development is an acceptable use of land, rather than the control of processes or emissions (where these are subject to separate pollution control regimes), and adds that it should be assumed that these regimes will operate effectively. However, development may have effects, which although not of such severity to amount to pollution for the purposes of applying the pollution regime, are nevertheless material in planning terms.
33. NPPF paragraphs 127 a) and f), 170 and 180 are relevant in deciding whether development is likely to give rise to such material effects. These provide that development should function well and add to the overall quality of the area, create places that promote health and well-being, with a high standard of amenity; contribute to and enhance the natural and local environment by, amongst other things, preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of air or noise pollution; and ensure that new development is appropriate for its location taking into account the likely effects of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development.

34. The operation of the AD Plant involves the transport and discharge of potentially odorous feedstock. How this is managed has significant implications for the quality of the area and the achievement of a high standard of amenity for nearby residents. It is necessary here, in the interests of the use and development of land, for the planning regime to retain control over odour emissions to safeguard the well-being and living conditions of nearby residents. The Inspector in the 2017 appeal decision imposed a condition requiring adherence to the approved Odour Management Plan in order to ensure that the plant is operated without undue odour nuisance. The evidence adduced in the current appeal does not indicate that such a condition is no longer necessary and reasonable in the circumstances that apply here.
35. Operation of the various activities and facilities at the AD Plant has the potential to generate noise with distinctive characteristics that would be likely to be intrusive and annoying in this rural setting. Condition 10 refers to BS8233:2014. The appellant's noise assessment states that the most appropriate guidance when determining the noise impact here is BS4142:2014. BS8233 does provide that where industrial noise affects residential or mixed residential areas, the methods for rating the noise in BS4142 should be applied. But that does not mean that it is inappropriate to cite BS8233 in Condition 10. BS8233 provides guidance for the control of noise in and around buildings. Noise Rating (NR) curves assign a single-number rating to a noise spectrum that can be used to specify the maximum acceptable level in each octave band of a frequency spectrum. NR was originally proposed for use in assessing environmental noise. I consider that it provides for some control of annoying tones, which is necessary and reasonable in this case given the nature of the operation at the AD Plant and the proximity of sensitive receptors.
36. Intrusive and annoying noise from the operation of the AD Plant has the potential to adversely affect the quality of the area. This could impair the achievement of a high standard of amenity for the area and jeopardise the living conditions and well-being of nearby residents. I consider that it is necessary in the interests of the use and development of land for the planning regime to retain control over noise emissions. The Inspector in the 2017 appeal decision imposed a condition to protect the living conditions of nearby residential properties from unacceptable noise levels, the provisions of which are similar to those in Condition 10. The evidence adduced in the current appeal does not indicate that such a condition is no longer necessary and reasonable in the circumstances that apply here.
37. Taking all the above considerations into account, I find in relation to Conditions 5 and 10 that there are sound planning reasons in this case why it would be necessary to retain planning controls for noise and odour emissions rather than relying solely on the EP.

Other matters

38. The appellant considers that the provisions of Condition 7 ii) and iii) would be unnecessary if the scale of the operation were limited by the tonnage of feedstock. However, I consider that it would be necessary and reasonable to retain the provisions concerning sites to be utilised for either feedstock source or digestate destination in the interests of limiting travel distances. I have

taken into account all other matters raised in evidence but have found nothing to outweigh the main considerations that lead to my conclusions.

Conclusions

39. Allowing the appeal would grant a planning permission that on its face appears unimplementable within the confines of the Appeal Site. It seems to me that doing so would undermine the integrity of the planning system. However, if that is not in itself reason to withhold planning permission, I consider that 'varying' Conditions 5, 7 and 10 of permission 17/0650/VAR, as proposed by the appellant, would be likely to have an unacceptable adverse effect on the living conditions of nearby residents. The benefits of the proposal would not outweigh this harm. I find that the proposal would conflict with the development plan taken as a whole. It would also be at odds with national policy and guidance. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

John Woolcock
Inspector