

REPORT TO: Planning Committee

MEETING DATE: 3 June 2014

BY: Depute Chief Executive (Partnerships and Community Services)

SUBJECT: Application for Planning Permission for Consideration

Note - this application was called off the Scheme of Delegation List by Councillor Veitch for the following reasons: This application appears to have generated significant concern locally therefore Members would benefit from visiting the site.

Application No. **14/00127/P**

Proposal Change of use of technical building for anaerobic digester to agricultural building and removal of condition 7 all as changes to the scheme of development the subject of planning permission 10/00660/P

Location **Ruchlaw Mains
Stenton
Dunbar
East Lothian
EH42 1TD**

Applicant Ruchlaw Produce Co. Ltd

RECOMMENDATION Consent Granted

PLANNING ASSESSMENT

The application site is comprised of an area of agricultural land in a countryside location to the northwest of the village of Stenton and some 70 metres to the east of the north-south running C132 public road. It is some 300 metres to the northwest of an area of woodland, to the south of which is the village of Stenton. The southern edge of the woodland forms the northern edge of Stenton Conservation Area. There are a number of listed buildings within the village of Stenton, the largest of which is the Category B listed Stenton Parish Church.

The nearest residential properties to the application site are two houses to the west of the C132 road and adjacent to the buildings of Ruchlaw Farm, 6 Ruchlaw Mains to the north of those farm buildings, Ruchlaw Mains Cottages to the west of those farm buildings, Mill Lane Cottages some 200 metres to the northwest of the site and the Category B listed Ruchlaw Mains, located some 400 metres to the south of the site.

The nearest residential property in the village of Stenton is some 260 metres to the southwest of the site.

The site is surrounded by undulating agricultural land, with buildings associated with Ruchlaw Farm located to the north and west of the site.

On 7 April 2011 planning permission was granted for construction on the site of an anaerobic digester to process pig slurry and other organic products to generate renewable electricity and create organic fertiliser. Associated works include alterations to the existing site access and landscaping of the site.

The approved development comprised of a technical building housing a combined heat and power plant (CHP) and with an exhaust flue, storage tanks, parking and loading bays and associated equipment rooms and a digester tank, two digestate storage tanks and three smaller storage tanks. The CHP plant is designed to provide for the energy needs of the anaerobic digester and for the wider farm operation, with excess output of electricity being fed into the national grid.

As approved the technical building has a rectangular footprint some 45 metres long by 32 metres wide, with a pitched roof with a ridge height of some 13 metres, the roof and sides with external finishes of green coloured plastic-coated metal sheeting. The flue as approved is a 0.16 metre diameter stainless steel stack with a height of some 19 metres. The approved digester tank is 31 metres in diameter with 6 metres high sides capped by a dome to a height of some 7.5 metres, the sides and dome being finished with aluminium sheeting in a moss green colour. The approved digestate storage tanks are some 36 metres in diameter with the same side and dome heights but with gray concrete sides with the domes finished a moss green colour. Two of the approved smaller storage tanks are 9 metres in diameter with 5 metres high sides and capped with 2.5 metres high domes. The other smaller storage tank is some 7 metres in diameter with 5 metres high sides and capped with a 2.5 metres high dome. All three of the smaller storage tanks have silver gray stainless steel sides and moss green coloured domes. The biofilter as approved is some 36 metres long, some 10 metres wide and some 2 metres high. The biogas flare, for emergency use to relieve pressure build-ups only, is approved at some 8 metres high with a diameter of 0.6 metres.

Other than the buildings, areas of hardstanding around the technical building and the storage tanks are also approved and a landscaper scheme which included 3 metres high bunds along the north, east and west boundaries of the site and trees planted along the north and part of the south boundary and with a 2 metres high chain link fence within the bunds.

Access to the site as approved is from the existing access off the C132 road, extended into the main part of the site, with alterations to allow access by HGVs.

Under the provisions of the Environmental Impact Assessment (Scotland) Regulations 1999 that type of development is within the category of being a Schedule 2 Development, being one that may require the submission of an Environmental Impact Assessment (EIA). Schedule 3 of The Environmental Impact Assessment (Scotland) Regulations 1999 sets out the selection criteria for screening whether a Schedule 2 development requires an EIA. With regard to Schedule 3 of the Regulations the Council concluded that the anaerobic digester is unlikely to have any significant effects on the environment of the area, nor is it to be sited in any designated environmentally important area and thus there was no requirement for the proposed development to be the subject of an EIA. The Scottish Environment Protection Agency (SEPA) advised as a consultee that the scheme of development was capable of being licensed under their

regulatory powers and therefore they had no objection to it.

Planning permission is now sought for the change of use of the technical building from the approved use as part of the anaerobic digester and removal of condition 7 of planning permission 10/00660/P as changes to the scheme of development the subject of that planning permission.

Condition 7 of planning permission 10/00660/P requires that:

In the event that the anaerobic digester and related combined heat and power plant installed on the application site fail to produce electricity and/or heat for a continuous period of 6 months, then, unless otherwise approved in writing by the Planning Authority, they shall be deemed to have ceased to be required. If they are deemed to have ceased to be required they and their ancillary infrastructure shall be dismantled and removed from the site by the operator by no later than the date occurring 6 months after the end of the said continuous 6 months period, and the ground fully reinstated to the specification and approval of the Planning Authority.

Reason:

To prevent a redundant anaerobic digester and combined heat and power plant remaining on the application site, in accordance with Scottish Planning Policy: February 2010 and in the interests of the landscape amenity of the area.

That condition is in accordance with Scottish Government advice on securing the removal of renewable energy projects where they have outlived their viable operational use.

Section 25 of the Town and Country Planning (Scotland) Act 1997 requires that the application be determined in accordance with the development plan, unless material considerations indicate otherwise.

The development plan is the approved South East Scotland Strategic Development Plan (SESplan) and the adopted East Lothian Local Plan 2008.

Policy 1B of the approved South East Scotland Strategic Development Plan (SESplan) and Policies DC1 (Development in the Countryside and Undeveloped Coast), ENV3 (Listed Buildings), DP13 (Biodiversity and Development Sites), and T2 (General Transport Impact) of the adopted East Lothian Local Plan 2008 are relevant to the determination of the application.

Material to the determination of the application are Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and Scottish Planning Policy: February 2010.

Scottish Planning Policy on the historic environment echoes the statutory requirements of Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 that in considering whether to grant planning permission for development which affects a listed building or its setting a planning authority shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

Also material to the determination of the application are the 46 written representations received from members of the public.

Of these representations, 15 register objection to the proposed change of use of the

technical building. The grounds of objection are in relation to:

- 1) the visual impact of the industrial style buildings in this countryside location which, without the mitigation of their use being for providing renewable energy, is unacceptable;
- 2) the buildings would have a harmful impact on the setting of the B listed Ruchlaw House;
- 3) the change of use would have a considerable effect on the community;
- 4) the smell of slurry from the tank constructed on the site is unbearable at times, including in Stenton;
- 5) the use of a tank for slurry storage is a bacterial hazard and is being operated without the relevant SEPA approvals;
- 6) property owners within the area have not been notified as neighbours;
- 7) the applicant has failed to fulfil the original terms of the application, little of the required landscaping has been carried out and conditions of the planning permission have not been discharged;
- 8) the applicant's attitude is of concern to neighbours;
- 9) whether or not the original application was intended to lead to this outcome;
- 10) management of the farm at Ruchlaw is attended by rising levels of noise (including from a wind turbine and from within the farm steading), smell, traffic and general filth and untidiness;
- 11) increased traffic resulting from the development has and will lead to damage to roads; and
- 12) slurry spreading is carried out carelessly.

Of the other representations, one simply states that they have no objection to the proposals. The other 30 support the proposals in general terms, though one notes that roof colour of the building should be appropriate to its surroundings.

The application was neighbour notified and advertised in accordance with the relevant statutory provisions.

Any breach of SEPA regulations on the storage of slurry are a matter for SEPA under the relevant legislation. There is no requirement to consult with SEPA in respect of this application.

The applicant's attitude towards neighbours is not a material consideration in the determination of this planning application.

Any amenity issues arising from the applicant's operation of Ruchlaw Farm should be addressed through the relevant legislation, including environmental health legislation and SEPA regulatory powers and not through the determination of this planning application.

The application stands to be determined on the merits or otherwise of the proposals and not in respect of any perceived intent of the applicant.

No written objections or other representations were received in respect of the previous application.

The applicant has formed the bunds and started tree planting as approved by planning permission 10/00660/P. Therefore development has commenced and the planning permission is secured. The applicant has also built a storage tank on the site. That tank is the eastmost of those approved by planning permission 10/00660/P and is of the size of the storage tanks approved by planning permission 10/00660/P. The tank is currently in use as a slurry storage tank without being used as part of the approved anaerobic digester use. In this the use of this tank itself is not functionally different from that which it would serve as part of the approved anaerobic digester use, which was to store pig slurry for the anaerobic digester.

The applicant advises that the existing site was planned for use as an Anaerobic Digester but that they were unable to take the £500K Govt grant awarded; they were told 1.5 years later that they could not take FIT and grant and this reduced the viability. They also did not get a contract for food waste from Edinburgh Council. The applicant further advises that the site was scraped, levelled and landscaped in good faith of the project going ahead and also as they had to erect a large slurry store to be used for digested slurry, to meet new regulation by Dec 31 2012 requiring farms to provide 6 months slurry storage. The site investment in levelling and slurry store to date has cost £200,000. The applicant also informs that in September 2013 the farm business purchased 100 acres of additional land adjacent to Ruchlaw Mains and winter wheat has been sown on that land. Because of this, by September 2014 they will need additional grain storage for 400 tonnes of wheat and to meet this requirement need to start construction of this [technical] building.

Thus it is now proposed that the as yet unbuilt technical building approved by planning permission 10/00660/P be used instead for purposes of agriculture rather than as part of the originally proposed anaerobic digester use. The principle of the use of the building for agricultural purposes on the land of the operational land of Ruchlaw Farm is consistent with Part 1(a) of Policy DC1 of the adopted East Lothian Local Plan 2008 and with Scottish Planning Policy: February 2010.

The primary material considerations in the determination of this application are whether or not the agricultural use of the building approved by planning permission 10/00660/P is appropriate and whether or not this would result in any significant impact over and above the use of the site as an anaerobic digester operation.

The design assessment of the proposal approved by planning permission 10/00660/P was that the functional design and finishes of the building and the related digestate tanks would not in themselves be inappropriate to their countryside location. The digestate tanks would be similar to agricultural slurry storage tanks. They would also be seen in relation to the nearby existing farm buildings to the north and west.

However, it was acknowledged that notwithstanding those appropriate design factors, the buildings and digestate tanks are large structures on a site in a relatively open landscape.

The landscape assessment of the proposal approved by planning permission 10/00660/P was that the site is located in a prominent position, equidistant from the two

areas of existing livestock sheds, one to the north, the second to the west. The location may have been selected to reduce any likelihood of contamination affecting the livestock and food production areas. A landscape preference was that the site to be located further north on the south side of the livestock sheds within the low lying valley as this would retain the open views over the higher levels where the proposed site is positioned. That site is also reasonable well screened from the road to the west and the core path to the south running from Ruchlaw Mains to Stenton.

However, the applicant's confirmation that this site was selected to maintain an appropriate distance away from livestock sheds and food production areas was acknowledged in the landscape assessment. Also acknowledged was that the cutting and filling of the existing ground and the creation of mounding within the sloping field would lower the levels of the buildings. On that basis the landscape conclusion was that the siting of the development as proposed would be acceptable if additional screen planting was introduced, bearing in mind that it will take a number of years before the screen planting becomes effective. This, combined with the proposed tree planting along the north boundary at a width of 12 metres as indicatively shown on the plans was seen to be adequate for screening views directly into the site from the north. As the large scale of the building and dome topped digester/storage tanks would be visible over the landform from all other views into the site, the landscape advice was further that additional tree planting to all four sides of the proposed development should be introduced, to a minimum width of 12 metres. To avoid such planting creating a treed enclosure unusual in an open setting, extension needed to be made to the treed strip along the north boundary of the site in a westerly direction to link with the roadside trees. This additional planting would change the visual perspective from an isolated enclosure to further help integrate the site into its surrounds by forming a link to Ruchlaw Mains farm buildings.

The grant of planning permission included conditions to secure the above measures and that all tree planting should comprise a woodland mix of species common to the area, protection measures for young trees, that the northern slope of the proposed bund along the northern site boundary should be continued until it meets with the existing ground levels and that trees should also be planted over this bund as it is positioned within the proposed treed strip.

The conclusion of this landscape assessment was that, subject to the relevant conditions the proposed development, by its form, proportion, height and scale would not be so dominant, prominent, intrusive or incongruous in its landscape setting as to have an unacceptable impact on the landscape character and appearance of the area.

Subsequent to the commencement of development and in response to a complaint from a member of the public, a Planning Enforcement officer visited the site. The conclusion of the site visit is that the landscaped bunds have been formed in accordance with the requirements of planning permission 10/00660/P and that some of the required tree planting has been carried out. There are ongoing discussions between the Enforcement Officer and the applicant to secure the further tree planting required by the terms of that permission. If planning permission is granted for the now proposed change of use of the technical building to agricultural use as an amendment to the existing permission, the relevant landscape requirements of planning permission 10/00660/P would still apply and be enforceable.

The tank as built is not of the approved colour, a matter that can be pursued through planning enforcement. Any other alleged breaches of condition should also be pursued through planning enforcement.

A further assessment of application 10/00660/P was that, due to its distance away from the village of Stenton and with the amount of screening afforded by the intervening area of woodland, the development would not have an adversely imposing or visual impact on that core element of Stenton Conservation Area. The area of woodland would serve as a buffer to mitigate any greater impact on the setting of the Conservation Area or of the village of Stenton itself. Furthermore that by virtue of its distance away from the village of Stenton and from the listed building of Ruchlaw Mains the proposed development would not have any direct visual relationship with any of the listed buildings within or close to the village of Stenton and thus would not have a harmful visual impact on their setting.

On these design, landscape and built heritage considerations the development was approved as being consistent as relevant with Policies ENV1C, ENV1D and ENV3 of the approved Edinburgh and the Lothians Structure Plan 2015, Policies DC1 (Part 5) and ENV3 of the adopted East Lothian Local Plan 2008 and Scottish Planning Policy: February 2010.

The landscape and built heritage assessment of application 10/00660/P considered the impact of the built development elements of that application. The use of the buildings and tanks was not a material consideration in that assessment. Therefore the conclusions in respect of the now proposed agricultural use of the technical building and the associated use of the tanks must be that their visual impact remains acceptable subject to the mitigation measures required and therefore consistent with the relevant parts of the development plan, now being Policy 1B of the approved South East Scotland Strategic Development Plan (SESplan), Policies DC1 (Part 5) and ENV3 of the adopted East Lothian Local Plan 2008 and also with Scottish Planning Policy: February 2010.

What is now proposed does not involve any additional or new buildings. The proposal is rather that the main technical building be built as approved within the site as partially landscaped and planted but be used for agricultural storage purposes rather than as part of an anaerobic digester use. As such this would also mean that the tank which has been built on the site would be used to store slurry in relation to the existing farm operation of Ruchlaw Mains and not in relation to an anaerobic digester use. The proposal is also that condition 7 of planning permission 10/00660/P be removed. This would have the effect of allowing the other parts of the development approved by that planning permission to be completed and used without them requiring to be used for the production of heat/electricity as required by the existing planning permission. If the tanks are used for the storage of slurry in relation to the farm use of Ruchlaw Mains rather than in relation to the anaerobic digester use as approved, this agricultural use would be consistent with their location.

As now proposed the development of the site would differ from that approved in that the use of the building and tanks approved by planning permission 10/00660/P would be related directly to the farm use of Ruchlaw Mains rather than for anaerobic digestion as a means of renewable energy production. In this the building and tanks would not affect the amenity in any significantly different way, although it would mean that the flue and flare would no longer be required. The building and tanks would not have any greater landscape or built heritage impact than that of the development as previously approved. Indeed, without the flue and gas flare, the erection of the buildings and tanks can be seen as having slightly less impact than if the development was built and used as previously approved.

In the assessment of application 10/00660/P the Council's Transportation service raised no objection to the proposed development. They confirmed that the proposed

access, parking and turning arrangements would be acceptable for the vehicles up to HGV size which would service the development, consistent with Policy T2 and DP22 of the adopted East Lothian Local Plan. In respect of this application, Transportation raise no objection providing the previously approved access requirements are met.

CONDITIONS:

- 1 no conditions

Please note that the remainder of pages relating to this item have been removed as they contain personal information (for example - names and addresses of people that have made representation)