

APPEAL DECISION (DPEA)
Appeal Reference
DPEA PPA-110-2355
Planning Reference
APP/2017/1492
Planning Proposal
Erection of agricultural building and installation of two biomass boilers (part retrospective)
Summary of Decision
<p>The appeal only pertains to the two biomass boilers as the agricultural shed can be built within the applicants permitted development rights. A prior notification was received in November 2017 and prior approval was not required.</p> <p>Garden ground of the nearest house (Highfield) was approximately 45m from the nearest boiler. Whilst Kirkview is located approximately 250m from the boilers with its curtilage about 100m away. Infrastructure Services (Environmental Health) under took an assessment based on the appellants submitted information. This assessment found particulate matter would cause substantial effects upon the nearest receptor. Also oxides of nitrogen would have a slight increase upon the nearest receptor. Infrastructure Services (Environmental Health) observed smoke and odour at Highfield during their site visit in July 2017.</p> <p>The appellant stated that the original refusal was unfair for the following reasons:</p> <ul style="list-style-type: none">• Issues with neighbouring properties had arisen due incorrect fuel being used (to high moisture content). Appellant has since demonstrated that the boilers could operate with zero smoke.• Effects would only occur during the start-up of boilers.• Video evidence of smoke output used by Planning at committee was misleading (speeded up).• Financial loss to appellant.• Boilers promoted by government to reduce emissions. <p>The appellant requested a temporary permission.</p> <p>The Reporter accepted that boilers could be operated without smoke output but found no evidence to suggest that low level emissions would not be carried across to Highfield and Kirkview on occasions where wind direction was against the prevalent direction. Infrastructure Services (Environmental</p>

Health) have shown in their assessment that there were issues based on the information submitted by the appellant. Proposal was found to not be compliant with Policy C2 and P4. Furthermore Scottish Planning Policy states that renewable energy is encouraged but for 'the right development in the right place; not development at any cost'. A temporary permission was not deemed acceptable given the concerns. No weight was given to the video evidence used during the previous Buchan committee. The appeal was dismissed.

Policy Issues

Contrary to Policy C2 Renewable energy and Policy P4 Hazardous and potentially polluting developments and contaminated land of the Aberdeenshire Local Development Plan 2017.

Additional Points

None

Actions

Note Decision

Appeal Decision Notice

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Decision by R W Maslin, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-110-2355
- Site address: Craigshowdie Farm, Ardallie, Peterhead, Aberdeenshire AB42 5BR
- Appeal by Mr G Whitelock against the decision by Aberdeenshire Council
- Application for planning permission APP/2017/1492 dated 8 June 2017 refused by notice dated 29 November 2017
- The development proposed: erection of agricultural building and installation of two biomass boilers (part retrospective)
- Date of site visit by Reporter: 2 May 2018

Date of appeal decision: 22 May 2018

Decision

I dismiss the appeal and refuse planning permission.

Preliminary

1. The application dated 8 June 2017 seeks planning permission for erection of an agricultural shed and retrospective approval for installation of two biomass boilers. The appeal form dated 27 February 2018 and submitted on behalf of the Appellant says: "We are only appealing the refusal of the biomass boilers." The appeal statement says that a separate permission for the shed has been obtained.
2. In response to a request for further information, the Appellant has provided a copy of a document dated 21 December 2017 in which the Council refers to a prior notification registered on 28 November 2017. The notification relates to the proposed agricultural shed. The Council's document says that the proposal is considered acceptable and that prior approval will not be required.
3. From this, I take it that planning permission for the shed has been granted in terms of the 1992 General Permitted Development Order as amended.

Reasoning

4. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. The development plan consists of Aberdeen City and Shire Strategic Development Plan 2014 and Aberdeenshire Local



Development Plan 2017. Having regard to the provisions of the development plan the main issue in this appeal is the effect of emissions from the two boilers.

5. The application for planning permission for the shed and boilers was submitted in June 2017. At that time the two boilers had been installed and brought into use. In a letter dated 1 February 2018, the Council advised the Appellant that use of the boilers should cease. At the time of my inspection, the boilers were not in use.
6. Fuel for the boilers would include waste wood and straw. Each boiler has a maximum output of 295 kW. The output of the boilers would be heat. The destination of the heat would be the adjacent buildings.
7. Use of the boilers gave rise to complaints from occupiers of two houses in the vicinity. Complaints included reference to smoke emissions blowing into properties at Highfield and Kirkview.
8. During my inspection, I noted that the boundary of the garden ground associated with Highfield is about 45 metres from the nearer of the two boilers and that Highfield itself is about 85 metres from the nearer boiler. The house at Kirkview is about 250 metres from the boilers. Ground associated with Kirkview comes within about 100 metres of the boilers.
9. The Council's Environmental Health Officer undertook a screening assessment based on information provided by the Appellant during consideration of the application for planning permission. The assessment indicated that, with regard to particulate matter, the boilers are likely to have "a substantial adverse impact at the nearest receptor". The assessment also indicated that there is likely to be an increase in oxides of nitrogen concentration, resulting in a slight adverse impact at the nearest receptor. The Environmental Health Officer visited the site on 19 July 2017. Smoke and odour from the two biomass boilers were observed at Highfield, approximately 50 metres to the north of the boilers. It is the opinion of the Environmental Health Service that that smoke and odour emissions from the boilers will have a significant impact on the amenity of the surrounding properties. The Service recommends refusal of permission.
10. The Appellant states that the decision to refuse permission is unfair. It had been explained to the Council that the boilers had been wrongly operated. Fuel with too high a moisture content had been used. This had resulted in unnecessary smoke and emissions which caused issues with the neighbours. Any effects on the nearest neighbours caused by the initial start-up of the boilers would be minimal due to the prevailing wind directions. It has been clearly demonstrated that the boilers can operate with zero smoke.
11. The Appellant says that the Council committee that refused planning permission was shown a misleading video recording. The video had been made when the boilers were being wrongly operated. The video had been speeded up.
12. The Appellant says that he is suffering a substantial financial loss as a result of the boilers being shut down. Boilers such as these are promoted by the Government as they reduce carbon-based emissions. When operating, the boilers attract a payment under the renewable heat incentive (RHI) scheme. The emissions are carbon neutral. At the very

least, a temporary approval should be given so that the Appellant can receive the RHI payment and prove that the boilers can operate without any issues.

13. I accept the Appellant's claim that, with use of appropriate fuel and with experience now gained in operation of the boilers, smoke would not be produced. I find that this would be a significant improvement, but there is nothing to suggest that emissions from the boilers would not continue to be carried at low level across Highfield and Kirkview.

14. I note that the screening assessment undertaken by the Environmental Health Service is based on information provided by the Appellant. From this, I take it that the screening assessment is based on a scenario in which the boilers are being operated correctly. As already seen, the assessment identified problems with emissions of particulate matter and oxides of nitrogen.

15. From the foregoing, I find it likely that continued operation of the boilers would mean that from time to time, depending on wind conditions, particulate matter and oxides of nitrogen would be carried from the boilers to Highfield and Kirkview.

16. I note the information provided by the Appellant in relation to wind direction. I accept that, for most of the time, wind conditions would be such that emissions would not be carried at low level in the direction of the nearest neighbouring properties. On other occasions, emissions would be carried to the nearest neighbouring properties. Even though this would be likely for a limited proportion of the time, I find that it would result in an unacceptable impact on the amenity of these properties.

17. Policy C2 in the local development plan relates to renewable energy. It supports biomass developments if they are in appropriate sites and of the right design. The policy also says that "steps must be taken to mitigate any negative impacts on occupiers of nearby properties".

18. Policy P4 in the local development plan relates to hazardous and potentially polluting developments and contaminated land. The policy indicates that permission will not be given for development if there is a risk that it could cause significant pollution or create a significant nuisance. It also says that "any proposed development which could have a significant detrimental impact on air quality must provide appropriate mitigation measures".

19. I find that the likelihood of adverse effects on neighbouring properties means that the proposed boilers are not supported by policy C2 and are contrary to policy P4.

20. My attention has not been drawn to any specific policies in the Aberdeen City and Shire Strategic Development Plan 2014. I note from the Council's committee report that the general objectives of the strategic development plan include promoting sustainable economic development which will reduce carbon dioxide production. I find that local plan policy C2 accords with this and provides necessary detail, including the provisos mentioned in paragraph 17 above.

21. My conclusion is that the proposed boilers do not accord with the development plan.

22. I find that there are two material considerations that should be taken into account. These are national policy and the financial effect described in the statement of appeal.

23. The Third National Planning Framework seeks to increase the use of renewable sources of energy. It states that biomass has a growing role to play in providing heat (paragraph 4.23).

24. The principles in Scottish Planning Policy include mitigation of climate change and protecting the amenity of existing development (paragraph 29). Increased use of renewable sources of energy is endorsed (paragraph 154), but paragraph 169 makes it clear that energy infrastructure developments must take into account possible adverse effects. This reflects paragraph 28: “the aim is to achieve the right development in the right place; it is not to allow development at any cost”.

25. I find national policy gives strong support to heat generation that uses renewable fuel, but this support is qualified by the need to take into account any possible adverse effects. In the present case, I find that likely adverse effects outweigh the benefits of using renewable fuel.

26. The Appellant refers to substantial financial loss. I find that this is very unfortunate but is something that has arisen by carrying out development, for whatever reason, without first obtaining planning permission. I have considered the suggestion that permission be granted for a limited period. I find that this would not be satisfactory in the light of my conclusion that the boilers, even when properly operated, are likely to have an adverse effect on neighbouring properties.

27. I note what the Appellant says about the video recording that was shown to Council members. In making my decision on the appeal, I have not given weight to the video.

28. As permission for the shed now exists, I have not given consideration to the merits of the shed and the representation objecting to it.

29. My conclusion is that, for the reasons set out above, the proposed boilers do not accord with the relevant provisions of the development plan and that there is no material consideration which would justify granting planning permission.

R W Maslin
Reporter