

DCNC2004/2598/N - VARIATION OF CONDITIONS 1,2,3 AND 4 OF PLANNING PERMISSION NC03/1895/N, PRINCIPALLY TO ENABLE THE PILOT PLANT FOR ACCELERATED COMPOSTING OF ORGANIC MATERIAL TO BE UNDERTAKEN UNTIL 31 ST DECEMBER 2008 AT WHARTON COURT, WHARTON, LEOMINSTER, HEREFORDSHIRE, HR6 0NX

For: Bioganix Ltd at above address

Date Received:
4th August 2004

Ward:
Leominster South

Grid Ref:
51035, 55919

Expiry Date:
29th September 2004

Local Member: Councillors R Burke and J P Thomas

1. Site Description and Proposal

- 1.1 The application site is at Wharton Court, about 3.1 Km south of the centre of Leominster, immediately off the A49(T). Wharton Court is a Grade II* Listed Building dating principally from the 17th century. Two barns close to the Court are themselves separately and specifically listed as 16th century and combined 17th and 18th century respectively. The nearest houses are at Wharton Court (about 35m to the south-east), Stone Farm (350m to the west) and around Wharton Bank (13 houses 250 - 400m to the south-west).
- 1.2 The River Lugg SSSI/cSAC is about 250m to the east of the site.
- 1.3 The application site itself is irregularly shaped about 80m x 90m along the longest dimensions.
- 1.4 The applicant operates a novel in-vessel feather composting business. The operation is carried out on a pilot scale to determine the efficiency of the process in accordance with the requirements of the Animal By Products Order. The site has been operational since February 2002 and has been subject to considerable alteration since then.
- 1.5 Members will recall that permission was granted on 16th June this year for the operation of a pilot plant and retention and use of associated buildings for one year. The current application is to vary conditions 1, 2, 3 and 4 of the permission. In detail the proposals are:
- to vary condition 1 (which currently requires the use to cease on 1st July 2005 and the site to be cleared before 1st December 2005) to enable the use to continue to 31st December 2008 and the site to be cleared before 30th June 2009.

The reasons given for the proposal are:

"We estimate that in order to be financially sustainable, we need to operate the plant at Wharton Court for a minimum of four years from the time at which we are given permission to operate for such a period. We have assumed that we will be granted such permission by 31 December 2004 and hence have requested that we are able to operate the Wharton Plant for four years from that date. The principal reasons for the four year requirement are:

- a) *As well as the investment of £1 million made by 7Y Holdings in Bioganix, Bioganix has also borrowed money from third parties. In addition, we have entered into rental commitments beyond June 2005. Our cash flow forecasts show that we need to operate for a minimum of four years in order to repay our third party debts and fulfil our rental liabilities. Furthermore we wish to invest additional money in our Wharton plant to make the operation more robust, reduce odours and improve efficiencies. The payback for these investments is again approximately four years.*
 - b) *Our medium term plan is to raise more capital and start-up a commercial scale operation on a new site. We need a period of profitable operation in order to convince people to invest in our business. Our focus during the last two years has been on making the pilot plant work acceptably as opposed to making a profit. Our experience to date suggests that it will take all of four years to find another site, raise finance, receive the necessary permissions and install and commission plant. Furthermore we need an income stream in order to keep the company going during the period of establishing another site."*
- to vary condition 2 (which currently requires a scheme for the clearance of the site to be submitted not later than 1st July 2005 and the approved scheme to be implemented before 1st December 2005) to enable the scheme to be submitted not later than 31st December 2008 and implemented before 30th June 2009.

The grounds for the request are that the operators need 6 months post cessation of operations to comply.

- to vary condition 3 (which currently states "Not more than 12,000 tonnes of material shall be imported ... during any 12 months period") to read "Not more than 12,000 tonnes of controlled waste material shall be imported ... during any 12 months period".

The reasons given for requesting this variation are:

"The original condition referred just to material, taken literally this would include building materials, and equipment brought on to site to carry out some of the conditions imposed by the planning permission. It is our view that the condition was intended to control the volume of composting activity on the site and that the condition should therefore relate to the controlled waste material that is composted."

- and to remove or amend condition 4 (which currently states that "This permission shall be implemented only in lieu of, and not in addition to, the planning permission NC2000/2267/F dated 18 October 2000.")

The reasons given for requesting this variation are:

"Permission NC2000/2267/F dated 18 October 2000 relates to a number of buildings at Wharton Court and relates to the permitted use of other buildings in addition to the

ones addressed by the permission granted on 16th June 2004. Some of these other buildings are occupied and are in use. Thus condition 4 would appear to seek to preclude their lawful use whilst the planning permission DCNC2003/1895/N is in effect."

- 1.6 The applicants have appealed against the conditions imposed on the existing permission and state that they will abandon this if permission is granted.

2. Policies

Waste Strategy 2000

Planning Policy Guidance Note 10 – Planning and Waste Management

Hereford and Worcester County Structure Plan

WD2 – Location and Need

WD3 – General Development Control criteria

E14 – Adequate Disposal of Waste

E15 – Dangerous or difficult Waste

CTC3 – Protection of Sites of International Importance

CTC7 – Protection of Listed Buildings

CTC9 – General Development Control Criteria

Leominster District Local Plan

A1 – General Development Control Criteria

A3 – Protection of International Sites

A4 – Protection of SSSI

A9 – Safeguarding the landscape

A13 – Monitoring Pollution Control

A14 – Safeguarding Water Resources

A15 – Development and Watercourses

A18 – Listed Building and their Settings

A24 – Scale and Character of Development

A36 – New employment in Rural Buildings

A70 – Traffic

A76 – Parking

Herefordshire Unitary Development Plan (Revised Deposit Draft)

P5 – Promotion of environmental management

P6 – Environmental capacity

P7 – Protection of environmental assets

P12 – Innovative economy

S1 – Sustainable development

S2 – Development requirements

S10 – Waste

DR1 – Design

DR4 – Environment

DR9 – Air quality

DR13 – Noise

E8 – Design standards

E11 – Employment in countryside

E12 – Farm diversification

CA2 – Landscape character

LA3 – Setting of settlements

NC2 – Sites of international importance

NC8 – Habitat creation
HBA4 – Setting of Listed Buildings
W1 – New waste management facilities
W3 – Waste handling
W4 – Temporary permissions
W9 - Reclamation

3. Planning History

NC1999/2252/F – Proposed mushroom growing unit, new barn, extensions to existing barn, new farm buildings, associated landscape works – granted 8th March 2000

NC2000/2267/F – Change of use from agricultural workshops to commercial workshops – Granted 18th October 2000

NC2003/1895/N – Pilot plant and associated building for accelerated composting of organic material. Granted 16th June 2004.

Adjoining Land

97/0461/S – Continuation of earth barrier as noise/visual barrier alongside the A49 – Prior Approval Required 1st July 1997

97/0788/N – Continuation of Earth Barrier as noise/visual barrier alongside the A49 – Permission granted 17th December 1997.

NC99/2318/F – Change of Use from agricultural workshops to commercial workshops – granted 8th March 2000.

4. Consultation Summary

4.1 The proposal was advertised on site, in a newspaper and 29 neighbour notification letters were sent out.

Statutory Consultations

4.2 Environment Agency: Have no objection.

4.3 River Lugg Internal Drainage Board: Any reply will be reported orally. With regard to the previous application, they noted that if there is any increase in discharge volumes or rates of discharge a consent will be necessary and that the developer will need to ensure discharges from the site do not adversely affect adjoining watercourses or the River Lugg SSSI/cSAC.

4.4 English Nature state: "... if no demonstrable effect is shown to accrue from this plant then there is no problem. The tight regulation imposed by both the Council and the Environment Agency on this works should ensure that no harm comes to the river, whilst at the same time making important steps towards achieving local recycling targets. As such English Nature has no additional comments to make on this variation of conditions."

4.5 Highways Agency: Have no objections.

4.6 Network Rail: Do not wish to comment.

- 4.7 English Heritage: Originally commented that they “regard this as an inheritantly unsuitable location for an expanding and intensive industrial activity. It creates an alien neighbour for this fine 17th Century house and degrades the character of its historic setting. It is difficult to see how this scale of construction and activity could be adequately mitigated by landscaping measures – note the visual impact for example of building 4...”

Following on-site discussions with officers they withdrew their objections provided that any permission is time limited to 5 years and do not object to this application or wish to make any representation other than “We recommend that this case should be determined in accordance with government guidance, development plan policies and with the benefit of conservation advice locally.”

Internal Council Advice

- 4.8 Environmental Health Officer comments as follows: “I can confirm that my comments on the previous application DCNC 2003/1895/N are relevant to the present determination.

As stated previously information on noise nuisance is available to this Service from 3 sources i.e. complaints from the public, reports from monitors in Stoke Prior and officer observations.

The information provided previously referred to a period between February 04 and April 04. Since that time this Service has received a further 9 individual complaints. These refer to 6 specific events. The source for 2 of these complaints was identified as being other than Bioganix, for 3 of the complaints the source could not be positively identified, 3 were due to Bioganix at a time of mechanical failure, and 1 was concerning ongoing odour emissions. Officer monitoring/observations have identified very little faint odours having only been observed occasionally on the A49 by the Bioganix plant. Resident monitors in lower Stoke continue to note odours on a level comparable to that reported to the Committee previously. The applicant has submitted an analysis of these odour reports which looks at reports of unacceptable odours and the probability of these being associated with the composting process by comparing these to the wind direction at that time. It concludes that whilst all the odours reported can not be attributed to Bioganix improvements such as covered conveyors to move materials and increased filtration and improvements in existing plant can reduce these incidents, but that this is not possible within the constraints of the present permission.

I would take this opportunity to comment on the table of results provided comparing wind/odour in that it shows that on average only 1.77% of a day nuisance is caused. Although this appears to be a very small amount the perception of the persons providing odour monitoring records is that unacceptable odours occur frequently, although sometimes only for short periods and that the situation for them is unacceptable.”

The earlier comments (in summary) were:

“This service has received a large number of complaints regarding malodorous emissions from the composting operation at the above site. The complaints are mainly from the residents of Stoke Prior, Ford Bridge and Wharton Bank, however complaints have also been received as far away as Leominster. Complaints are also occasionally received from persons travelling on the A49...”

“The information available to me as regards this proposal in the main indicated that should proper controls and practices be employed that it can be undertaken without causing odour nuisance.”

“The odour plume analysis suggests that the odour emissions from the composting can be treated to a level that should not cause nuisance nor give rise to a loss of residential amenity. The sampling done shows clearly that there is a substantial improvement in the removal of odour from the extract gases once they pass through the Biofilter achieving a reduction in odour of approximately 98%. Prior to the introduction of this filter the odours emitted through the exhaust system were at a much greater concentration and gave rise to numerous complaints and were in my opinion unacceptable. Information available to me in the way of odour monitoring in the main supports the conclusions of the odour plume analysis, the exception being the observations by residents keeping records.

It is difficult to check on the source of the odour with this type of report, however there are instances where odour is attributed to the Biogonix plant when other activities were taking place in the area, which could account for the nuisance. For example, I would bring your attention to the reference to a group of tourists deciding not to visit Leominster on the 1st April. Investigation of complaints from residents of Leominster at that time identified the source to be manure spreading on land near to the new Leominster Industrial Estate.

The records provided are useful in indicating trends and they show an improvement. Reports of odour are not now as frequent, often being less intense and of short duration. It is clear, however, that the residents keeping the records do not find the situation acceptable.

Officer observations since February only regularly identify odours on the A49 adjacent to Wharton Court. However, these are not at a level that could be regarded as a nuisance.

I would therefore conclude that whilst I appreciate concerns expressed by residents, it may prove difficult to defend on appeal on the grounds of odour nuisance.”

4.9 Head of Conservation:

Listed Building Issues

In recognition of its outstanding architectural and historical importance Wharton Court is given a two star grading on the statutory list. Only a small proportion (about 6%) of the nation's built heritage are graded in this way which means that Wharton Court is of significant national as well as local interest.

This tall, stone-built Jacobean house that dominates the flat-lands formed by the Lugg and the Arrow, must have been built to be seen and admired. Four stories tall, with prominent chimneys rising from each corner, it commands the valley from Leominster to Hampton Court. Pevsner describes it as ‘forbidding’, and indeed it is. The presence of the C17 barn to the north of the Court suggests that an agricultural livelihood has always been associated with this place.

Although railway, trunk road and by-pass break up the estate, the powerful presence of the house is still very evident from positions along each of these routes.

The nature of the expansion at Wharton Court and the spread of its operations seriously threatens the visual quality of the house within its setting. As part of a plan for

agricultural diversification, a series of functions have stealthily invaded the area to the north of the Court House and its appearance is now marred by industry.

In recognition that a balance needs to be achieved between the demands of agricultural diversification and the need to protect the setting of important listed buildings, temporary permission was granted by this Council in June 2004 to retain some extremely visually invasive buildings on the site. It follows that an extension to that temporary permission would not protect the setting of these listed buildings.

If this application is approved, the precedent could be set for future applications for extensions of time and the long term setting of the listed buildings could be endangered.

Landscape issues

The County Landscape Character Assessment identifies this area as Landscape Type "Riverside Meadows". This is a distinctive landscape character type, typified by the flat, linear nature of the topography, lack of settlement and woodland and linear pattern of riverside trees. The location of such an imposing building in this otherwise unsettled flat landscape is therefore extremely dramatic.

However, the effect of this powerful juxtaposition has been significantly eroded over the last few years by a number of developments at Wharton Court associated with farm diversification. These developments have given no consideration at all to the impact on the character of the landscape, the setting of the Court or the views from public vantage points such as the A49. A substantial bund has been constructed at right angles to the A49, parallel to the northern elevation of the large barn, previously approved. This has been planted with trees but is so steep that they are unlikely to thrive. As a feature within the landscape it is extremely visually intrusive and destroys the landscape character and views along the flood plain. It does not provide acceptable screening for the development considered by the current application and the potential for increased screening from the tree planting, if it survives, is negligible within 5 years.

Great harm has already been done to the local landscape character, the views along the river flood plain and the setting of Wharton Court. This harm can only be exacerbated by an extension of time to the original temporary permission. It may also result in other unauthorised development taking place elsewhere when prospective developers perceive, however wrongly, that the development at Wharton Court has been accepted by the local authority.

The application could therefore be refused on Conservation grounds.

5. Representations

- 5.1 Humber and Stoke Prior Group Parish Council opposes this application. It does not wish to see the conditions on the original permission altered.
- 5.2 Leominster Town Council: "Recommends refusal for the following reasons:
 - 1) In the interests of protecting the long-term setting of Wharton Court and the two adjoining listed barns (Leominster District Local Plan Policy A18: Listed Buildings and their settings), and
 - 2) It is felt that the problems of offensive odours emanating from the pilot plant have not been resolved and that the environment and amenity of the local area and local populace should be protected from this persistent and long-term problem."

5.3 Hope-under-Dinmore Parish Council: "Oppose the planning application ... as our parishioners have been subjected to obnoxious odours from this site for far too long. It is considered that the planning permission already granted is more than adequate."

5.4 2 letters of objection have been received from:

Mrs M A Jones, Stone Farm, Stoke Prior
Mr and Mrs Evans, The Dalmonds, Stoke Prior

The principal points of objection are:

- Support for the adequacy and appropriateness of the existing conditions
- Need to protect bird and animal habitats, prevent pollution and protect the SSSI
- Misleading claims by the applicant
- The risk of pollution

A continued complaint, however, has been of the odour nuisance produced on the site.

One letter of qualified support has been received from Sir Simon Gourley, Hill House Farm, Knighton, LD7 1NA, the essence of which is: "Nobody in their right mind would claim that the experience of the 7Y composting plant has, to date, been little short of disastrous." "... I have no personal financial involvement in this matter but I do feel very strongly that what they are trying to do at the troubled plant represents the sort of problem that society has somehow to overcome, but cannot possibly if everyone holds up their hands in horror and claims that it is some one else's. It isn't, it and similar problems belong to all of us. The future well being of much of Herefordshire will depend on finding satisfactory solutions ..."

5.5 The full text of these letters can be inspected at Planning Services: Minerals & Waste, Blueschool House, Blueschool Street, Hereford and prior to the Sub-Committee meeting.

6. Officers Appraisal

6.1 The application is to vary 4 conditions on the existing permission. The proposed variations to conditions 1 and 2 have important implications for the setting of the Listed Buildings, the River Lugg SSSI c/SAC, the landscape and the amenities of local people and are considered in detail below. The proposed variations to conditions 3 and 4 can be dealt with more simply, however, and are addressed first.

Condition 3

6.2 The existing condition was intended to control the volume of waste material being processed on site, in the interests of amenity and because greater volumes could have adverse effects which might need further assessment. Officers accept that as phrased, however, it could prevent the importation of other necessary materials, e.g. building materials which would not be significant and which need not be controlled. A difficulty arises, however, with the variation proposed in that definitions of waste are not fixed and can be assumed to change over time. Members should also be aware that most agricultural waste is not a 'controlled' waste and would not therefore be covered by the proposed variation. Limiting processing to 'controlled waste' could therefore allow unlimited volumes of uncontrolled waste to be imported. The current process does not yet work perfectly, allowing larger volumes might compromise its success and worsen local amenity. Officer's advice, therefore, is that whilst the broad principle of the

variation proposed is acceptable, the wording proposed might itself prove ambiguous, open to abuse and difficult to enforce. They recommend therefore that the proposed variation be refused but that the following be substituted, to delete condition 3 and replace it with

“Not more than 12,000 tonnes of materials shall be composted at this site in connection with the development hereby permitted during any 12 month period.”

Condition 4

- 6.3 Condition 4 was originally imposed to attempt to limit the development to the more recent permission and to prevent the almost unrestricted original permission (NC2000/2267/F) being used for composting. In retrospect, given the extent of the works necessary to undertake in vessel composting at this site, officers consider that it is not necessary. An unforeseen consequence of the condition was also the difficulty it caused to the legitimate use of another building as a workshop, covered by the 2000 permission. In conclusion, therefore, officers recommend that the proposed variation to delete condition 4 be approved.

Condition 1

- 6.4 This condition is to extend the temporary permission for composting from July 2005 to 31st December 2008. The principle considerations as to whether planning permission should be granted were set out in the Sub-Committee agenda of 16th June. These issues are still material to this application, but the general issues of whether planning permission should be given have been considered. None of the issues of planning principle have changed since then and Members should be aware therefore that there are no reasons to refuse planning permission for the proposals in terms of National Waste policy (as set out in Waste Strategy 2000 and Planning Policy Guidance Note 10), the Draft Regional Waste Management Strategy, or other aspects of emerging Regional Policy.
- 6.5 SSSI/cSAC The application site adjoins the River Lugg SSSI, cSAC the protection of which must be given the highest priority. Neither English Nature or the Environment Agency consider however that the application would have any adverse implications for the designated sites or species. Although the need to prevent pollution of the river or watercourses which feed into it is of the greatest importance, there are no reasons for refusing permission on the grounds that it would have an adverse effect on the river Lugg SSSI/cSAC.
- 6.6 Structure Plan and Local Policies Structure Plan Policies for waste, notably policies WD2 and 3 prescribe that the site for the disposal of waste should have regard to the geographical and transport relationship between the sources of waste and the proposed handling or disposals, the cumulative impact of those facilities and the need for them and set out a list of criteria against which applications will be considered.
- 6.7 Other policies in the Leominster District Local Plan amplify these and relate to the wider implications and effects of proposals. These issues are simplified under general headings:

Location/Proximity to Waste Sources

- 6.8 The proximity of waste management facilities to the sources of waste handled is a matter of considerable importance and the ‘Proximity Principle’ is now enshrined in

Government Policy and a central part of the concept of BPEO. In this case the application site is located on the trunk road network and is fairly well placed to take deliveries of waste minerals from the north of the County and has good links to the wider road network. Much of these materials are relatively locally produced and it could not be argued that the proposed variations could be refused on the grounds that it did not comply with the Proximity Principle.

BPEO (Best Practicable Environmental Option)

- 6.9 The concept of BPEO is central to national waste policy and the Courts have held that it is a consideration, which must become in mind at all times by the decision maker. The Council has adopted a BPEO for the major waste streams, that for commercial and industrial waste, (which it could be argued includes the materials involved here) is to reduce the element landfilled to 23%, increase recycling to 73% and thermally treat the remaining 4%. The composting plant would increase recycling of waste streams, which at least in part could be described as originating from food preparation. If this is accepted it would in principle be in accordance with the BPEO. Even if the waste stream is defined as agricultural the application is to develop a means of transforming a fairly difficult waste, into compost quickly and in principle this must be desirable particularly in this County where poultry processing is important and large scale. As such it conforms to the principle of the Waste Hierarchy. The proposed variations to condition 1 would enable further recycling to take place. The weight to be given to this aspect of the BPEO for this proposal must be set against the possible harm notably to the amenities of local people which might ensue.

Effects of Surface and Ground Waters

- 6.10 The protection of local water sources from pollution is of the highest importance – the nature conservation interests of the River Lugg SSSI/cSAC are particularly vulnerable. There are no suggestions however from the statutory consultees that local surface and ground waters could not be adequately protected by the imposition of conditions. If permission were to be granted Officers would argue that the retention of these is essential.

Effects on Nature Conservation

- 6.11 The site adjoins the River Lugg and the land between the river and the site is of very high nature conservation value. Again, if permission were to be granted officers consider it essential to maintain the existing conditions relating to the protection and enhancement of nature conservation.

Effects on the Landscape

- 6.12 The application site is outside of but overlooked by the Area of Great Landscape Value. The 'tower' added to the barn in the north side of the site is particularly prominent and Officers consider distracts from views of the AGLV for some distance along the A49. The landscape of the application area itself is markedly flat with long views north to south along the river valley. As the Head of Conservation has commented, historically Wharton Court dominated this view. A number of intensive developments have diminished this effect over the years. The (permitted) barn to the north of the site and the bund alongside the A49 and north of the site (some of which is permitted) are significant in this respect. The 'tower' added to this barn, which is fundamental to the pilot plant, is particularly so. The weight to be given to the effect of

this tower, when considered against other developments on and around the site must be a matter of opinion. Officers' original advice was that the tower has an adverse impact on the local landscape and recommend that it should be refused on these grounds if the application were for its permanent retention. Its retention for a limited period is arguably, however, less significant and officers do not consider that the proposed variations to conditions 1 and 2 could be refused on these grounds.

Effects on Local Settlements and Amenities

- 6.13 The pilot plant is not visually attractive but only limited parts are visible from adjoining public land. What is visible from Wharton Bank, the settlement closest to the site, significantly impacts on the view and could be considered a disamenity. Other effects on local settlements and amenities must include additional traffic, noise, dust/litter and vermin. Objectors have drawn attention to these. They are however material considerations to the planning application but officers did not find sufficient evidence to justify refusal of permission for the development in principle on these grounds, and equally could not recommend that the proposed variation to allow an extension of time should be refused on them.
- 6.14 The most important effect on local amenities from the development has undoubtedly however been the creation of unpleasant odours. When the application was considered in June, officers commented that it is not easy to discuss the issue in the measured way necessary in considering a planning application, and that Members should not have had any illusions that the objections made by local people were unfounded or unreasonable and that the smells originating from the plant up to the end of 2003 were repellent and must have been very distressing to local people. If these smells had continued in the same way officers would have recommended refusal on the grounds of the unacceptable effect on local amenities, residents and visitors to the area. Members are reminded, however, that the proposal is for the development of a pilot plant for a limited period. The process is by implication experimental and subject to change. Over the past years these changes have been considerable and have significantly improved the operation of the plant. The Council's Environmental Health Officer has monitored the site since 2002 and originally found much that was objectionable. Since the beginning of February 2004 however he has received far fewer complaints
- 6.15 The Parish Council has submitted 2 reports since June, reporting 35 odour incidents. Most of these are described as "short bursts" lasting only a few minutes. By definition, most of these have been difficult to verify. It must be stated that the EHO does not consider that all of these are attributable to the composting operation but officers are equally sure that some should be. The applicant has submitted a thick file of monitoring reports, including those made by local people. A 5-page analysis of those submitted by the applicant states, inter alia,

"Results from Wind/Odour Monitor Comparison From a total of 187 days

1	<i>Days on which the wind allowed Bioganix to cause a problem</i>	166
2	<i>Days on which a problem was reported</i>	91
3	<i>Days on which wind allowed these to be accurate</i>	81
4	<i>Total mins of nuisance reported</i>	5350
5	<i>Total mins allowed by wind</i>	4859.5
6	<i>Average percent of day when nuisance occurred</i>	1.77%

“Conclusions

Discounting the confusing and recurring incidents of reported smells from the Bioganix plant when the wind has been in a contrary direction to the complainant, we appear to have two separate types of incident. Both of these are short bursts of smells; one is at various times during the working day and the other type is early in the morning. The short bursts reported during the day are generally consistent with our own observations of slight smells detectable when the transfer trailer is in use for a few minutes time, three to five times per day. The early morning bursts do seem to be mainly consistent with the known effects of overnight still air and inversion effects. The early morning bursts of smell could indicate that at times the filtration of the overall exhaust air could be improved. It is interesting to note that we have identified 89 days on which weather conditions could have been such that if the plant was producing a smell it would have been blown in the direction of complainant houses. However on only 6 of these days have we been notified of a possible complaint. Some of these appear to correlate with periods when the plant was suffering some form of mechanical breakdown, or shutdown for some purpose. This would have led to a delay in processing and a rise in the amount of untreated material being stored within the sealed bunkers. All this would appear to indicate that the filtration system has been generally very effective, but that it can sometimes struggle if a high loading is present.

The presence of reported complaints about Bioganix that contradict weather records does serve to confuse the task of analysing the data, however it does highlight the difficulties of the situation. Bioganix does not seek to dismiss in any way the genuine concerns of local residents, nor does it seek to deny its responsibilities. Given the past history of the plant it is entirely understandable that any smells in the area will tend, automatically, to be attributed to the plant. This does present problems in terms of the perception of the plant and highlights the difficulties of working towards achieving a level of zero complaints.

Solutions

The reports of short bursts of smell that we have attributed to the continued use of the transfer trailer between site buildings would appear to confirm our view that the installation of a sealed conveyor between buildings would have a dramatic effect on the remaining issues from the plant. The designs for this conveyor have been drawn up for some while and were agreed and included within the original planning application. Work on this project would take probably 3 to 4 months from commencement. The imposition of conditions 1 and 2 on the planning approval, limiting operation of the plant to 12 months only have made it commercially impossible to proceed with this development. Bioganix and its financial backers are not in a position to undertake such expenditure with perhaps only 6 to 8 months of operating time in which to recoup the additional investment.

Overall filtration of the air does appear to have been very effective. The bio-filter itself was part of the original planning application. The base of the filter has been constructed in such a way that its size can be doubled. The company felt that whilst some investment prior to planning approval was necessary it would be imprudent to install all of the filter until the future was more certain. The imposition of conditions 1 and 2 on the planning approval, limiting operation of the plant to 12 months only, have made it commercially impossible to expand the filter to the planned size. Bioganix and its financial backers are not in a position to undertake such expenditure with perhaps only 6 to 8 months of operating time in which to recoup the additional investment.

Reducing the initial odour loading on the filtration system will also help to improve the efficiency of filtration. Build ups of stored material are caused by breakdowns in the

composting equipment itself, resulting in additional material having to be stored within the sealed buildings until such time as the equipment can be repaired and the backlog cleared. Most breakdowns have occurred due to mechanical failures of the main compost vessel. This vessel is the original prototype design, it has understandably suffered a number of mechanical problems purely due to it being a prototype. Bioganix had planned to replace this original vessel with a new piece of plant incorporating all the design changes highlighted by the prototype. A new vessel would be inherently more reliable and very unlikely to suffer long periods of inoperation. This investment cannot take place whilst the plant is expected to be shut down within 12 months. The investment is only feasible over a minimum 4 year period.

The Board and management of Bioganix believe that carrying out the proposed changes would continue the dramatic and ongoing decline in odour incidents.”

- 6.16 Officers believe that this is plausible and that if the extension of time requested were to be granted conditions could be imposed requiring the installation and use of covered conveyors, by a specified time. This should further reduce the odour nuisances which have proved so unpleasant locally. The essential issue is whether Members consider the applicant's case reasonable and the measures proposed likely to succeed or that the case is unconvincing and unlikely to succeed – with a corollary that if the latter, the risk to the amenities of local people is enough to justify refusal. There cannot be a certain answer to these questions but it must be acknowledged that the plant has been progressively improved and that, if “bursts” of odour currently result from the lack of covered conveyors, and the need to extend the bio filter, their installation might be successful in permanently preventing odour nuisance recurring. Officers' advice is that they would not recommend that permission should be granted for the permanent use of this plant on this site on the grounds that the adverse effects on the 3 Listed Buildings, especially Wharton Court, and on the landscape character of the area are unacceptable. They do, however, consider that a short term use would be acceptable in Listed Building and landscape terms.
- 6.17 The application itself is explicitly for a pilot project for another 3½ years beyond that already permitted. If permission were to be granted it could be done on explicit conditions that it ceased and that all the built elements constructed were removed from the site by 31st December 2008. This could be enforced. The advantages would be that the applicant is able to refine the pilot project and would have time to develop an alternative site. The disadvantages would be that local people might be exposed to further disamenity and that the Council has accepted that adverse effects on the Listed Buildings are acceptable in the short term.
- 6.18 Officers believe that there are indications that the site is now operating better and given the time applied for, may be completed properly. The applicant claims that this will end the odour nuisance. The proposal can be effectively time limited by condition and officers recommend that the application to vary condition 1 shall be granted. Its continuation would mean temporary adverse effects on the setting of the 3 Listed Buildings, particularly the most important, Wharton Court itself, but on balance Officers consider that this short-term disbenefit could be seen against the possible benefit that the further development of the pilot plant and its odour control elements would create. This would also have a subsidiary effect in creating an additional income stream for the repair of the Listed Building. In order to secure this, two conditions (Nos. 4 and 5) are proposed to require air tight conveyors to transport materials between the main process buildings and another (No. 6) to control hours of vehicular movement. National policy is to encourage innovative waste technologies in order to significantly increase the country's recycling capacity. The emerging UDP generally encourages

recycling and encourages short-term pilot projects, the applicant's case is that a minimum of 4 more years is necessary to ensure that the technology is successful. Nothing in the UDP requires this application to be refused. On balance therefore Officers recommend that planning permission should be granted. On further consideration, however, Officers consider that the condition could usefully be rephrased to make enforcement more effective and they recommend therefore that the existing condition be deleted and replaced with

"1) The use hereby permitted shall cease on 31st December 2008 and no material whatsoever shall be processed through any part of the development hereby permitted whatsoever after that date."

Condition 2

- 6.19 The proposed variation to condition 2 is simply to tie in the proposed site clearance with the proposed extension of time. If the latter is granted, it would be perverse not to grant the variation to condition 2. Officers consider that both the original condition and that proposed could also be slightly rephrased to make enforcement more effective and they recommend therefore that a date of 30th November 2008 be imposed by which the scheme must be submitted and minor changes of the description of what is to be removed be added.

Conclusion

- 6.20 If the changes proposed were to be permitted both the applicant's wish for a longer period to prove the effectiveness of the plant and odour control systems and officers to impose the most enforceable conditions will be achieved, local people's amenities should be effectively protected and the long term setting of the Listed Buildings secured.
- 6.21 Members should also be aware that in Waste Planning terms the development of in-vessel composting has been difficult if this pilot project were to be successful it could have a wide application and lead to the development of a useful waste treatment technology.
- 6.22 S72(1)(b) of the 1990 Act expressly gives power to impose conditions requiring that a use be discontinued or that buildings or works be removed at the end of a specified period. This power is clarified in Circular 11/95 which advises inter alia, that, "a temporary permission will normally only be appropriate where the applicant proposes temporary developments, or when a trial run is needed in order to assess the effect of the development of the area ..."
- 6.23 The Circular notes that such a permission must be reasonable having regard to the capital expenditure necessary to carry out the development. In this case the applicant has expressly applied for permission for a "Pilot Plant ... until 31st December 2008" and in supporting documents states:
"The current plant is intended to be operated only as a pilot plant. It is needed as a proving ground for the principles and technology of composting and as a demonstration of the effectiveness of the process, with a view to relocating the entire operation to a larger plant on allocated industrial land at the earliest opportunity."
- 6.24 It could not reasonably be argued therefore that the applicant was under any illusion that he was applying for a temporary permission. The variations proposed for conditions 1 and 2 will require the site to be cleared of all buildings, structures etc. associated with the application and the applicant has supplied a plan and schedule

indicating all of these. There cannot therefore be any ambiguity that the proposal is for a specific, limited period and will be removed at the end of that time.

RECOMMENDATION

That planning permission be granted subject to the following conditions:

- 1 - The use hereby permitted shall cease on 31st December 2008, and no material whatsoever shall be processed through any part of the development hereby permitted whatsoever after that date.**

Reason: In the interests of protecting the long term setting of Wharton Court and the two adjoining listed barns, of protecting the long term amenity of local people and visitors of the area, and because any longer use may have adverse environmental effects which would require further consideration.

- 2 - Not later than 30th November 2008 a scheme of work shall be submitted to the Local Planning Authority for their approval in advance in writing for the removal of all of building 1, the high part of building 4 (i.e. that part not permitted under ref. NC1999/2252/F granted 8 March 2000), the scrubber tanks numbered 1, 2, 3, 4 and 5, the enclosed conveyor, two overhead ducts, the structure between building 4 and odour scrubbing unit No. 1, contents of the bio-filter and associated structures and works shown on plans 488/03 Rev B (May 04) and 488/04 Rev B (May 04) and described in Bioganix's letter of 10 May 2004, and any other structures, works, equipment or materials on site in connection with the development hereby permitted, from the application site before 30th June 2009, and for the restoration of the site to agriculture and to the condition permitted under ref. NC1999/2252/F and the approved scheme shall be fully implemented before 30th June 2009.**

Reason: In the interests of protecting the long term setting of Wharton Court and the two adjoining listed barns, and because any longer use may have adverse environmental effects which would require further consideration.

- 3 - Not more than 12,000 tonnes of material shall be composted at this site in connection with the development hereby permitted during any 12 month period.**

Reason: In the interests of protecting the long term setting of Wharton Court and the two adjoining listed barns, and because any longer use may have adverse environmental effects which would require further consideration.

- 4 - Not later than 6th April 2005 a covered conveyor shall be constructed on site in accordance with drawing no. 488/03 rev B (May 04) in such a way as to ensure that no odour escapes from it during its use.**

Reason: In order to protect the amenities of local people and visitors to the area.

- 5 - After 6th April 2005 no composting or composted materials shall be transported between buildings 4 and 1 as shown on plan no. 488/03 rev B (May 04) other than by means of covered conveyor.**

Reason: In order to protect the amenities of local people and visitors to the area.

6 - E02 (Restriction on hours of delivery)

Reason: To safeguard the amenities of the locality.

7 - E06 (Restriction on Use) (use as a pilot plant for the accelerated composting of organic material until 1st July 2008) (B2)

Reason: The local planning authority wish to control the specific use of the land/premises, in the interest of local amenity.

8 - Not later than 1st October 2004 a scheme for the provision of surface water drainage works and surface water regulation shall be submitted to the Local Planning Authority for their approval in writing. The approved scheme shall be implemented in full not later than 3 months after its approval in writing. No other impermeable surfaces draining into the approved system shall be constructed.

Reason: To prevent the increased risk of flooding.

9 - F25 (Bunding facilities for oils/fuels/chemicals)

Reason: To prevent pollution of the water environment.

10 - F28 (No discharge of foul/contaminated drainage) (standard reasons and to protect the interests of the SSSI/cSAC)

Reason: To prevent pollution of the water environment.

11 - F32 (Details of floodlighting/external lighting)

Reason: To safeguard local amenities.

12 - F34 (Restriction on level of illuminance of floodlighting (sports grounds)) (after 'boundary' add 'and in the interets of highway safety')

Reason: To minimise the impact of the floodlights and to protect the residential amenity of nearby dwellings.

13 - F40 (No burning of material/substances)

No materials or substances shall be incinerated within the application site.

Reason: To safeguard residential amenity and prevent pollution.

14 - F42 (Restriction of open storage) (after 'material' add 'including any material intended for composting')

Reason: To protect the appearance of the locality.

15 - Not later than 24 hours after any request in writing from the Local Planning Authority the site shall be swept clean of any and all litter or waste material.

Reason: To protect the appearance of the locality and the setting of Wharton Court and the two listed barns and to protect the amenities of local people and visitors to the area.

16 - Not later than 31 days after any request in writing from the Local Planning Authority, as advised by the Council's Environmental Health Officer, a noise monitoring scheme shall be submitted to the Local Planning Authority for their approval in writing. The submitted scheme shall include:

- Noise monitoring locations**
- Method and frequency of measurement in accordance with BS4142 1997**
- Presentation of results and their interpretation within 7 days of measurement and**
- Procedures to be adopted if noise levels go above 5d BA LAeq above background levels**

Reason: To protect the amenities of local residents.

17 - All vehicles containing untreated material for composting or treated compost shall be sheeted with a tarpaulin when within the application site area unless wholly within one of the buildings hereby permitted for this use.

Reason: To protect the amenities of the local residents.

18 - With the exception of the external bio filter the general building structure and ventilation of the development hereby permitted shall be designed to contain fugitive emissions and prevent their escape into the open air. To achieve this the ventilation system shall be suitable and sufficient to maintain negative air pressure at all times other than when the doors to the process buildings are open.

Reason: To protect the interests of residential amenity.

19 - All doors shall be kept firmly closed when not in use.

Reason: To protect the interests of residential amenity.

20 - Not later than 1st July 2005 details of the provision to be made for an owl nesting box within 400 metres of the application site together with details of the timing of its erection shall be submitted to the Local Planning Authority for their agreement in writing.

Reason: In order not to disturb or deter the nesting or roosting of barn owls.

21 - Not later than 31st August 2005 a scheme to ensure that water voles are not poisoned by the use of vermin control measures on site shall be submitted to the Local Planning Authority for their approval in writing.

Reason: In order to protect water voles.

22 - Not later than 1st July 2005 a scheme for the erection of a sign reading 'No left turn' to be erected at the junction of the exit road leading to the A49 and the B4361 for the instruction of drivers leaving the site shall be submitted to and approved in writing by the Local Planning Authority and shall be implemented in accordance with the approved details not later than 28 days of their approval in writing.

Reason: To direct traffic onto the primary road network.

- 23 - Not later than 3 months of any request in writing by the Local Planning Authority as advised by English Nature a scheme for the enhancement of the biological water treatment capacity of the drainage ditches between the application site and the River Lugg shall be submitted for the approval by the Local Planning Authority in writing and the approved scheme shall be implemented in full within 3 months of its approval in writing.

Reason: In order to protect the nature conservation interests of the River Lugg SSSI/cSAC.

- 25 - A structural and condition survey of Wharton Court and the two Listed Barns shall be undertaken in accordance with the Royal Institute of Chartered Surveyors' current good practice advice and submitted to the local planning authority for their approval not later than 1st July 2005. The submitted survey shall contribute to the understanding of the construction and development of these buildings and identify areas at risk as a basis for ensuring their protection and repair.

Reason: To safeguard the character, appearance and stability of the three Listed Buildings adjoining the site.

Informative:

- 1 - N15 - Reason(s) for the Grant of PP/LBC/CAC

Decision:

Notes:

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Background Papers

Internal departmental consultation replies.