



Subject:	Planning Appeals Commission decision on the proposed Centralised Anaerobic Digester facility, North Foreshore (LA04/2019/1540/F)
Date:	18 April 2023
Reporting Officer(s):	Kate Bentley, Director of Planning and Building Control
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Restricted Reports	
Is this report restricted?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If Yes, when will the report become unrestricted?	
After Committee Decision	<input type="checkbox"/>
After Council Decision	<input type="checkbox"/>
Some time in the future	<input type="checkbox"/>
Never	<input type="checkbox"/>

Call-in	
Is the decision eligible for Call-in?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

1.0	Purpose of Report or Summary of Main Issues
1.1	To report on the Planning Appeals Commission's appeal decision in respect of the proposed Centralised Anaerobic Digester facility, North Foreshore (LA04/2019/1540/F).
2.0	Recommendation
2.1	That the Committee notes the report.
3.0	Main Report
3.1	<u>Background</u> The Council recently received the Planning Appeals Commission's appeal decision in respect of the Council's decision to refuse planning permission for a Centralised Anaerobic Digestion (CAD) facility at North Foreshore (LA04/2019/1540/F).
3.2	The Planning Committee refused planning permission for the proposal at its meeting in August 2021. The decision notice was issued in September 2021, with the reasons for refusal being:

	<p>1. The proposed development would result in unacceptable environmental conflict with the adjacent film studios to the east (including Phases 1 and 2 of the film studios); and with the leisure, hotel, food and beverage uses contained in Giant's Park Belfast Limited's leisure-led mixed use proposals for land to the north and west. The proposed development would not be compatible with the character of the surrounding area and these adjacent land-uses and would prejudice future operations of these economic uses, contrary to paragraph 6.90 of the Strategic Planning Policy Statement for Northern Ireland (2015); Policy WM 1 of PPS 11: Planning and Waste Management; and Policies PED 8 and PED 9(a) of PPS 4: Planning and Economic Development.</p> <p>2. Policy BHA 05 of the draft Belfast Metropolitan Area Plan 2015 (v2014) zones the area for a range of uses including waste management. The associated North Foreshore Giants Park Masterplan (2010) identifies land to the south east part of the zoning for Arc21 waste management facilities. However, this land has since been redeveloped as film studios with further planning permission granted on these lands to extend the film studios operations. As a consequence, waste management uses are no longer required within the Policy BHA 05 zoning and for this reason planning permission is refused.</p>
3.3	<p>The appeal was heard by way of the informal hearing procedure. The hearing took place on 12th and 13th January 2023. The Council was represented at the appeal by counsel. The Planning Manager (Development Management) gave evidence on behalf of the Council.</p>
3.4	<p>The Planning Appeals Commission (PAC) made its decision on 6th March 2023, issuing both a substantive appeal decision and costs decision. Both appeals were allowed with a full award of costs made against the Council for causing an unnecessary appeal.</p>
3.5	<p>A copy of the main appeal decision is provided at Appendix 1. A copy of the costs decision is provided at Appendix 2.</p>
3.6	<p><u>Appeal Decision</u> In the preliminary matters, the Commissioner confirmed that the Giant's Park Belfast Ltd's (GPBL) status as "preferred developer" in commercial negotiations with the Council as landowner confers little weight on a proposal that has yet to be subject to a formal planning application; nor does it create any presumption in favour of any such proposed development (par. 13).</p>
3.7	<p>The Commissioner first dealt with the Council's second reason for refusal, noting inconsistency in the Council's determination of the application for the proposed CAD facility compared to its handling of applications for Phases 1 and 2 of the film studios on the adjacent land. The Council's consideration of the applications for the film studios demonstrated a more flexible approach to the status of the North Foreshore Comprehensive Master Plan (CMP) in that the film studios conformed in principle with Policy BHA 05 of draft BMAP (v2014). Moreover, the CMP did not stipulate the need for waste management facilities within the site, it was merely deemed an acceptable location in principle. Draft BMAP does not identify waste management facilities and recycling as suitable uses within Zoning BHA 05 only if promoted by Arc21; they are considered acceptable in principle. The Commissioner was not persuaded by the Council's case that the proposed CAD facility would displace other economic uses envisaged for the North Foreshore lands and that the appeal proposal would therefore displace much needed jobs for this part of the city. The Commissioner also gave little weight to the provisions of the <i>Belfast Agenda</i> pending adoption of the LDP. The Commissioner therefore rejected the Council's second reason for refusal.</p>

3.8	Turning to the first reason for refusal, the Commissioner noted that the Environmental Statement provided with the application did not demonstrate any significant incompatibility issues with adjacent land-uses. The Commissioner did not find the proposed CAD facility to be in conflict with either the SPPS, PPS 11 or PPS 4. The Commissioner found the proposed CAD facility to be acceptable in all other respects.
3.9	In the absence of technical evidence, the Council provided evidence of perception of harm to the GPBL proposals resulting from the appeal proposal. It also provided evidence of the likely economic, environmental and social benefits of the respective proposals. However, the Commissioner stressed that it was not their role to make a binary choice between the two proposals, but to assess the proposed CAD facility on its own merits. Whilst the perception of harm can be a material planning consideration, the Commissioner noted that in deciding the weight to attach to it, the decision-maker is entitled to have regard to the extent which perceived risks have objective justification. The Commissioner noted that the Council was unable to demonstrate actual harm resulting from the CAD facility and therefore the degree of concern in respect of actual or perceived impacts is limited. The Commissioner was not persuaded that the appeal proposal would significantly prejudice development of the North Foreshore Giant's Park for leisure-led, mixed use development; or that it would be detrimental to the attractiveness of the film studios to end users and/or investors.
3.10	<p><u>Appeal Costs Decision</u></p> <p>In terms of the first refusal reason, the Commissioner did not find the Council's consideration of the impact of the proposal on the GPBL proposals to be unreasonable of itself. However, it was critical of there being no technical or scientific-based reasons underpinning the refusal reason. The Commissioner referred to the additional note from Environmental Health appended to the final report to the August Planning Committee and the advice from officers that 'there are no technical reasons why the proposed CAD facility would be incompatible with either the film studios or GPBL proposals.' The Commissioner observed that much of the Council's evidence related to the perceived benefits/disadvantages of the appeal proposal when compared to the GPBL proposals. However, the Commissioner pointed out that the appellant was entitled to have their application determined on its own merits.</p>
3.11	Regarding the second refusal reason, the Commissioner was critical of the Council not weighing in the planning balance the environmental, social and economic benefits of the proposed CAD facility. The Commissioner also referred to the Council's inconsistency between its handling of the applications for the appeal proposal and the film studios on the adjacent land, particularly Phase 2 of the film studios which was being considered by the Council at the same time as the appeal proposal. It noted that a more liberal interpretation of the draft BMAP policy seems to have been applied to the film studios proposals.
3.12	The Commissioner commented that the Council did not ' <i>...undertake reasonable, objective assessment of the grounds on which it considered the policies in its first reason for refusal to be engaged; and did not demonstrate that a balancing exercise had been undertaken to show how the evidence before it had been weighed and assessed. The [Council] behaved unreasonably in terms of the process followed by the Planning Committee and the failure to provide persuasive evidence to support the stated refusal reasons before and at the time of reach its decision.</i> '
3.13	The Commissioner concluded that ' <i>Whilst disparity and disagreement are inherent and reasonable characteristics of the planning process, in this instance, the [Council] was unable to produce credible evidence to substantiate its reasons for refusing permission. On this basis of this unreasonable behaviour, it caused an unnecessary appeal and a full award of costs should be made to the claimant.</i> '

4.0	Financial & Resource Implications
4.1	A full award of costs has been made against the Council for causing an unnecessary appeal. The Council will be required to pay the appellant's costs including the appeal fee; senior counsel/legal fees; planning consultant fees; and environmental statement consultancy team.
4.2	The Council also has to pay for its own appeal related costs including officer time and appointing counsel to advise on the appeal and represent it at the hearing.
5.0	Equality or Good Relations Implications / Rural Needs Assessment
5.1	No adverse impacts identified.
6.0	Appendices – Documents Attached
	Appendix 1 – copy of main appeal decision (allowed)
	Appendix 2 – copy of costs decisions (allowed)