

# Chichester District Council

## Planning Committee

### Planning Enforcement Report

**Crouchland Farm, Rickman's Lane, Kirdford, Billingshurst,  
West Sussex, RH14 0LE**

#### 1. Contacts

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#### 2. Recommendation

- 1) **That the Council use its planning powers under Section 173A of the Town and Country Planning Act 1990 to extend the period specified in Enforcement Notices PS/54 and PS/55 from 21 May 2019 to 21 May 2021; and**
- 2) **To extend the period of compliance specified in Enforcement Notices PS/62 , PS/63 and PS/64 from 12 December 2018 to 21 May 2021**

#### 3. The site and recent history

- 3.1 Crouchland Farm covers some 500 acres and is located on the west side of Rickman's Lane approx. 1.2km south east of the village of Plaistow and 2.8km north of the village of Kirdford. The area is rural in character and the site is surrounded by open and wooded countryside.
- 3.2 Following an extensive Public Inquiry to hear evidence relating to the development and use of Crouchlands Farm as a biogas plant, the appeal decision (originally issued on 10 October 2017; corrected and re-issued on 21 November 2017) upheld the decision of West Sussex County Council to refuse planning permission. The appeal decision also upheld two Enforcement Notices issued by Chichester District Council requiring the use to cease, the plant to be dismantled and, following the removal of digestate from the land, the removal of the lagoons [See Appendix A].

3.3 In reaching this decision, the Planning Inspector extended the period for compliance with the requirements of the Enforcement Notices to 18 months i.e. on or before 21 May 2019. The requirements are set out in Annex 2 and Annex 3 of the Appeal Decision.

#### **4. Background and proposals**

4.1 On 7 August 2017 administrators were appointed to Crouchland Biogas Limited (CBL) under Law of Property Act Receivership with the purpose of evaluating the financial situation of the Company, on behalf of Privilege Project Finance Limited (PPFL) – the creditors. Advisors were also appointed as receivers under the Law of Property Act and following the outcome of the Planning Inquiry the joint administrators to the Company decided to comply with the Notices. Work then commenced relating to the decommissioning of the anaerobic digestion plant to bring about compliance, including marketing of the assets of the Company for sale.

4.2 On 1 November 2017 officers of the District Council, West Sussex County Council and the Environment Agency attended a meeting with the appointed Advisors to the Administrators who advised that they had been authorised to shut down the plant. This resulted in the cessation of the importation of feedstock and waste onto the land for use in the anaerobic digestion plant before the due compliance date of 10 November 2017. During the meeting the problems with the site were highlighted including the poor quality of the plant and equipment and the scale of the decommissioning project. For safety reasons, it was acknowledged that it was in everyone's interest to complete decommissioning as safely as possible and as quickly as possible. The Advisors emphasised that the site was being closely monitored and tested on a daily basis but that the operation was complex and time consuming having regard to the level of waste on the site and due to the environmental and hazardous risks involved.

4.3 On 1 August 2018 three further enforcement notices were issued to control development not considered at Inquiry:

PS/62 - the erection of a steel framed lean-to building;

PS/63 - the erection of a separator tower building;

PS/64 - the construction of a slurry lagoon, earth bund and fencing

4.4 The issue of these notices gave rise to significant concern expressed by the Administrators and the Environment Agency (EA) in that the decommissioning of Lagoon 4 and the site relies upon this associated infrastructure. In addition, the development the subject of these notices forms part of the operator's contingency plans in the event of a failure of lagoon 3. This has been highlighted by the EA that notes that due to an exceptionally high level of solid waste, the digestate on site needs to go through a process of screening and testing before it can be sent for recovery/ disposal. Consequently, an early removal of these developments would, it is contended, prevent 'on site' management of the waste.

4.5 The EA fully support the enforcement action taken, and recognise that the decommissioning of parts of the site rely upon the existing equipment

controlled by ENs PS/62, 63 & 64 (above). Taking these matters into consideration the period for compliance with these recent notices has now been amended to align with the 2015 notices i.e. by 21 May 2019 so that the site can be restored to its agricultural use without a risk to the environment.

- 4.6 A further meeting was held with CDC officers on 18 September 2018 with the representative of the Administrators accompanied by their Advisor and a legal representative. The meeting was also attended by officers from the Environment Agency and WSCC. The meeting amplified the need to decommission the site in a phased manner to ensure full and safe compliance having regard to the environmental implications of not doing so.
- 4.7 At this meeting the Administrators also set out their legal obligations to decommission the site in a manner that would not create the risk of an environmental pollution event and advised that they would not be in a position to continue in their position as administrators if there was risk of criminal liability through either an unsafe decommissioning of the site, or by virtue of being unable to complete the requirements of the enforcement notices by 21 May 2019. They therefore made officers aware of their intention to formally request that the period of compliance be extended by a further 2 years to allow for the decommissioning and clear up of the site to take place in a safe manner.
- 4.8 Under Section 173A (1) (b) of the Town and Country Planning Act 1990 [the Act] a local planning authority may waive or relax any requirement of an Enforcement Notice. In particular, it may extend any period specified in the notice in accordance with section 173(9) as follows:

173A Variation and withdrawal of enforcement notices

*(1) The local planning authority may—*

*(a) withdraw an enforcement notice issued by them; or*

*(b) waive or relax any requirement of such a notice and, in particular, may extend any period specified in accordance with section 173(9).*

*(2) The powers conferred by subsection (1) may be exercised whether or not the notice has taken effect.*

*(3) The local planning authority shall, immediately after exercising the powers conferred by subsection (1), give notice of the exercise to every person who has been served with a copy of the enforcement notice or would, if the notice were re-issued, be served with a copy of it.*

*(4) The withdrawal of an enforcement notice does not affect the power of the local planning authority to issue a further enforcement notice.*

- 4.9 This request was made on 1 October 2018 by a letter dated the same day [Appendix B]. The letter requests that the time for compliance, in relation to all the Crouchlands Enforcement Notices, be extended by two years. This is to

provide those responsible for the decommissioning works with sufficient time to complete all works safely. The works may be completed in less than two years but the requested extension of time would remove the likelihood of an offence arising under the Act for a failure to comply with the requirements of the Notices, which would prevent the administrators remaining in office.

## **5.0 Current Position**

5.1 Since November 2017 the administrators of Crouchland Biogas have ceased biogas production at the site and have been in the process of decommissioning the associated plant, equipment and lagoons. A recent site visit conducted by officers on 5 October observed that:

- The biogas production enterprise has ceased
- The Anaerobic Digesters (AD1 and AD2) have been emptied. The engineers report on these tanks has found them to have structural faults and so it is likely that these will be dismantled and removed;
- The CHP engines have been sold and will be removed from the land;
- The unauthorised Harsnips Barn has been removed from the land;
- The dairy slurry lagoon has been drained; it is proposed to create a Duck Pond in this area west of Lagoon 3;
- Lagoon 2 is in the process of being emptied but work will stop next week in accordance with the Permit;
- Water drained from the lagoons is run over ground via a network of 'umbilical' pipes;
- Bagged compost waste continues to be taken off the land from the field to the west of the access drive;
- The farm is operating as an agricultural enterprise; Hay has been cut and stacked in the open barn; fields have been mown and sheep have been introduced for grazing the land.
- At the time of the site visit work was continuing to scoop out slurry and connect pipes to AD3 to complete its decommissioning following the removal of gases from it.

5.2 It is therefore considered that at this time the requirements of (ii) set out in Enforcement Notice PS/54 has been partially complied with and the requirements set out in (iii) of Enforcement Notice PS/54 have been achieved (see Appendix 1, Annex 2 of Appeal A). Principally, Lagoon 3 will be the development which will remain extant as of May 2019 together with completing tasks which are currently suspended in response to the limitations of the environmental operators permit.

### Lagoon 3

5.3 This represents the most significant risk on site in terms of its physical structure, size, location, the gases present within it [which requires monitoring of the Lagoon three times every day] and the need to remove excess surface water from the rubberised plastic cover to prevent its weight displacing the hazardous waste contained within the lagoon.

- 5.4 Lagoon 3 covers an area of two professional football pitches and has been constructed in an elevated position to the main farm yard complex and surrounding properties. The matter is contained within by several 'above ground' bunds, of which there is concern in relation to their long term stability. There is no record of what waste is contained within it, but the Lagoon continues to produce gas that cannot be removed or collected as the gas pipework was not completed underneath the rubberised plastic cover. Moreover, as the waste within the Lagoon is considered to be chemically unstable, it would represent a significant hazard if there was a leak caused by any error in the method of its removal or a failure of the structure itself.
- 5.5 The enforcement notices currently require the removal, prior to 21 May 2019, of a significant amount of infrastructure including the removal of lagoon 3 and AD3, with the 1.3km of pipework between the two, soil bunding, debris etc, (together with Lagoon 3). Additional funds have been lent by PPFL to assist compliance with the notices but Lagoon 3 represents a significant logistical, practical and expensive task to undertake, especially given the enforcement notices' deadline of 21 May 2019. It is also noted that the Environmental Permit requires works of pumping and disposing of the waste to be discontinued from Monday 8 October until the end of March. This presents a significant break and delays what progress can be made.
- 5.5 The Administrators advise that the environmental hazards associated with Lagoon 3 are such that any person in control of the land or taking part in its management, at the point of any leak, could be held responsible for the resulting 'harm', and as such they could be prosecuted. So far they advise that no contractors have been prepared to engage with an operation with such a high level of risk and there is certainly no prospect of a safe methodology being developed before May 2019 to remove Lagoon 3 or any likelihood that a contractor can be found which is prepared to undertake the task by that time.
- 5.6 Having regard to this identified risk the administrators request that the Council use its powers under the Town and Country Planning Act to extend the time for compliance. During this period, there would be an opportunity for further funding to be sourced and an appropriate programme of works to be devised.
- 5.7 As set out in the letter of 1 October 2018, the administrator has alerted the Council that it is considering whether to bring the administration to an end, the current unachievable compliance date within the enforcement notices being the primary concern. The resultant outcome of such action would be to transfer the remainder of the land (other than lagoon 3) to West Sussex Agri Ltd (WSA) – a subsidiary of PPFL. Lagoon 3 would remain within the ownership of Mr Lutman-Johnson and the company CBL will go into compulsory liquidation. Mr Lutman-Johnson and the official receiver will then become responsible for complying with the enforcement notices. The District Council may then seek to prosecute Mr Lutman-Johnson for failure to comply with the enforcement notices, however, it is considered that this is unlikely to result in the clear up of lagoon 3 and the restoration of the land.
- 5.8 The Council as local planning authority would then need to consider whether it was expedient to take further action, including possible direct action to achieve the decontamination and restoration of lagoon 3. Additionally, the

Environment Agency may also need to consider action in the event the lagoon became unstable and therefore represented an imminent environmental risk. The cost of safe decontamination of the Lagoon and restoration of the land has been evaluated by the administrators as being up to £5 million, however if lagoon 3 becomes disassociated with the remainder of the previous biogas operation, decommissioning without the third anaerobic digester [AD3], or other lagoons to capture the material in the event of a failure in its structure, would become much more difficult and likely to be more expensive.

- 5.9 The site is regulated under the Environmental Permitting Regulations and the Environment Agency has reported its satisfaction with the operations being conducted on site to decommission the site and to safeguard against pollutants escaping into the environment. They are also very aware of the costs being incurred in this matter and the investment that is still required to bring about a completion of the works. There is no public contingency to carry out this work if the project fails at this point and the Environment Agency have advised that in their view an extended period of compliance for a further 2 years is not unreasonable given the conditions on site and the need to ensure that any decontamination works are undertaken in a safe manner that does not represent a risk to the wider environment and public health. A further letter from the Environment Agency setting out their position is expected imminently, and will be reported to the Planning Committee.

## **6. Conclusion**

- 6.1 Officers are satisfied that extensive works of compliance have been undertaken and that these have now reached an advanced stage. However, further progress is hampered by the need to stop the spreading of cleaned waste on the land (in accordance with the environment permit) and the circumstances surrounding the handling of Lagoon 3.
- 6.2 It is also apparent that at the time of the Public Inquiry that no party, other than the operator of the biogas plant at that time, had any knowledge of the full extent of the use or the conditions on site. Full disclosure was not advanced relating to the structural stability of the operational development, its lack of supporting infrastructure or the nature of the waste and the processing of it.
- 6.3 It is likely that if this had been evidenced at appeal it may have led to the Planning Inspector requesting the submission of a detailed Environmental Management Plan to inform the decommissioning of the site and the timescales required to achieve the works required. As an example, at the point of deciding to shut down the plant, no works could commence on site for five months until the gas had reduced to safe working levels. Had this information and the constraints on spreading cleaned waste been available to the Inquiry it is likely that the period of compliance would have been over a much longer period of time.
- 6.4 The repercussions of the Council not agreeing a variation of the enforcement notice as now requested to allow for an extended period of compliance would be that lagoon 3 would likely remain in situ for a substantially longer period of time whilst parties responsible for its decontamination and removal are identified, and a plan and funding for those operations is sought.

## **7 Legal Implications**

### Crime and Disorder Act Implications

- 7.1 There are no implications.

### Equality Act Implications

- 7.2 As part of the decision-making process, under the Equality Act, public bodies must have due regard to the need to eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act; advance equality of opportunity between people who share a protected characteristic and people who do not share it; and foster good relations between people who share a protected characteristic and people who do not share it.
- 7.3 In reviewing the planning issues set out in this report, it is concluded that a decision to increase the period of compliance would not adversely affect those with 'protected characteristics'.

### Human Rights Implications:

- 7.4 The Human Rights Act requires the District Council to take into account the rights of the public under the European Convention on Human Rights and prevents the Council from acting in a manner which is incompatible with those rights. Article 8 of the Convention provides that there shall be respect for an individual's private life and home save for that interference which is in accordance with the law and necessary on a democratic society in the interest of (inter alia) public safety and the economic wellbeing of the country. Article 1 of the protocol provides that an individual's peaceful enjoyment of their property shall not be interfered with save as is necessary in the public interest.
- 7.5 Any interference with these rights needs to be proportionate to the aims sought to be realised. The extension of the time to comply with the requirements of the Enforcement Notices will assist the removal of development that is considered to be in breach of planning control. The effect of the development, in this case has been found to have greater environmental consequences than first identified and so any adverse harm arising from it is considered to invoke the rights under Article 1 of the 1st protocol - Protection of property. Article 8 of the Convention (Right to respect for private and family life) for private landowners and occupiers of nearby properties.
- 7.6 In assessing the implications of the identified articles on the proposed enforcement action, it is noted that the Human Rights Act 1998 does not impair the right of the state or local authorities to enforce laws as it deems necessary in the public interest. It is therefore considered that the proposed extension of the time for compliance with the extant Enforcement Notice/s and their objective of securing compliance with planning control by removing the unauthorised plant and equipment and ceasing the use, would uphold adopted national and local planning policies and protect the amenities of local residents and the amenity of the area. This cannot be achieved by any lesser measures

and therefore the action to be taken is considered proportionate to the circumstances found on site. There is no interference with the rights of others, as the Council deems an extension of time to be necessary to safely control the discontinuance of the use and to remove the development in accordance with the public interest.

## **8.0 Recommendation:**

- 8.1 The recommendation is to extend the period of compliance of the relevant enforcement notices to 21 May 2021 based on the reasoning set out above. It is considered that the recommendation is a proportionate response to the circumstances of this case which has a long and complex planning and enforcement history.

## **9. Background Papers**

- 9.1 Enforcement files PS/13/00015/CONCOU & PS/14/00104/CONENG;
- 9.2 Planning history

## **10. Appendices**

- 10.1 Appendix A – Appeal Decision dated
- 10.2 Appendix B – Letter dated 1 October 2018
- 10.3 Appendix C – Site Plan