

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

That the District Council take formal enforcement action and issues two enforcement notices under s172 of the Town and Country Planning Act 1990 (as amended by the Planning Compensation Act 1995) in respect of:

- 1. Without planning permission the material change of use of the land to a mixed use for agriculture and for the purposes of a commercial biogas plant, including the importation and processing of feedstock and waste from outside the farm unit;**
- 2. Without planning permission the erection and installation of commercial biogas plant equipment and the construction of a digestate lagoon (the matters which appear to be in breach of planning control are set in Appendix A).**

The reasons for issuing the notices are set out in Appendix A to this report.

3.0 Introduction

- 3.1 Planning permission was refused by West Sussex County Council at the meeting of its Planning Committee on 3 March 2015 for *proposed upgrading of an existing anaerobic digester facility to enable the export of biomethane to the national grid, installation of a new digestion tank, two new CHP engines, digestate lagoon and associated infrastructure* by decision notice dated 7 April 2015. A copy of the decision notice is attached at Appendix B to this report.

- 3.2 At the Committee meeting it was also resolved that a report concerning the options for enforcement at the site should be reported to the next meeting.
- 3.3 At the meeting of the WSCC Planning Committee on 2 June 2015, it was resolved that the case be referred to Chichester District Council (CDC) to investigate the matter further and determine the appropriate course of action to regularise the activity on the site. This report advised that both the unauthorised physical development on the site and the anaerobic digestion use of the site are breaches of planning control which are not immune from enforcement action. It explained that following the cessation in May 2014 of the importation of 25,000 tonnes per annum of food waste from London (which resulted in the breach being a county matter), imported food waste no longer forms a substantial proportion of the current feedstock (only 3%). On this basis it had been agreed that the current operations on the site are a district matter and so the expediency of taking formal enforcement action would be a decision for the District Council.
- 3.4 This report address the planning issues arising from the operation of the plant as a commercial biogas facility utilising imported feedstock from outside the site and whether it is expedient to take enforcement action having regard to the extent of the breach of control, the amount of development carried out and the harm caused by it.

4.0 Main Report

4.1 Relevant Planning History

07/04916/FUL	Permit	New silo for additional slurry storage to comply with amended NVZ regulations. Per 19 December 2007;
07/04917/FUL	Permit	Replacement silo for additional slurry storage to comply with amended NVZ regulations. Per 19 December 2007;
08/02511/FUL	Permit	Siting of 3 no. portable containers associated with the harvesting of methane from silos. Per 11 September 2008;
11/02514/FUL	Permit	Siting of 4 no. metal containers associated to aid gas conditioning for biogas plant. Per 26 August 2011;
11/04982/FUL	Permit	Replacement of existing slurry/dirty water lagoon with underground concrete storage store. Per 17 May 2012
13/00912/FUL	Withdrawn	Siting of portable containers and associated cooling vessels for gas conditioning from biogas plant. Wdn 16 September 2013;

The first three permissions (listed above) were implemented in accordance with the approved plans, but recent changes have been made to the layout of the gas conditioning equipment . Notwithstanding this, the anaerobic digestion (AD) plant has been in operation since 2010. The 2011 permissions have not been carried out in accordance

with the approved plans and the resultant operational development is considered to be unauthorised.

13/00015/CONCOU	Enforcement case - Use of an anaerobic generator and importation of waste slurry. PCO
14/00104/CONENG	Enforcement case - Creation of a slurry lagoon. PCO
WSSC/042/14/PS	Planning application - Proposed upgrading of an existing anaerobic digester facility to enable the export of biomethane to the national grid, installation of a new digestion tank, two new CHP engines, digestate lagoon and associated infrastructure. Refused 7 April 2015.
WSSC/036/15/PS	Application for a lawful development certificate for a proposed use of the site under the planning permissions as an anaerobic digestion facility including the production and export by HGV of biogas, the generation and export of electricity to the national grid, the production and export of digestate for use as fertiliser and the unrestricted throughput of waste, crops and glycerol for both on and off-farm sources including the importation of material by road. Under consideration by WSSC.

- 4.2 Application WSSC/036/15/PS seeks a Certificate of Lawful Use relating to the extent of the permissions implemented to date. It does not seek to establish the lawfulness of any operational development. The County Council is the appropriate authority to determine this application because it seeks confirmation as to whether the lawful use of the site includes the unrestricted processing of waste which is a county matter. The proposed use differs from the existing use because it would include the unrestricted throughput of waste, crops and glycerol, without any limitation on vehicle movements.

5.0 Baseline Position

- 5.1 The baseline position relates to the interpretation of traffic movements associated with the Anaerobic Digestion use of the site. The District Council's view differs from that of the applicant and the County Council. The District Council considers that the 2007 and 2008 permissions permitted operational development only that was ancillary to the agricultural use and operation of Crouchland Farm. For this reason, the use of further conditions to those permissions explicitly restricting the importation of waste/export of gas was considered unnecessary to make those applications acceptable. The District Council considers that the use now taking place comprises a commercial energy production facility that utilises the importation of feedstock from outside the site and that this amounts to a material change of use of the site (from agriculture to a mixed use of agriculture and a commercial enterprise exporting Biomethane gas). The District Council is of the opinion that this is unauthorised, and that retrospective planning permission should be sought for the additional operational development that has taken place since 2012.

6.0 Current Position

6.1 The current situation is that it is understood that approximately 766 tonnes of material is fed into the AD plant per week (tpw), of which 430 tpw comprises imported crops (i.e. 56% of the total throughput based on information provided by the PCN). A detailed breakdown of the throughput is provided in the table attached at Appendix C. The conclusion is that the current use of the facility fails to be considered as a District matter.

6.2 The amount of AD plant and equipment that has been installed on site without planning permission, including dates of installation is as follows:

- I- 1 no. 8m high digester tank – completed in February 2014;
- 2 no. CHP engines – installed in March 2013 and November 2013;
- Gas conditioning equipment – installed in March 2014;
- Gas cleaner – installed February 2014;
- 3 no. CNG gas compressors – October 2013;
- Associated pipework – installed January 2014;
- 1.5 MW dual fuel boiler and hot water pump – installed March 2014;
- 1 no. Peecon feeder adj to biogas tank – installed October 2014;
- Enclosed flare – installed March 2014;
- Control cabinet – installed January 2014;
- 3 no. CNG coolers – installed November 2013;
- 1 no. Purac cooler – installed November 2013;
- ENCAL kiosk – installed May 2014;

6.3 The amount of associated development (including for agriculture) that has taken place on site without planning permission is as follows:

- Digestate lagoon – completed October 2012;
- Digestate lagoon associated pipework - September 2013;
- Digestate lagoon associated fencing – September 2014;
- Landscape bund to woodland – July 2013;
- Hardstanding – installed July 2013
- Waste storage area and separator ;
- Digestate liquid holding tank;
- Dirty water pump;
- Bunded fuel store;
- New farm workshop/machinery store part of which is used to store glycerol tanks in – completed 2014;
- 1 no. electricity substation – installed November 2013;
- 2 no. electricity transformers – installed February 2014;
- Biomethane loading bay and stations – installed October 2014;
- Admin office and control room – January 2014
- Surface water and drainage interceptor – installed October 2014;
- Glycerol storage tanks – externally located;

A location plan of the site together with a detailed plan of unauthorised AD plant and equipment on site is attached at Appendix D and E respectively.

6.4 It is evident from the information provided, that the current level of operation as an AD/biogas facility is reliant on some 59% of the throughout material being imported from external sources off-farm (this includes the 3% of fruit and mushroom waste but not including glycerol as an additive). This is equivalent to approximately 44 two-way lorry movements per week (information provided by the PCN). When added to the export of biomethane and digestate this totals approx. 150 two-way HGV movements per week associated with the use of the AD Plant as follows:

- Imported feedstock and waste = 44.1 two-way HGV lorry movements per week on average;
- Export of biomethane = 27.6 two-way HGV lorry movements per week on average;
- Export of digestate directly associated with AD Plant = 80 two-way HGV lorry movements per week on average (assuming the 2/3rds of the feedstock material for the AD plant comes from outside the site)

6.5 In addition, a considerable amount of unauthorised operational development has taken place which is unrelated to the processing of 'on-farm waste i.e. a third biogas tank erected on the site of a proposed underground slurry storage tank and a new digestate lagoon constructed approximately 500m from the main farm buildings complex adjacent to PROW 564 (Public Right of Way).

7.0 Constraints

Listed Building	NO
Conservation Area	NO
Rural Area	YES
AONB	NO
Strategic Gap	NO
Tree Preservation Order	NO
South Downs National Park (designated)	NO
Flood Zone	NO
Nitrate Vulnerable Zone	YES

8.0 Policy Context

8.1 Section 38(c) of the Planning and Compulsory Purchase Act 2004 requires that applications are determined in accordance with the statutory 'development plan' unless material considerations indicate otherwise (as confirmed in paragraphs 2 & 196 of the National Planning Policy Framework (NPPF). For the purposes of this development, the statutory development plan comprises the Chichester District Local Plan First Review 1999 and the Kirdford Parish Neighbourhood Plan (2014).

8.2 The key policies material to the determination of this development are set out below. In addition there is reference to the relevant parts of the NPPF and accompanying Planning Practice Guidance (PPG).

8.3 The draft Local Plan is a further significant material consideration in relation to this matter. The plan has been found sound (subject to modifications) by the Local Plan Inspector and is to be reported to the Council on 14 July 2015 for adoption. The draft Local Plan does therefore at this stage have substantial weight and will, form part of the development plan following its adoption by the Council. Emerging Local Plan policy 41 relates to the provision of off-site renewable energy (e.g. where it is not embedded as part of a development proposal such as for stand-alone solar, biomass and energy crops, anaerobic digestion, wind and landfill gas) where it has been demonstrated that the all the following criteria have been met:

1. *There is no significant adverse effect on landscape or town character, ecology and wildlife, heritage assets, area or features of historic significance or amenity value;*
2. *There is no significant adverse impact on local amenity, health and quality of life as a result of noise, emissions to atmosphere, electronic interference or outlook through unacceptable visual intrusion; and*
3. *There is no adverse impact on highway safety....*

When considering the social and economic benefits, account will be taken of the degree of community participation/ownership of a scheme.

Relevant Policies and guidance
<p>NPPF: paragraphs 14, 17, 28, 32, 35, 97, 98, 109, 122, 123, 196 -197, 207 Chichester District Local Plan First View 1999: RE1, RE5, RE8, RE12, BE11, B5</p> <p>Chichester Local Plan: Key Policies and Proposed Modifications: Relevant policies - 1, 25, 39, 41, 45, 48 and 49 are set out as follows:</p> <p>Policy 25 – Development in the North of the Plan area – development is required to conserve and enhance the rural character of the area, the quality of the landscape and natural/historic interest;</p> <p>Policy 39 – transport, accessibility and parking – development should be located to minimise additional traffic generation and movement; avoid problems of highway safety and cumulative impact on residential amenity which are severe;</p> <p>Policy 41 – off-site renewable energy – the development should not result in a significant adverse effect on the landscape; local amenity or have an adverse impact on highway safety;</p> <p>Policy 45 – development in the countryside – should represent a sustainable form of development in the countryside, ensure that the scale, siting, design, materials would have minimal impact on the landscape and rural character of the area;</p> <p>Policy 48 – natural environment – development should have no adverse impact on the tranquil and rural character of the area and enhance local landscape character of the surrounding area and site, public amenity in general.</p>

9.0 The site

- 9.1 Crouchland Farm is located on the west side of Rickman's Lane approximately 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.
- 9.2 The site comprises a large dairy farm covering approximately 500 acres. The main farm buildings complex is located at the end of an access road which extends some 500m into the agricultural holding from the highway. The access road is also a bridleway open to all traffic (BOAT 643). The access road then continues north towards Hardnips Copse which is a block of ancient woodland located opposite the main farm buildings complex. The track at this point is also designated as a public right of way (PROW restricted byway 633).
- 9.3 The main operational area containing the AD tanks and associated equipment is located on the eastern side of the access track leading north to Hardnips Copse. The equipment is housed between the cluster of existing farm buildings/cow sheds at Crouchland Farm. There is a dirty water attenuation lagoon located to the north east of the farm buildings and AD plant. This has been constructed by means of excavating a substantial amount of soil and forming an earth bund around the development.
- 9.4 500m to the west of the main plant, a new digestate lagoon has been built in a field to the south of PROW 564/BOAT 3519. It lies just beyond a line of mature trees and opposite the farm's existing slurry lagoon. A series of large diameter pipes have been installed in the ground linking the AD plant to this lagoon.
- 9.5 In addition to the above, it appears a further building has been provided on the northern side of the AD Plant to house new glycerol tanks.
- 9.6 The land immediately surrounding the site is in dairy use. The nearest dwelling to the AD plant is the farm manager's house some 60m to the east of the main plant area. Crouchlands House is 250m to the south, whilst there are several properties approximately 400m away to the north along Rickman's lane. The area is rural in character and the site is surrounded by a mix of open countryside and blocks of woodland. The site lies in the north eastern part of the District where conserving the rural character of the area, with its high quality landscape and environment is considered a key planning objective.

Background to the Enforcement Investigation

- 9.7 The Council received a complaint in January 2013 concerning the importation of food waste and the operation of a Biogas plant that was unrelated to the handling of on-farm manure and slurry. Following the issue of a Planning Contravention Notice (PCN), it was revealed that a substantial amount of food waste was being imported and processed on the site. It was subsequently

agreed that the enforcement investigation should be taken forward by the County Council as the Minerals and Waste Authority.

- 9.8 In March 2014, the County Council served a PCN seeking information about the operational activities on the site at that time. The PCN reply showed that some 13.6% (5724tpa) of the site's annual tonnes per annum (tpa) throughput was food waste. In May 2014 the operator ceased the importation of food waste from London. This volume of material was replaced by locally-sourced farm produce (i.e. purpose grown crops) and a small amount of vegetable waste. This resulted in the County Council determining a planning application (ref: WSCC/042/14/PS), which was part retrospective and part proposed, for the upgrading of the existing facilities and continued operation of it with the option of importing food waste. The application was refused by decision notice dated 7 April 2015. The current level of throughput p.a. at the AD Plant (approx. 39,832 tpa) includes 56% imported crops, 3% imported waste and 14% Glycerine. This compares with 27% of on-farm produce and farmyard manure. Appendix C contains the WSCC committee report and provides further details (page 9).

10.0 Consultations

10.1 Environmental Health (EH):

The response from the CDC Environmental Protection is that the Environment Agency is the prime enforcers of this site as the activity is subject to an Environmental Permit. CDC as the Local Authority has a residual duty to investigate complaints about nuisance that occur in our district. Consequently EH has picked up some complaints about odour and noise over the years this plant has been operating. Currently there are 2 complaints open and noise recording equipment has been installed at a property in Rickman's Lane in order to investigate allegations about plant noise. No evidence has been gathered to support the allegations. The recent application to WSCC planning to add a third digester and gas production / collection plant has been examined and site visits conducted. No objections were raised to the application based on any approval restricting vehicle movements and recommended maximum plant noise conditions in line with their own acoustic consultant's predictions.

10.2 Environment Agency:

No objection. The site is regulated under the Environmental Permitting Regulations.

10.3 WSCC Highways:

The original consultation (to planning application WSCC/042/14/PS) assumed a baseline of circa 14,000 tpa of material imported into the site, ancillary to the operation of the farm (i.e. movements from other parts of the farm to the AD facility site). A highway objection was raised based on the intensification of HGV movements resulting from an increase to circa 32000 tpa through the importation of 3rd party material. The amount of material currently being imported to the site is approx. 28,964 tpa. WSCC has confirmed, therefore, that the Highway comments on the original consultation still apply as follows:

The Local Highway Authority raises an objection to the proposed development as it considers the proposed route from Crouchland Farm to Plaistow Road to be unsuitable to accommodate, by virtue of its insufficient width, restrictive nature of the junctions and limited visibility the intensification in HGV movements that would be generated by the proposed development and would result in detriment to highway safety. This would be contrary to paragraphs 32 and 35 of the NPPF, 1.2.1 and 1.4.9 of the WSCC Local Transport Plan 2011-2026 and paragraphs b, c(i) and c(iii) of the West Sussex Waste Local Plan (2014). Should the Planning Authority be minded to refuse the application the LHA recommends the following reason be included:

The vehicular route to be used by HGV traffic between the site and the B2233, by virtue of its narrow width, tight turns and restricted visibility (with particular regard to Rickman's Lane, the junction of Rickman's Lane and Foxbridge Lane, Foxbridge Lane and the junction of Foxbridge Lane/Plaistow Road) is not suitable to accommodate the intensification in HGV traffic that would be generated by the proposed development, and would result in a severe impact on highway safety contrary to paragraphs 32 and 35 of the NPPF, 1.2.1 and 1.4.9 of the WSCC Local Transport Plan 2011-2026 and paragraphs b, c(i) and c(iii) of the West Sussex Waste Local Plan (2014).

10.4 West Sussex County Council – Minerals and Waste

Re your consultation relating to the use of the site at Crouchland Farm, assuming, as you state, that the permitted operation of the site is for the management of on-farm waste only:

The importation of material which includes 3% waste would not, in our view, constitute a 'waste' use (as set out in our Committee Report).

The material considerations relating to the operation of the site are unlikely to differ significantly whether the material being imported is waste or non-waste, particularly as the key impact relates to highways movements. We therefore have no comments in this regard. I would however note that the site is subject to an Environmental Permit issued by the Environment Agency.

Finally, as you are aware the County Council is currently considering a Certificate of Lawfulness for the proposed use of Anaerobic Digestion with unrestricted throughput of imported waste or other material and the generation and export of electricity, biogas and digestate (see WSCC/036/15/PS). This is due to be determined at committee on 21 July 2015.

11.0 Planning Comments

- 11.1 The main issue for consideration is whether it is expedient to take formal enforcement action. Any action taken must be proportionate to the harm caused. In doing so, regard must be had to the extent of the breach, the unacceptability of the development (taking into account the provisions of the statutory development plan and any other material considerations), and whether the breach is causing any material harm.

Principle of the Development

- 11.2 The principle of siting an anaerobic digestion facility at the farm has already been established through the various planning permissions granted in 2007 – 2011. However, the District Council's interpretation of these planning permissions is that they permit the processing of on-farm crops and waste. As such, it is considered that the significant level of importation of 'feedstock' has resulted in a material change of use of the site from agriculture to a mixed use of agriculture and a commercial biogas plant including the importation of feedstock and export of biomethane to the national grid.
- 11.3 An AD plant is considered 'renewable energy' in that it produces energy from waste and biomass. The present level of output would result in approx. 54,314MWh of energy from the biomethane production, equivalent to the energy demand from 3,823 homes, and 4,022,195KWh of energy from the CHP's, equivalent to the demand from 951 homes per year. Renewable energy is supported through national policy including paragraph 98 of the NPPF which recognises that even small scale projects can provide a valuable contribution to cutting greenhouse gas emissions and proposals should be approved where impacts can be made acceptable.
- 11.4 As it stands the AD Plant at Crouchland Farm falls under the definition of a 'small-scale' facility in that it processes under 50,000 tonnes of material per annum (ref from WSCC Waste Local Plan). However, currently 22,360tpa of feedstock is imported to the plant along with 1.144tpa of vegetable waste and 5460tpa of Glycerine. This is equivalent to 44.1 two-way HGV lorry movements on average per week (not including the HGV movements associated with the export of biomethane and digestate from the plant).
- 11.5 The advice contained in the NPPF is re-iterated in emerging Local Plan policy 41- *offsite renewable energy*. This policy states that planning permission for off-site renewable energy proposals will be granted subject to a number of criteria including that there is no significant adverse impact on landscape, local amenity and on highway safety. These considerations will now be examined in more detail as follows:

Impact on Landscape Character and Visual Amenity

- 11.6 The site is not within an area designated for its landscape value as such. However, it is situated within the Rural Area, the character of which is recognised in Policy RE5 of the CDLP First Review 1999 and Policy 25 of the Emerging Local Plan.
- 11.7 The built elements of the development are adjacent to the lawful plant, sited within the envelope of the main farm buildings complex. The additional unauthorised AD digester is located on the eastern side of the modern cow barn adjacent to a loading area where the digestate is removed from the system and biomethane loaded into lorries. Access to the operational area is via the farm roads used as a bridleway and public right of way. The dome of the third digester can be seen from the bridleway to the east of the farm, whilst the equipment adjacent to the farm buildings complex can be seen from PROW 633.

- 11.8 The operational development is agri-industrial in appearance and some of it is partially screened by the existing digesters and farm buildings. However, given the substantial amount of unauthorised equipment erected on the site, which is part and parcel of the intensification in the use of the premises, it is considered the development in question has a material adverse impact on the character and appearance of the surrounding area. As the associated equipment is visible from the PROW it results in a visually intrusive form of development unrelated to the agricultural needs of the holding. Also, the additional equipment is not in keeping with the adjacent farm buildings and as such is considered to be harmful to the visual amenity of the surrounding area which is predominantly rural in character.
- 11.9 Furthermore, an earth bund has been formed around the third digester and dirty water lagoon to the east of the farm buildings. Although its purpose is to screen the development, the bund remains in view from the public realm and is therefore considered to add to the visual harm of the development in the wider countryside setting. It is an artificial feature that is not in keeping with the natural rural landscape.
- 11.10 In addition, a new digestate lagoon has been constructed in the field to the west of the main farm buildings complex. It measures 17,000 sqm and has been constructed by forming a 2m high earth bund around its perimeter. The lagoon is covered by a plastic tarpaulin and is enclosed by a safety fence measuring 1.3m in height atop of the bund.
- 11.11 This lagoon can be seen from the PROW and a Byway open to all traffic (BOAT) that passes immediately to the north of it. On the opposite side of the PROW is the farm's existing open slurry lagoon. However, the development of the digestate lagoon has resulted in the loss of further open countryside and at the introduction of an engineered earth bund that is considered to represent an unacceptable visually intrusive and harmful form of development in this location which is unrelated to the agricultural needs of the holding.
- 11.12 It is considered overall that the unauthorised operational development has resulted in an increase in the amount of physical development on the site which is out of keeping with and harmful to the pre-existing rural character of the area. In addition, with the substantial increase in HGV traffic movements to and from the site, it is considered that this has a detrimental impact on the tranquillity of the area. Having regard to the desirability of conserving the rural character of the area, the quality of the landscape and natural and historic environment, it is considered the development is contrary to Policy RE5 of the adopted Local Plan and Policy 25 in the emerging Local Plan.

Impact on Local Amenity

- 11.13 The closest dwelling to the site is the farm manager's house which is 60m to the east of the plant. Crouchland (house) is located approx. 250m to the south of the site, whilst there are several residential properties located approx. 400m away along Rickman's Lane to the north.
- 11.14 The development has the potential to result in an adverse impact on existing residential amenity through noise and disturbance both from the operation of

the site/plant and equipment, and from vehicles travelling to and from it. However, this has to be considered in the context of any impact arising from the operation of the site as a farm and the existing lawful AD plant which is uncontrolled by planning conditions relating to HGV movements, noise and hours of use.

11.15 As it stands there is no objection from CDC Environmental Health regarding noise nuisance and odour affecting any of the properties mentioned. However, given the proximity of the site to several PROW's, the increase in noise and disturbance from the additional HGV's has the potential to affect the enjoyment of these routes. But such impacts are not material and would only be transient upon users of the PROW as they pass by the site. In light of the number and frequency of HGV movements generated by the use of the site as a commercial AD plant (72 two way HGV movements per wk on average), it is considered that the main issue is that the use has a significant negative impact on the amenity of local residents as a result of noise and disturbance from traffic from the increase in HGV movements to and from the site. Such levels of HGV traffic are inappropriate and out of character in this rural location and damaging to the rural ambience of the area and the amenities of local residents in connection with a material change of use of the site to a commercial Biogas plant using imported feedstock and exporting biomethane.

Highway Capacity and Road Safety

11.16 The site is located approximately 9km from the principal traffic route (the A272). It is accessed from the farm entrance track leading off Rickman's Lane. The amount of material currently being imported to the site is approx. 28,960 tpa. This equates to on average 44 two-way HGV movements per week. In addition to exporting Biomethane and digestate from the site this increases to 81.7 two-way HGV movements per week. There are approximately 60.4 other HGV movements per week (single way) not connected with the AD Plant i.e. dirty water and farm slurry, but if, for example, the capacity of the AD plant was limited to handling on farm waste only, two thirds of these lorry movements would cease i.e. some 20 single way HGV movements of digestate for use as a fertiliser to spread on the fields of nearby farms would remain.

11.17 The HGV's access the B2233 via Rickman's Lane, Foxbridge Lane and Plaistow Road. The Highway Authority has commented that the route from Crouchlands Farm to Plaistow Road is substandard by virtue of its insufficient width, restrictive nature of the junctions and limited visibility. Accordingly, it is considered the route is unsuitable for the intensification of HGV movements generated by the current unauthorised use of the site. The development results in a severe detriment to highway safety contrary to policy 41 of the emerging local plan.

Impact on the Environment

11.18 The development has the potential to result in impacts on the environment primarily through emissions to water and air, and through lighting, potentially impacting on ecology. The development is not located in a flood risk area or groundwater source protection area, but it is located in a nitrate vulnerable zone (NVZ), hence to need to comply with NVZ regulations.

11.19 The development has resulted in the need to construct a digestate lagoon to the west of the AD plant and a new dirty water lagoon to the east of the cow yard to ensure there is sufficient capacity for water storage. The Environment Agency (EA) has raised no objection to the development as it stands. The operational development is currently regulated by the EA under the Environmental Permitted regime. It is therefore considered acceptable in terms of impact on the water environment and control of emissions and odour. In this respect, it is noted that the Environmental Protection Service raise no objection.

11.20 In relation to light pollution, there is insufficient evidence to demonstrate the current operation of the AD plant has materially increased light pollution in this rural location sufficient to warrant making a specific objection on this ground. In conclusion, it is considered the development is not unduly harmful to the environment in terms of water, air pollution, lighting and ecology.

Conclusion

11.21 Based on the lawful agricultural use of the site and the District Council's assessment of the remit of the permissions granted, it is considered that the development and current use of the site has resulted in a material change of use from an ancillary on-farm Biogas plant to a commercial facility using primarily imported feedstock.

11.22 The principle of the development is not considered acceptable in this instance as it has resulted in a significant negative impact on the character and amenity of the area. By reason of its siting and design, the unauthorised operational development fails to respect the prevailing rural character of the area. It has resulted in a visually intrusive and harmful form of development when viewed from the surrounding public rights of way network. In addition, the development has a detrimental impact on the amenity of local residents due to the increase in HGV traffic using the local road network which is considered to be substandard and unsuitable for the intensification in HGV movements associated with the unauthorised change of use.

11.22 When assessed against the relevant policies of the development plan, it is considered the unauthorised development at Crouchland Farm is contrary to policies RE1, RE5, RE12, BE11 and B5 in the CDLP First Review 1999; policies 1, 25, 39, 41, 45 and 48 of the draft Local Plan and paragraphs 14, 17, 35, 98, 109 and 123 of the NPPF.

11.23 In relation to the NPPF, section 10 states that *planning plays a key role in helping to secure a radical reduction in greenhouse gas emissions* through supporting the delivery of renewable energy infrastructure, and when determining applications, local planning authorities should approve applications unless material considerations indicate otherwise and if the impacts are acceptable. However, for the reasons set out above, the Biogas Plant at Crouchland Farm is considered to be an inappropriate and unacceptable form of development in this location as it fails to comply with the relevant policies in the development plan and specific policies in the framework which indicate the development should be restricted.

12.0 Legal Implications

- 12.1 Physical development becomes immune from planning control after 4 years. Unauthorised changes of use of land become immune after 10 years. The unauthorised physical development at the site began in 2012, less than 4 years ago; therefore it is not immune from enforcement action. The AD plant was brought into use in 2009 and importation of food waste began in 2011. As this is less than 10 years ago, the unauthorised change of use from agriculture to a mixed agricultural and commercial use is not immune from enforcement action.
- 12.2 The landowner and developer of the AD plant maintain that the planning permissions granted by the District Council in 2007 and 2008 means that there is a lawful unrestricted use of the authorised physical AD equipment on the site. However, officers have taken the view that the planning permissions did not authorise a material change of use and only permitted building operations in relation to the authorised use as agriculture. The District Council has maintained that the intensification and material change of the site to a commercial energy production facility has taken the operation of the AD facility beyond the scope of the approved development such that it requires separate consent.
- 12.3 However, in view of the complexities of the law in this respect, it is recommended that two enforcement notices are issued, as alternatives to each other. One would cover the material change of use of the land (the preferred position) and require not only the cessation of the use but the removal of building operations which are integral to such use. The other notice would only cover the building/operational development which is not immune from enforcement action in itself and which facilitates the intensified use.
- 12.4 WSCC is the determining authority for a current application for a Certificate of Lawful Use for the use of the AD Plant with unrestricted throughput of imported waste and export of gas and digestate. In the event that a certificate of lawful use is granted, for the proposed development, the District Council will need to review any enforcement action taken as a result of this recommendation set out in this report.

Expediency to take Enforcement Action

- 12.5 Based on the assessment set out in section 11 above, it is considered that there is a breach of planning control subsisting at the site and that it is expedient to take enforcement action to rectify the breach of planning control and to remedy the harm caused to amenity and highway safety.

Crime and Disorder Act Implications

- 12.6 There are no implications.

Equality Act Implications

- 12.7 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.

- 12.8 In reviewing the planning issues set out in this report, it is concluded that the decision to take enforcement action would not adversely affect those with 'protected characteristics'.

Human Rights Implications:

- 12.9 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.
- 12.10 Any interference with these rights needs to be proportionate to the aims sought to be realised. The enforcement action being considered is the issue of an Enforcement Notice/s under s172 of the Town and Country Planning Act 1990. This will involve the amendment and removal of development that is considered to be in breach of planning control. The development, in this case the erection of a substantial amount of plant and equipment in connection with an unauthorised use of the land, is the private property of the landowner and developer and therefore invokes their rights under Article 1 of the 1st protocol - Protection of property. It is also considered that Article 8 of the Convention (Right to respect for private and family life) is engaged in terms of the investment in and ownership of the plant/equipment by the individuals concerned.
- 12.11 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 Enforcement Notice/s and its 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 harm arising. Interference with the rights identified is justified in this case, as the Council deems it necessary to control the use and development of the property in accordance with the public interest.

13.0 Recommendation:

- 13.1 The recommendation is to take enforcement action and issue two enforcement notices for the reasons set out in Appendix A to this report. Therefore, based on the planning assessment set out above, it is considered both necessary and

expedient to take enforcement action and this is considered a proportionate response to the breach of planning control identified.

14.0 Background Papers

14.1 Enforcement files PS/13/00015/CONCOU & PS/14/00104/CONENG;

Correspondence received from WSCC following Enforcement Report ENF Ref: INV/003/2014;

Planning history as set out above in Section 4

NPPF, PPG and Development Plan as set out in Section 8 above.

15.0 Appendices

15.1 Appendix A – Matters which appear to be in breach of planning control and suggested reasons for issuing the notice/s;

Appendix B – Copy of the decision notice ref: WSCC/042/14/PS;

Appendix C – Table of Throughput of the AD Plant

Appendix D – Location Plan of the site;

Appendix E – Site Plan Crouchland Farm AD plant

Appendix A – Enforcement Notice A

The Breach of planning Control alleged is:

Without planning permission material change of use of the land to a mixed use for agriculture and for the purposes of a commercial biogas plant, including the importation and processing of feedstock and waste from outside the farm unit.

Reasons for issuing the notice:

It appears to the Council that the above breach of planning control has occurred within the last ten years. The area of land shown edged red on the attached plan is being used for the purposes of a commercial biogas plant, including the importation and processing of feedstock and waste from outside the farm unit. This has resulted in a material change in use of the site from an ancillary on-farm Biogas plant to a mixed use of farm use and a commercial facility using primarily imported feedstock. The use of the site is not considered to be in accordance with the planning permissions granted in 2007 and 2008 for two anaerobic digesters and a control room, gas washing plant and CHP engine for use as an on-farm AD facility. The development constitutes an inappropriate and harmful form of development within the Rural Area for which there are no special circumstances to justify its retention as an exception to normal policies of restraint where it is having an adverse impact on the rural character of the area, the quality of its landscape and the natural and historic environment.

The development is considered harmful to the character and appearance of the surrounding area for the following reasons: The siting and design of the unauthorised operational development is considered to constitute a visually intrusive and harmful form of development when viewed from the surrounding public rights of way network. In addition, the development is having a detrimental impact on the amenity of local residents due to the increase in HGV traffic using the local road network which is considered to be substandard and unsuitable for the intensification in HGV movements associated with the unauthorised change of use. It represents an inappropriate form of development in this rural location from a highway safety perspective because the route between the site and the junction of Foxbridge Lane and Plaistow Road is unsuitable in terms of its width, the restrictive nature of the junctions to allow safe manoeuvring, and limited visibility, to manage the intensification of HGV movements to and from the site. There are no compelling circumstances to allow this development to remain as it conflicts with the objective of conserving the intrinsic character and beauty of the countryside. The development is therefore contrary to saved policies RE1, RE5, RE8, RE12, BE11 and B5 of the Chichester District Local Plan First Review 1999; policies 14, 17, 28, 32, 35, 98, 109, 122 & 123 of the National Planning Policy Framework March 2012 and policies 1, 25, 39, 41, 45, 48 of the Chichester Local Plan: Key Policies proposed modifications 2014-2029. The Council does not consider that planning permission should be given, because planning conditions could not overcome these objections to development.

Steps required to secure compliance:

- (i) Cease the use of the land as a commercial biogas plant;
- (ii) Cease any importation and processing of feedstock and waste for use in the anaerobic digestion plant on the land;
- (iii) Cease the production of biomethane for export from the site;
- (iv) Disconnect, dismantle and remove from the land the biogas digestion tank, control room building and peecon feeder base and equipment, foul tank and pump and all other biogas equipment installed in the approximate position shown coloured yellow on the attached plan;
- (v) Disconnect and remove from the land the 2 no. CHP engines, gas conditioning equipment, gas cleaner, 3 no. CNG gas compressors, admin office and control room, 1.5 MW dual fuel boiler and hot water pump, enclosed flare, control cabinets, 3 no. CNG coolers, 1 no. Purac cooler, ENCAL kiosk, connectors and equipment for the transfer of biogas to trailers and all other biogas equipment and equipment housing in the approximate position shown coloured orange on the attached plan;
- (vi) Demolish and remove from the land the digestate lagoon, the surrounding fencing and the earth bund in the approximate position shown coloured brown on the attached plan;
- (vii) Disconnect and remove from the land the associated pipework connecting the digestate lagoon to the AD Plant and digestate liquid holding tank in the approximate location shown coloured purple on the attached plan;
- (viii) Reconfigure the land using the earth from the bund to match the profile of existing land surrounding the digestate tank in the approximate location shown coloured green on the attached plan from the land and reinstate the ground to match the existing levels on either side of the site.
- (ix) Remove the resulting debris from the land

Period for Compliance: Steps (i) – (iii) above in 1 month;

Steps (iv) – (ix) above in 6 months

Enforcement Notice B:

The Breach of Planning Control alleged is:

Without planning permission:

- (i) The installation of a biogas digestion tank, control room building and pecon feeder base and equipment, foul tank and pump and all other biogas equipment installed in the approximate position shown coloured yellow on the attached plan;
- (ii) The installation of 2 no. CHP engines, gas conditioning equipment, gas cleaner, 3 no. CNG gas compressors, admin office and control room, 1.5 MW dual fuel boiler and hot water pump, enclosed flare, control cabinets, 3 no. CNG coolers, 1 no. Purac cooler, ENCAL kiosk, connectors and equipment for the transfer of biogas to trailers and all other biogas equipment and equipment housing in the approximate position shown coloured orange on the attached plan;
- (iii) The construction of a digestate lagoon, fencing and earth bund in the approximate position shown coloured brown on the attached plan;
- (iv) Engineering operations in the laying and installation of pipework connecting the digestate lagoon to the AD Plant and digestate liquid holding tank in the approximate location shown coloured purple on the attached plan;
- (v) The deposit of soil to form an earth bund surrounding the digestate tank in the approximate location shown coloured green on the attached plan

Reasons for issuing the notice:

It appears to the Council that the above breach of planning control has occurred within the last four years. The operational development listed above constitutes an inappropriate and harmful form of development within the Rural Area for which there are no special circumstances to justify its retention as an exception to normal policies of restraint. The development constitutes an inappropriate and harmful form of development within the Rural Area for which there are no special circumstances to justify its retention as an exception to normal policies of restraint. The additional digestate tank and associated equipment have been erected on the land in connection with developing a commercial biogas plant at this site which is reliant primarily on the importation of feedstock and waste from outside the site to generate biogas. The associated gas conditioning equipment, compressors, coolers, CHP engines and up-loading stations for the transfer of biogas to trailers, together with the 53,193 cubic metres digestate lagoon and associated pipework and earth bunding result in development is considered to be harmful to the character and appearance of the surrounding area for the following reasons: The siting and design of the unauthorised operational development is considered to constitute a visually intrusive and harmful form of development when viewed from the surrounding public rights of way network. In addition, the development is having a detrimental impact on the amenity of local residents due to the increase in HGV traffic using the local road network which is considered to be substandard and unsuitable for the intensification in HGV movements associated with the unauthorised change of use. It represents an inappropriate form of development in this rural location

from a highway safety perspective because the route between the site and the junction of Foxbridge Lane and Plaistow Road is unsuitable in terms of its width, the restrictive nature of the junctions to allow safe manoeuvring, and limited visibility, to manage the intensification of HGV movements to and from the site. There are no compelling circumstances to allow this development to remain as it conflicts with the objective of conserving the intrinsic character and beauty of the countryside. The development is therefore contrary to saved policies RE1, RE5, RE8, RE12, BE11 and B5 of the Chichester District Local Plan First Review 1999; policies 14, 17, 28, 32, 35, 98, 109, 122 & 123 of the National Planning Policy Framework March 2012 and policies 1, 25, 39, 41, 45, 48 of the Chichester Local Plan: Key Policies proposed modifications 2014-2029. The Council does not consider that planning permission should be given, because planning conditions could not overcome these objections to development.

Steps required to secure compliance:

- (i) Disconnect, dismantle and remove from the land the biogas digestion tank, control room building and peecon feeder base and equipment, foul tank and pump and all other biogas equipment installed in the approximate position shown coloured yellow on the attached plan;
- (ii) Disconnect and remove the 2 no. CHP engines, gas conditioning equipment, gas cleaner, 3 no. CNG gas compressors, admin office and control room, 1.5 MW dual fuel boiler and hot water pump, enclosed flare, control cabinets, 3 no. CNG coolers, 1 no. Purac cooler, ENCAL kiosk, connectors and equipment for the transfer of biogas to trailers and all other biogas equipment and equipment housing in the approximate position shown coloured orange on the attached plan from the land;
- (iii) Demolish and remove the digestate lagoon, fencing and earth bund in the approximate position shown coloured brown on the attached plan from the land;
- (iv) Disconnect and remove the associated pipework connecting the digestate lagoon to the AD Plant and digestate liquid holding tank in the approximate location shown coloured purple on the attached plan from the land;
- (v) Reconfigure the land using the earth from the bund to match the profile of existing land surrounding the digestate tank in the approximate location shown coloured green on the attached plan from the land and reinstate the ground to match the existing levels on either side of the site.
- (vi) Remove the resulting debris from the land

Period for Compliance: 6 months