

**DERBYSHIRE COUNTY COUNCIL**  
**REGULATORY – PLANNING COMMITTEE**

**29 July 2013**

Report of the Acting Strategic Director – Environmental Services

**2 PROPOSED SECTION 73 APPLICATION TO NOT COMPLY WITH CONDITIONS 2 AND 5 OF PLANNING PERMISSION CODE NUMBER CW4/0211/157 TO CHANGE THE DESIGN OF THE ANAEROBIC DIGESTER AND ASSOCIATED ANCILLARY PLANT AND EQUIPMENT AT BROOM HOUSE FARM, TOADHOLE FURNACE, OAKERTHROPE**  
**APPLICANT: MR D EASOM**  
**CODE NO: CW4/0513/34**

**4.2107.6**

**Introductory Summary** This application relates to a previously granted planning permission (Code No. CW4/0211/157) for an on-farm anaerobic digester and associated structures on land at Broom House Farm, Toadhole Furnace, Oakerthorpe, to replace an open air slurry lagoon. This Section 73 application is seeking permission to carry on the development without compliance with conditions 2 and 5 of that planning permission. This would allow the design of the anaerobic digester and associated ancillary plant, and equipment to be changed as proposed under the application. I am satisfied that the proposal would not give rise to an increase in negative impacts on local amenity. The change in design would have efficiency benefits and would support the delivery of sustainable waste management and a renewable energy project. I am satisfied that the proposal would accord with the provisions of the National Planning Policy Framework (NPPF) and development plan policies, and I therefore recommend that the application is approved subject to an appropriate alternative set of conditions.

(1) **Purpose of the Report** To enable the Committee to determine the application.

(2) **Information and Analysis**

**The Site and Surroundings**

The application site area extends to about 0.4 hectare, lies at Broom House Farm, in a rural open situation at Toadhole Furnace, Oakerthorpe, approximately 3 kilometres west of Alfreton, 2 kilometres north-east of South

Wingfield, and about 1 kilometre south-east of Wessington village. The farm comprises an extensive land holding, together with a large complex of old and more modern buildings which lie directly to the east of the farmhouse. To the east and adjoining the farm buildings, is a large open air farm slurry pond. Beyond this is a maturing hedgerow of trees and within 100 metres, at a lower level, are Amber Farm and Amber Mill, now predominantly residential properties with part light industrial usage. The main vehicular access into the site is from a short stretch of highway adjoining the A615 (Matlock-Alfreton Road). The site is located partly within the designated Toadhole Conservation Area.

### **Background Information**

Broom House Farm is a dairy farm producing a substantial quantity of liquid and solid organic waste from the herd of 450 milk cows. Twice each day, this waste is transferred from the large milking parlours to an extensive open-air slurry pit, situated between the farm buildings and the residential areas of Amber Farm and Amber Mill. Periodically, in accordance with the Department for Environment, Food and Rural Affairs (DEFRA) Regulations, regarding the spreading of farm wastes on land, this waste is removed and injected into the land as a fertiliser.

In June 2011, planning permission (Code No. CW4/0211/157) was granted for the construction and operation of an on-farm Anaerobic Digester, feedstock building and associated structures on land at the farm to replace the open air slurry lagoon in use at the farm.

Anaerobic digestion is the process whereby bacteria break down organic material in the absence of air, producing a biogas containing methane. As well as biogas, the digestion process produces a solid and liquid residue, called digestate, which can then be used as a soil conditioner and fertiliser.

The development approved under this permission has already commenced with the construction of the feedstock storage building and a digestate store.

### **The Proposal**

This is an application made under Section 73 of the Town and Country Planning Act 1990 not to comply with conditions 2 and 5 of planning permission code no. CW4/0211/157 in order to amend the design and appearance of the anaerobic digester tanks, and include two solids feeder hoppers, macerators and discharge pumps, and a gas holder tank. Condition 2 of this permission sets out the approved application details and Condition 5 restricts the erection of any building or structure on the site without the prior consent of the Waste Planning Authority.

The proposed amended design anaerobic digester would comprise two concrete rectangular tanks with a series of glass domes on the top for gas

collection, as opposed to the two cylindrical tanks as approved in the original application. The anaerobic digestion tanks would be partially located underground and each tank would have dimensions of 54.26 metres x 6.0 metres x 2.47 metres in height, each glass dome would add an additional 0.38 metre in height, giving a total combined height of 2.85 metres, of which 1.85 metres would be below ground level. The tanks would have a total combined capacity of 764 cubic metres.

The anaerobic digester would remain in the same area of the site as approved in the original planning application. All other structures would remain as approved under the original planning permission.

## **Consultations**

### **Local Member**

Councillor Lewis (Wingerworth and Shirland) has been consulted with a request for comments by 24 June 2013.

### **Local Member (Adjacent Ward)**

Councillor Williams (Ripley West and Heage) has been consulted with a request for comments by 24 June 2013.

### **North East Derbyshire District Council Planning**

Raised no objections to the proposal.

### **Environmental Health Officer (EHO)**

Has not objected to the proposal but has recommended conditions, in relation to noise, to protect the amenity of nearby residents.

### **Amber Valley Borough Council**

Raised no objection to the proposal subject to Derbyshire County Council being satisfied that the proposal would not significantly affect any adjacent residential amenity from the proposed development.

### **Wessington Parish Council**

Has been consulted with a request for comments by 24 June 2013.

### **Shirland and Higham Parish Council**

Raised no objections to the proposal.

### **Environment Agency**

Raised no objections to the proposal.

### **Derbyshire Wildlife Trust**

Raised no objections to the proposal.

## **Publicity**

The application has been advertised by press notice (Derbyshire Times), by site notice and by neighbour notifications with a request for observations by 12 July 2013. No letters of representation have been received as a result of this publicity.

## **Planning Considerations**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise. In respect of this application, the relevant policies of the development plan are contained in the Derby and Derbyshire Waste Local Plan (2005) (DDWLP) and the saved policies of the North East Derbyshire Local Plan (2006) (NEDLP). Other material considerations include national guidance which is set out in the National Planning Policy Framework (NPPF) and Planning Policy Statement 10: Planning for Sustainable Waste Management (PPS10).

This application relates to a previously granted permission for the development and use of an on-farm anaerobic digester and associated infrastructure. The principle of the development was assessed against the provisions of the development plan during the consideration and determination of the previous application in 2011. It was considered that the development, in the form proposed, conformed with the provisions of the relevant policies in the DDWLP and the NEDLP and with relevant Government Guidance, as set out in Planning Policy Statements (PPS's). The environmental benefits of the scheme were considered and, subject to conditions to protect local amenity, the development was considered to be acceptable. It was concluded in the report on this application that the development would move waste up the Waste Management hierarchy, encourage the development of renewable energy projects and would form part of a sustainable farm project.

The applicant states that the amendment to the design of the anaerobic digester unit is being sought to allow a more efficient unit to be installed and used on the farm.

There have been changes in Government guidance since the previous application was determined. The NPPF, published in March 2012, replaced many of the Planning Policy Statements. However, PPS10, which is a material consideration in determining this application, is expected to remain current until the National Waste Management Plan for England is published. The NPPF sets out the Government's key economic, social and environmental objectives and planning policies to deliver them. The NPPF (including additional guidance in Technical Guidance to the NPPF) is a material consideration in planning decisions. The NPPF states that local authorities

taking decisions on waste applications should have regard to policies in the NPPF, so far as relevant.

The NPPF does not change the statutory status of the development plan as the starting point for decision making. Applications for planning permission must still be determined in accordance with the development plan unless material considerations indicate otherwise. It states that the purpose of the planning system is to 'contribute to the achievement of sustainable development' and adds that there should be a presumption in favour of sustainable development. The term 'sustainable development' is not defined as such but the NPPF states that, in essence, it means that ensuring better lives for ourselves now does not mean worsening lives of future generations. It states that sustainability has economic, social and environmental aspects.

Government advice under the NPPF downplays the role of older development plan policies. It advises that 'saved' policies (such as those referred to above) should, as from the first anniversary of the introduction of the NPPF, ie 27 March 2013, be accorded less weight by planning authorities than formerly. Nevertheless, where such policies continue to form part of the development plan (as in this case), they need to be taken into account as material considerations to satisfy Section 38(6). In this case, it is still appropriate to give substantial weight to saved policies.

I consider that the most relevant development plan policies against which to assess the proposal are DDWLP policies W1b: Need for the Development, W6: Pollution and Related Nuisances W7: Landscape and Other Visual Impacts, and NEDLP policies GS1: Sustainable Development, BE1: General Design Principles and BE11: Development Within and Adjoining Conservations Areas.

The main issues that need to be considered for this proposal, in the context of the current development plan and national policies, are:

- the visual impact of the proposal; and
- the effect of the proposal on local amenity, in particular, odours and noise.

### **Visual Impact**

The main visual impacts of the proposal would be when viewed from nearby properties to the east of the site and from the B6013 which occupies an elevated position also to the east of the farm. The proposed digester component is considerably lower than the previous design and set within the ground which, in my view, is likely to make it less visible from these viewpoints. The proposed gas holder is more likely to be visible from these viewpoints, however, the intended colour finish is a dark green colour to key in

with the other farm buildings which, in my opinion, would help to minimise any visual impact of the structure.

In landscape and visual terms, I do not consider that the proposed new design would have any significant impact or impact on the character and appearance of the Conservation Area and I am satisfied that it would accord with policies W7 of the DDWLP and BE1 of the NEDLP.

### **Odour and Noise**

It was acknowledged in the report on the original application that whilst anaerobic digestion is essentially a sealed process, there are a number of associated operations which have the potential to generate odours.

The potential sources of odour emissions in the case of this development include the storage of feedstock inside the building and transfer of this to the digester.

The applicant has stated that the handling of the feedstock and digestate would be identical to that stated in the original planning application. I therefore conclude that the new design would be unlikely to have any more odour impact than the unit that has already been granted planning permission.

Condition 8 of the original planning permission required the applicant to undertake a noise survey to assess the potential noise impact of the development. Since submission of this Section 73 application, the applicant has provided the results of noise measurements under a survey in conformity with Condition 8 of the existing permission (which was approved on behalf of the Council under the scheme of delegation on 18 July 2013). These results have shown that it will be necessary to use noise attenuation measures to limit noise during use of the CHP unit to ensure avoidance of adverse noise impacts from its use. It has been indicated in recent correspondence that the applicant intends to construct and maintain an acoustic fence next to the CHP unit to serve this purpose, and the Environmental Health Officer has indicated that such a fence, which is 4 metres long and 4 metres high, would provide acceptable attenuation for the CHP unit to function without generating adverse noise impacts. The erection of such a structure would in itself amount to minor development, which would appear to require an application to be made for it and planning permission subsequently granted for it (without which, the erection would be an unlawful breach of planning control). However I do not anticipate that any particular adverse impacts would be associated with such an erection. I consider therefore, without prejudice to the future determination by the Council of any such application on its merits, that there is a more than reasonable prospect that such an application as is anticipated would result in the grant of planning permission for such minor development. Such an application could be made promptly and it is anticipated, could be determined in a reasonably short timescale. Condition 9 of the conditions proposed for

the grant of permission under this Section 73 application, as set out in my recommendation below, would have the effect of disallowing the use of the CHP to start, without the prior erection of a suitable fencing.

I am satisfied that the impact of noise for this development has been properly assessed and that noise mitigation measures included in the proposal are satisfactory. I do consider that amending the design of the anaerobic digester unit is likely to give rise to a more significant noise impact than previously considered. The Environmental Health Officer has not raised any objections.

### **Conclusion**

In conclusion, I find that the proposed amendment to the design of the anaerobic digester to be acceptable. The development would contribute towards sustainable waste management objectives, support the delivery of renewable energy and the amended design would have benefits by improving the efficiency of the unit. I do not consider that the proposal would give rise to other unacceptable environmental or amenity impacts and I am satisfied that it would accord with development plan policies. Subject to the conditions set out below, the application is recommended for approval.

(3) **Financial Considerations** The correct fee of £195 has been received.

(4) **Legal Considerations** This is an application submitted under Part III of the Town and Country Planning Act 1990 which falls to this Authority to determine as the Waste Planning Authority.

I do not consider that there would be any disproportionate impacts on anyone's human rights under the European Convention on Human Rights as a result of this permission being granted subject to the conditions referred to in the Officer's Recommendation.

(5) **Environmental and Health Considerations** As indicated in the report.

In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, human resources, property and transport considerations.

(6) **Background Papers** File 4.2107.6

Application documents dated 15 May 2013 and additional information received 5 and 10 July 2013 from E4environmental Ltd. Memoranda from the Rights of Way Officer dated 29 May 2013. Letters from North East Derbyshire District Council dated 27 June 2013, Amber Valley Borough Council dated 26 June 2013 and the Environment Agency dated 20 June 2013. Email correspondence from Shirland and Higham Parish Council dated 27 June

2013 and the North East Derbyshire Environmental Health Officer dated 11 July 2013.

(7) **OFFICER'S RECOMMENDATION** That the Committee resolves that planning permission is **granted** subject to the following conditions:

**Form of Development**

- 1) The development shall be carried out in accordance with the details set out in the planning application (Code No. CW4/0211/157) dated 18 January 2011 from Easom and Sons, as amended by planning application (Code No. CW4/0513/34) dated 15 May 2013 and additional information received 5 and 10 July 2013 from E4environmental Ltd, except as required by conditions of this permission.

**Reason:** To secure conformity with the details of the application that is approved and to clarify its scope.

- 2) The anaerobic digester facility hereby approved shall not receive or process more than 12,755 tonnes of waste materials annually as specified in the application documents. The operator shall keep accurate records of the amounts of waste processed in the digester and this record shall be made available for the Waste Planning Authority on request.

**Reason:** The use of the site at a higher rate of input could raise environmental and amenity issues not considered in the determination of this proposal and could be detrimental to the amenity of the area.

- 3) No structures, plant or external lighting shall be erected on the site (other than those identified in the application details as set out in Condition 1 above), except in accordance with a scheme that shall have been previously submitted to and approved in writing by the Waste Planning Authority.

**Reason:** To control the appearance of the development and safeguard the amenity of the area in accordance with Policy W6 of the Derby and Derbyshire Waste Local Plan.

- 4) The electricity generation substation building shall be constructed and maintained in accordance with the details and drawing no. STND/001/037 dated December 2006 received 24 August 2011 from Mr D Easom, as approved by the Waste Planning Authority on 1 June 2012.



**Reason:** To control the appearance of the development and safeguard the amenity of the area in accordance with Policy W6 of the Derby and Derbyshire Waste Local Plan.

- 5) The input materials (feedstock) for use in the digester shall comprise at least 75% by volume of materials sourced from the land farmed and managed by the applicant (Easom and Sons). The operator shall keep accurate records of the amounts and sources of feedstock input in to the digester and this record shall be made available for the Waste Planning Authority on request.

**Reason:** To protect the surrounding environment and safeguard the amenity of the area in accordance with Policy W6 of the Derby and Derbyshire Waste Local Plan.

- 6) The digestate (output) from the plant shall not be spread on, or injected into, ground other than land farmed and managed by the applicant (Easom and Sons).

**Reason:** To protect the surrounding environment and safeguard the amenity of the area in accordance with Policy W6 of the Derby and Derbyshire Waste Local Plan.

#### **Further Details**

- 7) Within three months of the date of this permission details, samples or colours of the materials to be used externally on the anaerobic digester (including the gas tank) and the acoustic barrier shall be submitted to and approved in writing by the Waste Planning Authority. The development shall then be implemented as approved.

**Reason:** In the interest of visual amenity.

#### **Noise**

- 8) The Combined Heat and Power (CHP) unit shall be installed and maintained to meet the acoustic specification in the Assessment of Environmental Noise Report (report no. 2651.01/ifb), received 10 June 2013 from E4environemtnal Ltd and as approved by the Waste Planning Authority on 18 July 2013.

**Reason:** To ensure minimum disturbance from operations and avoidance of noise nuisance in the interest of the amenity of the area in accordance with Policy W6 of the Derby and Derbyshire Waste Local Plan.

- 9) The CHP shall not be brought into use unless and until a separate planning permission is granted to permit the erection of noise

attenuation fencing of 4 metres length and 4 metres height conforming to the positioning and other details for such fencing provided in the communications by email from E4environmental to the Waste Planning Authority of 5 and 10 July 2013 and such fencing has been erected in accordance with such planning permission. For so long as the CHP is then in use or available for use such fencing shall be retained in that position and maintained as necessary so as to be kept fully effective at all times in its attenuation of noise from the CHP.

**Reason:** To minimise noise impact on the amenity of nearby residents in accordance with Policy W6 of the Derby and Derbyshire Waste Local Plan.

- 10) All vehicles, plant and machinery operated within the site shall be maintained in accordance with the manufacturers' specifications at all times, and shall be fitted with and use effective silencers. Except for the purpose of maintenance, none of the above shall be operated with the covers open or removed.

**Reason:** To ensure minimum disturbance from operations and avoidance of noise nuisance in the interest of the amenity of the area in accordance with Policy W6 of the Derby and Derbyshire Waste Local Plan.

#### **Dust**

- 11) At all times during the carrying out of operations authorised or required by this permission, water bowsters, sprayers, whether mobile or fixed, or similar equipment shall be used to minimise the emissions of dust from the site. All areas within the application site where vehicular activity takes place must be hard-surfaced. At such times as the prevention of dust nuisance by these means is not possible, movements of material shall cease until such time as conditions improve.

**Reason:** To provide for the control of dust impact in the interest of local amenity of the area in accordance with Policy W6 of the Derby and Derbyshire Waste Local Plan.

#### **Environmental Protection**

- 12) There shall be no burning of materials on the site.

**Reason:** To safeguard the amenity of the area in accordance with Policy W6 of the Derby and Derbyshire Waste Local Plan.

#### **Odours**

- 13) The process of anaerobic digestion and the management of odour and bio-aerosol's shall be carried out as described in the application

documents. The site operator shall use all appropriate measures to prevent or, where that is not practicable, to minimise, odours.

**Reason:** To provide for the control of odour impact in the interest of local amenity of the area in accordance with Policy W6 of the Derby and Derbyshire Waste Local Plan.

### **Drainage**

- 14) No foul or contaminated surface water, leachate, trade effluent shall be discharged from the site into either ground water or any surface water drainage systems, whether direct or via soakaways.

**Reason:** To prevent pollution of the water environment and to protect groundwater quality in the area.

- 15) The site operators shall ensure that all surface water drainage operates in an efficient manner.

**Reason:** To prevent pollution of the water environment and to protect groundwater quality in the area.

### **Landscaping**

- 16) The site shall be landscaped in accordance with the scheme and drawing no. 00070-00-C submitted on 13 September 2011 from Mr D Easom, as approved by the Waste Planning Authority on 7 September 2012. For the first five years following the implementation of the scheme, planting shall be maintained in accordance with the principles of good forestry and husbandry and any shrubs and trees which die or become seriously damaged, diseased or are missing shall be replaced with plants of the same size and species or such alternative species as may be approved in writing by the Waste Planning Authority (for the avoidance of doubt 100% replacement is required).

**Reason:** In the interest of landscape and visual amenity.

- 17) Within 12 months of the cessation of use of the site as an anaerobic digester all related plant and buildings shall be removed from the site.

**Reason:** In the interest of the amenity of the area and the environment.

### **Statement of Compliance with Article 31 of the Town and Country Development Management Procedure Order 2012**

The Authority worked with the applicant in a positive and pro-active manner based on seeking solutions to problems arising in the processing of planning applications in full accordance with this Article.

The applicant had engaged in pre-application discussions with the Authority prior to the submission of the application. The applicant was given clear advice as to what information would be required with any forthcoming application to amend the design of the anaerobic digester.

The Authority has kept the applicant up-to-date with the progress of the application and has forwarded to the applicant consultation responses from the Environment Agency, North East Derbyshire District Council, the Environmental Health Officer and the Parish Council and, where necessary, requested additional information in order to clarify the form of the development which the applicant has provided.

### **Reason for Approval**

The planning application has been determined in accordance with the development plan as is required by Section 38(6) of the Planning and Compulsory Purchase Act 2004. The development accords with the relevant development plan policies, which are listed below.

Furthermore, the grant of permission for the development subject to the conditions set out in this notice is considered to accord with the presumption in favour of sustainable development under the National Planning Policy Framework (NPPF), published by the Department of Communities and Local Government on 27 March 2012, and to be conforming in all other respects with the guidance in the NPPF (including additional guidance in Technical Guidance to the NPPF, March 2012, so far as relevant).

There are no other material considerations which indicate that the application should be determined otherwise than in accordance with the development plan and the NPPF.

### **Policies**

The principal planning policies relevant to this grant of planning permission are:

#### **The National Planning Policy Framework**

#### **Planning Policy Statement 10: Planning for Sustainable Waste Management**

#### **The Derby and Derbyshire Waste Local Plan Policies:**

W1b: Need for the Development.

W4: Precautionary Principle.

W6: Pollution and Related Nuisances.

W7: Landscape and Other Visual Impacts.

W10: Cumulative Impact.

## **North East Derbyshire Local Plan Policies:**

GS1: Sustainable Development.

BE1: General Design Principles

BE11: Development Within and Adjoining Conservations Areas

CSU4: Surface and Foul Water Drainage.

## **Footnote**

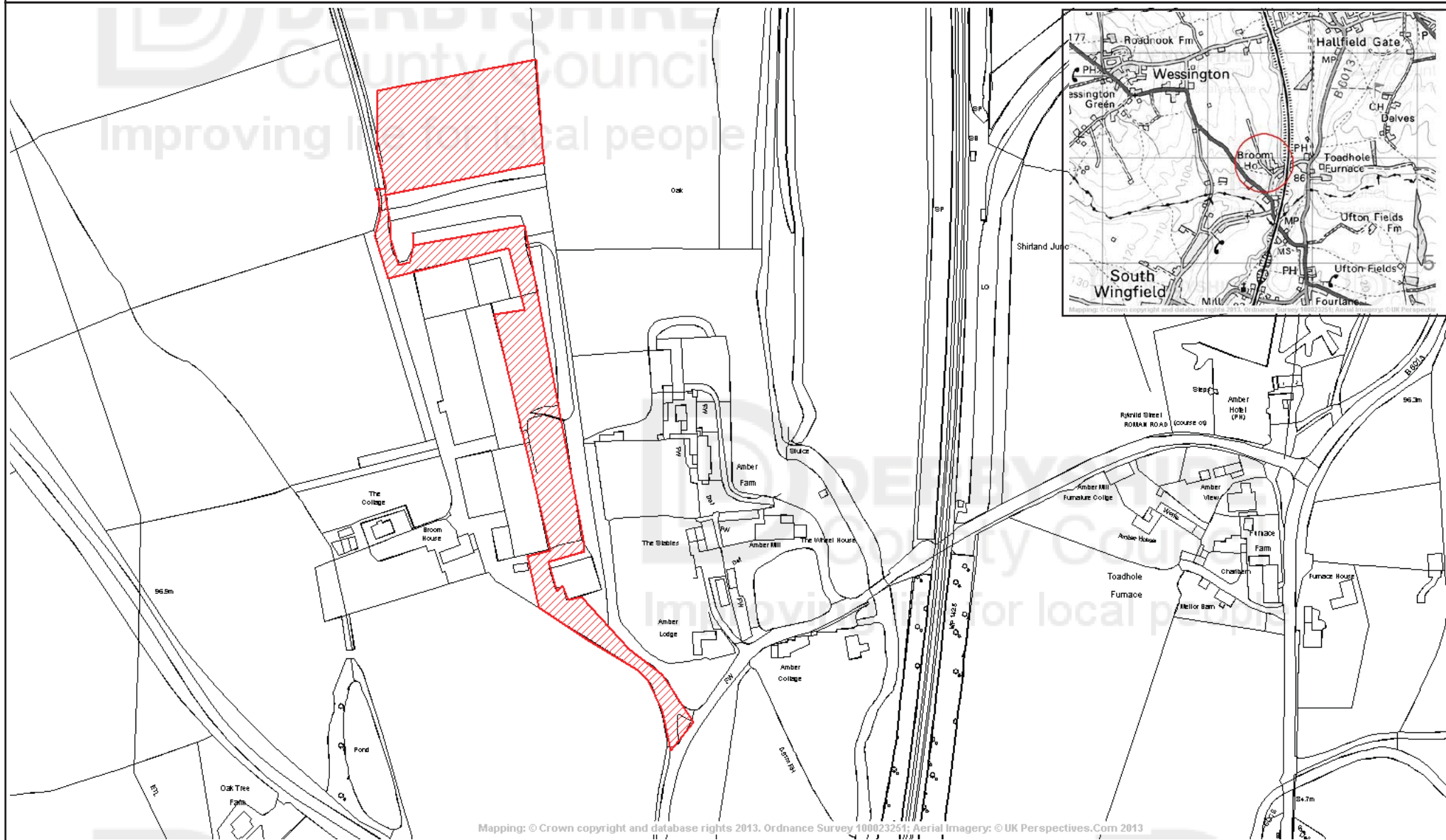
- 1) Wessington Public Footpath No. 13 crosses the south-eastern corner of the area outlined in red on the site location plan provided (drawing number EG-104-13).
  - The route must remain open, unobstructed and on its legal alignment at all times.
  - There should be no disturbance to the surface of the path without prior authorisation from the Rights of Way Inspector for the area.
  - Consideration should be given to members of the public using the path at all times.
  - A temporary closure of the footpath may be granted to facilitate public safety subject to certain conditions. Further information may be obtained by contacting the Rights of Way Section.
  - If a structure is to be erected adjacent to the public footpath, it should be installed within the site boundary so that the width of the right of way is not encroached upon.

Signed.....Date.....

**Mike Ashworth**  
**Acting Strategic Director – Environmental Services**

Title

# CW4/0513/34 - Broom House Farm, Furnace, Oakerthrope



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