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Mr. A. Frost
Head of Planning Services
Chichester District Council
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Your ref:
Our ref: C1992LON/AO0107b/SRB
Please Contact: Stephen Beattie
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Date: 1 October 2018

Dear Mr Frost

**CROUCHLAND BIOGAS LIMITED (IN ADMINISTRATION) AND
CROUCHLAND FARM (IN LPA RECEIVERSHIP)
Land at Crouchland Farm, Plaistow
Title Numbers: WSX325994 and WSX325853 (the Land)
Proprietor: William Michel Luttmann-Johnson**

As you are aware on 7 August 2017:

- (a) Jason Daniel Baker and Alastair Massey, both of FRP Advisory LLP, were appointed LPA Receivers over the freehold Land owned by Mr Luttmann-Johnson pursuant to a legal mortgage dated 27 June 2013 (the WLJ Mortgage)) over titles WSX325994 and WSX325853 in favour of Privilege Project Finance Limited (PPFL) formerly known as Eastern Counties Finance Limited (ECF).
- (b) Jason Baker and Alastair Massey, both of FRP Advisory LLP, were appointed Administrators of Crouchland Biogas Limited (CBL) by PPFL (formerly ECF) pursuant to a debenture dated 23 March 2013 (the Debenture) in favour of PPFL which created fixed and floating charges over the property and assets of CBL including the leasehold land comprised in title numbers WSX349023 and WSX349174 carved out of the Land. CBL also executed a legal mortgage dated 23 March 2013 (the CBL Mortgage) over the leasehold title number WSX349023 in favour of PPFL.

It may be helpful to provide a brief description of the roles of a LPA Receiver and administrator.

The power to appoint a receiver is found in section 101, Law of Property Act 1925, which permits a creditor that holds a mortgage over the assets of a debtor, to appoint a receiver to the assets secured by the mortgage. The receiver will take custody of the mortgaged assets, manage those assets and receive the income from them. Usually, a receiver will also have the power to sell those assets and apply the proceeds of sale in satisfaction of the debt secured by the mortgage. The specific powers of the receiver are clarified and specified in the mortgage document itself. A receiver is an agent of the mortgagor/debtor, not an agent of the mortgagee.

An administrator is appointed over a limited company pursuant to the Insolvency Act 1986, Schedule B1. The appointment can be made by the court, the directors or a creditor who holds a floating charge over the assets of the company. An administrator is an agent of the company.

An administrator must perform his functions with the objective of:

- (a) rescuing the company as a going concern, or
- (b) achieving a better result for the company's creditors as a whole than would be likely if the company were wound up (without first being in administration), or
- (c) realising property in order to make a distribution to one or more secured or preferential creditors.

An administrator must make an application to bring an administration to an end if he thinks the purpose of the administration cannot be achieved in relation to the company.

As stated in the Administrators' Statement of Affairs for CBL dated 4 September 2017, the amount of secured lending by PPFL to CBL was over £38 million (thirty-eight million pounds sterling). Mr Luttmann-Johnson provided a personal guarantee (the Guarantee) for the £38 million loaned by PPFL to CBL. Mr Luttmann-Johnson also personally borrowed sums from PPFL. Mr Luttmann-Johnson's total liability under the Guarantee and his personal borrowing is approximately £52 million (fifty-two million pounds sterling). That sum is secured over the Land by the WLJ Mortgage which contains an 'all monies' clause. You will appreciate that the amount owed to PPFL by Mr Luttmann-Johnson far exceeds the open-market value of the Land and, therefore, any sum that could be obtained for the Land if it was sold by the LPA Receivers to a third party.

On 29 December 2017, the debt owed by Mr Luttmann-Johnson to PPFL and the WLJ Mortgage were assigned to West Sussex Agri Limited (WSA). On the same date the debt owed by CBL to PPFL, the Debenture and the CBL Mortgage were also assigned to WSA. WSA is a wholly-owned subsidiary of Prestige Lux Holding 2 Sarl (Prestige).

On the 10 October 2017 the Inspector, Ms. Peerless, rejected three appeals by CBL against the two enforcement notices issued by Chichester District Council (CDC) (PS/13/00015/CONCOU and PS/13/00015/CONCOU issued on 15 July 2015) and the refusal to grant planning permission by West Sussex County Council (WSSCC) (application ref WSSCC/042/14/PS, dated 24 June 2014) (Appeal Decision). Following a few minor corrections in the record of the Appeal Decision, the effective date of the Decision was made on 21 November 2017 (Corrected Appeal Decision).

The enforcement notices 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 Lagoon 3). As you are aware, CBL does not have the funds, to comply with the enforcement notices. To date, although they have had no legal obligation to do so, PPFL and Prestige have provided further lending to CBL, acting by its Administrators, to assist CBL to comply with the enforcement notices.

Lagoon 3 represents a significant logistical, practical and expensive task to undertake, especially given the enforcement notices' deadline of 21 May 2019.

Lagoon 3 is contained within Mr Luttmann-Johnson's freehold title which is mortgaged to PPFL (now WSA) under the WLJ Mortgage. Lagoon 3 is not within the leasehold land leased by CBL from Mr Luttmann-Johnson. However, the enforcement notices describe CBL as one of the owners and therefore, the Administrators as agents of CBL, do not feel able to ignore them.

As LPA Receivers of the freehold Land we have held discussions with PPF/Prestige as to whether they would be willing to fund the clean-up of Lagoon 3. We understand from PPF/Prestige that they would, in principle, be willing to do so. However, we have been advised that the time required to resolve the

issues associated with Lagoon 3 needs to be extended considerably beyond the current deadline of 21 May 2019 in order for a clean-up to be completed safely.

We have received advice (in respect of which privilege is not waived) that if we remain in office as LPA Receivers and Administrators beyond the deadline of 21 May 2019 (in order to effect a clean-up of Lagoon 3 funded by PPFL/Prestige) a risk of prosecution by CDC of ourselves as LPA Receivers and Administrators, cannot be discounted. We hasten to add that we have also been advised that there would be strong grounds to defend any such prosecution but, as professionals and licensed insolvency practitioners, we are unwilling to risk any criminal proceedings, however misguided or misconceived they might be. We have been advised that CDC could offer an assurance under s.172A of the Town and Country Planning Act 1990 (TCPA) that they would not prosecute while we remained in office to clean up Lagoon 3 beyond the 21 May 2019 deadline. Further and alternatively, CDC could extend the time for compliance under s.173A TCPA. Without such an assurance or extension, we cannot, as professional licenced insolvency practitioners, remain in office with this risk hanging over us.

However, as LPA Receivers, we remain under a duty to act in the best interests of WSA (as the current secured lender of Mr Luttmann-Johnson). As the other requirements of the enforcement notices which apply to Mr Luttmann-Johnson's land (without Lagoon 3) have been complied with it would appear that the only option open to us now (unless the risk of criminal prosecution is lifted) is to transfer Mr Luttmann-Johnson's Land to WSA (without Lagoon 3) before the 21 May 2019 deadline. The value of the Land transferred will partially discharge the very large sum owed by Mr Luttmann-Johnson to WSA. Transferring security to a secured lender in partial or full discharge of the amount owed is known as selling by way of "credit bid" and is often used where the secured lender is owed far more than the secured asset is worth. After completion of the credit bid we would resign as LPA Receivers.

In our capacities as Administrators of CBL we would also credit bid the CBL Lease to WSA in partial discharge of the amount owed by CBL to WSA under the Debenture and CBL Mortgage. Although Lagoon 3 is not comprised in the CBL Lease, as stated above, the enforcement notices describe CBL as one of the owners of land which includes Lagoon 3.

The effect of a credit bid of the freehold Land (without Lagoon 3) and the resignation of the LPA Receivers is that Lagoon 3 will remain in the ownership of Mr Luttmann-Johnson subject to the WLJ Mortgage for the remaining sum outstanding to WSA. WSA will not go into possession and therefore will not be at risk of prosecution in relation to Lagoon 3, anymore than it is now.

After the credit bid of the CBL Lease, we will also bring the administration of CBL to an end and vacate office. CBL will go into compulsory liquidation and the official receiver will become the liquidator. In so far as CBL has any obligation to comply with the enforcement notices as regards Lagoon 3, the responsibility will then rest with the official receiver, a government official.

We have been forced to take this step and make arrangements for disposing of the Land (without Lagoon 3) and the CBL Lease because we cannot run the risk of prosecution after 21 May 2019. Given this is the only reason for us not being prepared to remain in office as LPA Receivers and Administrators beyond 21 May 2019 we are formally writing to CDC to request an extension to the deadline under Section 173A TCPA for an additional period of two years (i.e. 21 May 2021) in relation to Lagoon 3. If an extension is granted PPFL/Prestige would, we believe, be prepared to fund the clean-up of Lagoon 3 which must be in the interests of all stakeholders including local residents.

CDC is aware that the Environment Agency supports the request for an extension of time.

Without an extension the clean-up of Lagoon 3 will not be addressed and ultimately the problem and the cost will fall on the shoulders of CDC and the Environment Agency.

In the event that CDC does not agree to the extension of time required to permit the safe decommissioning of Lagoon 3, we will be left with no option in our capacities as LPA Receivers and Administrators of CBL to apply to Court for directions permitting us to

- a) transfer the freehold land excluding Lagoon 3 and the CBL Lease to WSA by way of credit bid. As explained above Lagoon 3 will continued to be owned by Mr Luttmann-Johnson, subject to the WLJ Mortgage;
- b) bring the administration of CBL to an end and place it into compulsory liquidation with the official receiver becoming the liquidator.

In both cases all opportunity of funding the clean up of Lagoon 3 will be lost, because there will be no one left in office to direct the clean-up and no-one with the funds to do it.

We are aware that as Head of Planning Services, you have delegated powers to enable you to grant an extension and give assurances not to prosecute. You have already used your power to extend the deadline for the enforcement notices issued on the 1 August 2018.

As LPA Receivers and Administrators we consider the position to be urgent and as such, if we do not receive a positive response from CDC granting the extension and/or assurances by Monday 8 October 2018 we will make an urgent application to Court to enable the transfer of the Land to WSA without Lagoon 3.

We look forward to hearing from you as soon as possible. If we do not hear from you by Monday 8 October 2018 we will assume that CDC is not prepared to extend the deadline beyond 21 May 2019.

Yours sincerely
For and on behalf of
Crouchland Biogas Limited &
Crouchland Farm



Jason Daniel Baker
Joint Administrator & LPA Receiver

Licensed in the United Kingdom by the Institute of Chartered Accountants in England & Wales and bound by the Insolvency Code of Ethics

The Joint Administrators act as agents of the Company and without personal liability.

The affairs, business and property of Crouchland Biogas Limited are being managed by Alastair Rex Massey and Jason Daniel Baker who were appointed Joint Administrators on 7 August 2017.

The LPA Receiver acts as agents without personal liability.

The office holder(s) will be the data controller in respect of the personal data collected for the purpose of administering this matter. Further information in relation to how we may use, store and share the information is set out in our privacy notice at <https://www.frapadvisory.com/privacy/>.

C.C. Environment Agency