

**Town and Country Planning Act 1990
Section 78**

**Appeal by Deal Farm Biogas Limited
Deal Farm, Kenninghall Road Bressingham
Planning Inspectorate Ref: APP/L2630/W/23/3324060**

**Proof of evidence on Planning Balance (CD11.7)
South Norfolk Council
16 January 2024**

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BA (Hons) Planning Studies
Post-graduate diploma in Town Planning**



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I, Tim Barker, of South Norfolk Council, will say as follows:

1. Introduction

- 1.1 My name is Tim Barker. I am a Principal Planning Officer and am part of the Development Management team for South Norfolk and Broadland District Councils.
- 1.2 This proof of evidence sets out the case for the Council as to why planning permission ought to be refused for the construction of an Anaerobic Digestion facility (part retrospective), comprising: 1 no. digester tank and 1 no. secondary digester/digestate storage tank, silage clamps, liquid and dry feed system; digestate separation, handling and pasteurization, biogas upgrading and mains gas-grid connection; carbon capture, CHP, agricultural building; office buildings, weighbridge, 2 no. covered digestate storage lagoons, and associated plant, vehicular accesses, roads and landscaping (including earth bunds).
- 1.3 My evidence considers the proposed development against the development plan, including the weight to be given to relevant policies in determining the application and compliance with the development plan as a whole. I also consider whether there are any material considerations which mean this appeal should be determined other than in accordance with the development plan.
- 1.4 In preparing this proof I have drawn upon the proofs of evidence submitted by Jonathan Hanner of Norfolk County Council as the Highway Authority (CD11.5); Martina Sechi, Landscape Consultant at Bidwells acting on behalf of the Council (CD11.3), and Dr Les Gornall of AD Ingenuity LLP (CD11.1) who are providing expert evidence on behalf of the Council on the application and the anaerobic digestion process.

Qualifications and Experience

- 1.6 I have a BA (Hons) degree and post graduate diploma in Town Planning from Sheffield Hallam University. I am a member of the Royal Town Planning Institute and have nearly 20 years' experience of assessing planning applications and other planning work including the preparation of Local Plan documents.
- 1.6 I have previous experience of giving evidence at planning appeals and development plan examination hearings. In particular I have given evidence at a planning inquiry against refusal of planning permission for a new residential development and I have represented the Council in examination hearings on the adopted Site-Specific Allocations and Policies and the Development Management Plan documents of the current Local Plan. I have also participated in hearings for a Neighbourhood Plan examination.
- 1.7 I declare that the evidence which I have prepared and provided for this appeal is true. It has been prepared and given in accordance with the guidance of my professional institution and I can confirm that the opinions expressed are my true and professional opinions.

2. Policy Context

- 2.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004, read together with section 70(2) of the Town and Country Planning Act 1900, requires that applications should be determined in accordance with the Development Plan unless material considerations indicate otherwise.

Relevant Development Plan Policies

- 2.2 Within the Council's Local Plan (CD7.1), policy DM4.1 of the Development Management Policies document adopted in 2015 is the primary policy relating to renewable energy. It states:

Proposals for renewable energy generating development requiring planning permission other than proposals for wind energy development will be supported and considered (taking into account of the impact of relevant ancillary equipment) in the context of sustainable development and climate change on the wider environmental, social and economic benefits of maximising use of renewable energy. The Council will encourage the use of on-site communal energy generation measures.

(1) The effect of the proposal will be considered on:

- (a) The effect on the character and appearance of the landscape;*
- (b) Designated and undesignated heritage assets;*
- (c) The amenities and living conditions of nearby residents by way of noise, outlook, and overbearing effect or unacceptable risk to health or amenity by way of other pollutants such as dust or odour*

Permission will be granted where there are no significant adverse effects or where any adverse effects are outweighed by the benefits. When attributing weight to any harm, including heritage assets regard will be given to national policy and guidance, statutory duty and legislation, and other policies in the Local Plan including Policy DM4.10;

(2) Where appropriate planning conditions will be imposed requiring the decommissioning and removal / dismantling of all plant and ancillary equipment, and if necessary the restoration of land, on the cessation of use.

- 2.3 Another key policy in the consideration of this application is policy DM3.11 relating to road safety and the free flow of traffic. It states:

- (1) On all sites development will not be permitted that endangers highway safety or the satisfactory functioning of the highway network.*
- (2) Planning permission will be granted for development involving the formation or intensified use of a direct access onto a Corridor of Movement providing it would not:
 - (a) Prejudice the safe and free flow of traffic or planned proposals for sustainable transport initiatives along the Corridor of Movement;*
 - (b) Be practical to gain access from the site to the Corridor Movement via a secondary road; and*
 - (c) Facilitate the use of the Corridor of Movement for short local journeys.**

2.4 In regard to residential amenity, the key policy within the Local Plan is policy DM3.13. This states that:

- (1) Development should ensure a reasonable standard of amenity reflecting the character of the local area. In all cases particular regard will be paid to avoiding:
 - (a) Overlooking and loss of private residential amenity space*
 - (b) Loss of day light, overshadowing and overbearing impact*
 - (c) Introduction of incompatible neighbouring uses in terms of noise, odour, vibration, air, dusts, insects, artificial light pollution and other such nuisances.**

Planning permission will be refused where proposed development would lead to an excessive or unreasonable impact on existing neighbouring occupants and the amenity of the area or a poor level of amenity for new occupiers.

- (2) In considering applications which may result in an increase in noise exposure, account will be taken of the operational needs the proposed and neighbouring businesses, the character and function of the area including background noise levels at different times of day and night and the need to protect areas of rural tranquillity.*
- (3) Development will not be permitted where the proposed development would operate noise or artificial light which would be significantly detrimental to the amenity of nearby residents or the occupants of other noise sensitive uses. Proportionate mitigating measures including limiting conditions will be used to reduce the potential noise or artificial light impact to an appropriate level whenever practical to do so.*

2.5 In regard to landscape impact the key policy within the Local Plan is policy DM4.5:

All development should respect, conserve and where possible, enhance the landscape character of its immediate and wider environment. Development proposals that would

cause significant adverse on the distinctive landscape characteristics of an area will be refused.

All development proposals will be expected to demonstrate how they have taken the following elements (from the 2011 South Norfolk Landscape Assessment as updated by the 2012 review) into account:

- *The key characteristics, assets, sensitivities and vulnerabilities;*
- *The landscape strategy; and*
- *Development considerations*

Particular regard will be had to protecting the distinctive characteristics, special qualities and geographical extents of the identified Rural River Valleys and Valley Urban Fringe landscape character types.

- 2.6 From the Joint Core Strategy, the following policies are also considered relevant in assessing the proposed development:

Policy 1: Addressing climate change and protecting environmental assets

Policy 2: Promoting good design

Policy 3: Energy and water

Policy 5: The Economy

Policy 6: Access and transportation

Policy 17: Small rural communities and the countryside

Policy 20: Implementation

- 2.7 As well as those referred to in paragraphs 2.2 to 2.6 above, the following policies in the Development Management Policies document 2015 are also considered relevant in assessing the proposed development:

DM1.1: Ensuring Development Management contributes to achieving sustainable development in South Norfolk

DM1.3: The sustainable location of new development

DM1.4: Environmental Quality and local distinctiveness

DM2.1: Employment and business development

DM3.8: Design Principles applying to all development

DM3.12: Provision of vehicle parking

DM3.14: Pollution, health and safety

DM4.2: Sustainable drainage and water management

DM4.4: Natural environmental assets – designated and locally important spaces

DM4.9: Incorporating landscape into design

DM4.10 Heritage Assets

- 2.8 Also of note are the Council's Landscape Character Assessments (CD7.3) referred to in policy DM4.5. These were originally produced in 2011, and then updated and reviewed by Chris Blandford Associates in 2012. These are referred to in more detail in the Council's landscape evidence prepared by Ms Sechi (CD11.3).
- 2.9 As set out in the Supplementary Statement of Case (CD5.5), in considering the application the Council did not consider the application against the policies from the Norfolk Minerals and Waste Core Strategy and Development Management Policies DPD (2011) (CD7.2) as the majority of the feedstock proposed was to be from sources other than waste. However, for the sake of completeness in the event that the Inspector were to consider this is as an application for a waste facility then the Council consider that the following policies would be relevant from that DPD:

Policy CS3: Waste Management Capacity to be provided
Policy CS4: New Waste Management Capacity to be provided
Policy CS5: General Location of Waste Management Facilities
Policy CS6: General Waste Management Considerations
Policy CS7: Recycling, composting, anaerobic digestion, and waste transfer stations
Policy CS13: Climate Change and renewable energy generation
Policy CS14: Environmental Protection
Policy CS15: Transport
Policy DM1: Nature Conservation
Policy DM3: Groundwater and Surface Water
Policy DM4: Flood Risk
Policy DM8: Design, local landscape and townscape character
Policy DM9: Archaeological Sites
Policy DM10: Transport
Policy DM12: Amenity
Policy DM13: Air Quality

National Policy

- 2.10 There is considerable national and international backing to the development of renewable energy schemes in order to mitigate against the contribution to climate change caused by the burning of fossil fuels to generate electricity. The UK is legally bound by the Climate Change Act 2008 to cut greenhouse gas emissions by 100% by 2050 compared to 1990 levels.
- 2.11 Reflecting this, the National Planning Policy Framework (NPPF) (CD8.1) states in paragraph 160 (formerly paragraph 155) that plans should provide a positive strategy for energy from renewable sources, that maximises the potential for suitable

development, whilst ensuring that adverse impacts are addressed satisfactorily (including cumulative landscape and visual impacts).

2.12 Paragraph 163 (formerly paragraph 158) of the NPPF goes on to state that when determining planning applications for renewable and low carbon development, local planning authorities should:

- a) *not require applicants to demonstrate the overall need for renewable or low carbon energy, and recognise that even small scale projects provide a valuable contribution to cutting greenhouse gas emissions;*
- b) *approve the application if its impacts are (or can be made) acceptable. Once suitable areas for renewable and low carbon energy have been identified in plans, local planning authorities should expect subsequent applications for commercial scale projects outside these areas to demonstrate that the proposed location meets the criteria used in identifying suitable areas, and*
- c) *in the case of applications for the repowering and life-extension of existing renewable sites, give significant weight to the benefits of utilising an established site, and approve the proposal if its impacts are or can be made acceptable.*

2.13 With regards to highway impacts, paragraph 114 states that in assessing applications for development it should be ensured that:

- a) *appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location;*
- b) *a safe and suitable access can be achieved for all users;*
- c) *the design of streets, parking areas, other transport elements and the content of associated standards reflect current national guidance, including the National Design Guide and the National Model Design Code, and*
- d) *any significant impacts of the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.*

2.14 Paragraph 115 then goes on to state that “*development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe*”.

- 2.15 In regard to landscape impacts, paragraph 135 states that, amongst other criteria relating more to the design of new residential developments, planning decisions should ensure that developments will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development; are visually attractive as a result of good architecture, layout and appropriate and effective landscaping, and are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change.
- 2.16 Paragraph 180 sets out that planning decisions should contribute to and enhance the natural and local environment. Relevant criteria are that development should protect and enhance valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory or identified quality in the development plan); recognise the intrinsic character and beauty of the countryside, and the wider benefits from the natural and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland; minimising impacts on providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures; preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability, noting that development should, wherever possible, help to improve local environmental conditions such as air and water quality.
- 2.17 Further national guidance is provided in the Planning Practice Guidance ([https://assets.publishing.service.gov.uk/media/5a7c2a20ed915d1d1741c82d/Planning Practice Guidance for Renewable and Low Carbon Energy.pdf](https://assets.publishing.service.gov.uk/media/5a7c2a20ed915d1d1741c82d/Planning_Practice_Guidance_for_Renewable_and_Low_Carbon_Energy.pdf)) which notes at paragraph 3 that planning has an important role in the delivery of new renewable and low carbon energy infrastructure in locations where the local environmental impact is acceptable. It also emphasises that the need for renewable or low carbon energy does not automatically override environmental protections and that “*renewable energy developments should be acceptable for their proposed location*” (paragraph 22).

Other Relevant Policies and Guidance

- 2.18 National Planning Policy Statements are relevant in considering renewable energy proposals. It should be noted that these are due to be replaced in early 2024.
- 2.19 In regard to the existing NPSs, National Policy Statement (NPS)-EN1 (CD8.6) is primarily for decisions on applications that are nationally significant and determined by the Secretary of State but states that it can be a material consideration in the determination of planning applications in conjunction with relevant technology specific NPSs. For the purposes of this appeal the relevant technology specific NPS is National

Policy Statement for Renewable Energy Infrastructure (NPS)-EN3 (CD8.7) although anaerobic digestion is not described separately in this document as it is not anticipated to have a generating capacity greater than 50MW.

- 2.19 The relevant replacement NPSs to come into force in early 2024 are the Overarching National Planning Policy Statement for energy (EN-1) and the revised National Policy Statement for renewable energy infrastructure (EN-3).
- 2.20 The development should also be considered in the context of the Government's intent to reduce the potential for retrospective planning permission to be granted for intentional development carried out without planning permission. This was set out in a Ministerial Statement in December 2015 by the then Minister for Housing and Planning which stated that the Government was concerned about the harm that is caused where development of land has been undertaken in advance of obtaining planning permission and sought to make intentional unauthorised development a material consideration to be weighed in the determination of planning applications and appeals.

3. The Site and its Context

- 3.1 The site is in a rural location in the parish of Bressingham and Fersfield in the district of South Norfolk. The parish is to the south of the district, and to the west of Diss which is the nearest town. Within the parish, the site lies a little under 1.5km north from the main part of the village of Bressingham.
- 3.2 In addition to the anaerobic digestion plant that has been constructed, the wider site consists of a traditional farmyard containing a variety of buildings from a Grade II listed farmhouse dating from the 17th century to large modern agricultural structures. The farm is operated by Aves and Partners.
- 3.3 The surrounding land is a largely arable agricultural landscape. It is open and relatively flat, albeit with some undulation and a slight fall to the south of the site. There are some small areas of woodland. There are also various other small clusters of buildings either formerly or still in agricultural use. This includes another agricultural site operated by Aves and Partners to the south of Deal Farm known as The Oaks. A number of other commercial uses have become established on this site and an application has been made to regularise this situation (ref: 2022/1930). This application remains undetermined due to outstanding highway concerns.
- 3.4 As would be expected of a rural location, the surrounding highway network consists of narrow rural roads. The nearest main roads are the A1066 around 3km to the south and the B1077 over 2.5km to the east. The local highway network is set out in more

detail in the proof of evidence prepared by Norfolk County Council's Highways Officer (CD11.5).

- 3.5 Historically access to Deal Farm is from Kenninghall Road which runs east-west to the south of the site, however access for the development that is the subject of this appeal is proposed to be from Common Road which runs north-south to the east of the site.
- 3.6 Whilst the site is in a rural location, there are some residential properties in relative proximity. The nearest properties are to the south along Kenninghall Road known as Sunnyside and Villa Farm, with the nearest point from the boundary of the site to the boundary of the residential properties being around 60 metres. There are also other residential properties nearby including properties on Common Lane from 300 metres to the south-east, a property 400 metres to the south on Lady's Lane and properties nearly 500 metres to the north-west on Stone Lane.

4. Planning History and The Proposed Scheme

Planning history up to and including the carrying out of the unauthorised works

- 4.1 In 2015 planning permission (ref: 2015/0595 – see CD6.2 for the decision notice) was granted on the site for a farm anaerobic digestion plant. The applicant was Aves and Partners who are the farmers based at Deal Farm. Prior to the granting of this consent, planning permission had been granted on two separate occasions for an anaerobic digestion plant at The Oaks site to the south of Deal Farm (most recent ref: 2013/1887). It was considered that the possibility of both plants being built out and made operational would not be acceptable and therefore a section 106 agreement was entered into to prevent the implementation of either of the earlier consents at The Oaks. In other words, the effect of the 2015 permission was to revoke consent for two other anaerobic digestion plants. There had been an incremental increase in the feedstock from the first application in 2013 up to the scheme approved in 2015 which had a feedstock of 22,360 tonnes per annum to be mainly sourced from the applicant's farm.
- 4.2 In 2018 some minor works of construction were undertaken but works progressed no further than that. New works started on the site in the Spring of 2021, however what was constructed was substantially different from that approved under the 2015 permission. In particular, the position of the digestion tanks and the silage clamps had been switched, whilst instead of the three digestion tanks on the original scheme there were two larger tanks constructed. This unauthorised development remains in situ.

Planning applications submitted following the unauthorised works

- 4.3 The applicant initially sought to rectify this with a section 73 application (ref: 2021/2036) to vary condition 2 (which required the development to be constructed in accordance with the approved plans) of the 2015 consent to regularise the difference in the layout of the development. As the application was considered it became apparent that the changes were more significant than initially appreciated. The Council took the view that the difference from what was now being applied for and what was originally granted consent were beyond the scope of what could be considered under a section 73 application and furthermore what had been constructed differed so much from that which had been approved in 2015 that it could no longer be considered that the 2015 consent had been implemented.
- 4.4 Following the withdrawal of the section 73 application the applicant submitted a new full planning application (ref: 2021/2788) for the plant ("the 2021 Application"). This application stated that the feedstock for the plant would be 46,750 tonnes per annum which was more than twice the feedstock approved under the 2015 permission. In addition, the new application included three lagoons which were not part of the previous proposals and other features such as a bund that had already been created and lighting conductors that were installed whilst the Section 73 application was being considered. Following widespread public opposition and a number of concerns from technical consultees including an objection from the Highway Authority, the application was withdrawn.
- 4.5 Following the withdrawal of the 2021 application, a further application for full planning permission (the subject of this appeal) was submitted ("the 2022 Application") to the Council on 23 June 2022. This reduced the number of lagoons proposed to two and the stated feedstock to serve the digester would be limited to 23,950 tonnes. Despite this, the designs for the digester remained the same as the 2021 Application, i.e. what is proposed would have capacity for twice the feedstock proposed. This application was refused on 14 December 2022 following consideration by the Council's Development Management Committee for the reasons set out on the decision notice (CD4.3).

Planning history since determination of the planning application

- 4.6 Following refusal of the 2022 application, the appellant submitted an application for a Lawful Development Certificate for a Proposed Development (ref: 2023/1375) to attempt to establish that works permitted by the 2015 consent had commenced and were still capable of being built out lawfully without the need for any further permission.

- 4.7 The Council refused this application in June 2023 (CD6.24 for the delegated report and CD6.25 for the decision notice) on the basis that, in summary (i) the excavation works the appellant was relying on had been subsumed into an entirely different development and therefore did not comprise part of the development authorised by the 2015 permission; (ii) that as the concrete pad that had been constructed in 2018 had been removed during the works in 2021 this would need to be re-built and the 2015 permission did not allow for its rebuilding, and (iii) that the unauthorised development could not be demolished without the need for further consent.
- 4.8 Following the refusal of the application for a certificate of lawful development, the Council moved to serve an enforcement notice against the unauthorised development. The enforcement notice requires the appellant to permanently cease the use of all parts of the land as a partially built anaerobic digestion facility; permanently dismantle and remove from the land all the unauthorised development along with an pipelines and materials associated with the development, and return the land to its form and condition prior to the commencement of the unauthorised development. The enforcement notice was served on 12 July 2023 and gives a compliance period of 15 months to carry out these actions. Whilst an appeal was initially submitted against the serving of the enforcement notice, this has now been withdrawn and therefore the enforcement notice remains in force and has taken effect.
- 4.9 Finally, in addition to submitting this appeal, the appellant has submitted a further planning application for an anaerobic digestion plant on the site (ref: 2023/0087). The application is largely the same as the 2022 planning application other than it includes similar mitigation planting to that submitted with this appeal and also proposes to lower the height of the domes and give the option of rationalising the lagoons to one larger lagoon, neither of which form part of this appeal. In other respects the scale and location of the digesters, along with the other elements of the plant on site, remain as applied for in the 2022 application. This application remains undetermined. As stated in the Statement of Common Ground (CD5.7), a number of technical consultees, including the Highway Authority and the Landscape Consultant employed by the Council, have sought further clarification and information which the appellant is seeking to address.

Consistency of decision making across the various planning applications

- 4.10 The planning history of an application site is material to the determination of subsequent applications. The appellant claims that the grant of the 2015 permission is particularly material to the determination of this appeal as the Council granted planning permission for a similar scheme in a comparative planning context. The consistency of decision making is capable of being a material planning consideration. The weight to be given to that material consideration is a matter for the decision maker.

- 4.11 My understanding is that the principle that like cases should be decided alike depends upon whether or not they are distinguishable in some relevant respect. I consider that the 2015 permission is distinguishable and therefore the principle that like cases should be decided alike does not apply here.
- 4.12 The 2015 permission allowed a relatively small-scale anaerobic digester which was well located in relation to the existing farm and intended to process mainly farm waste from the applicant's own holding. By contrast, what has now been built is an industrial scale facility which is located further from the existing farm site, does not cohere to the existing development on account of the large domes, and has introduced a landscape bund, lighting conductors and other alterations to the plant from that previously approved which have all resulted in a marked increase in its visual impact. Even if a condition limiting feedstock to around half the plant's capacity is considered enforceable, the resultant development will be hugely over-engineered, therefore having an unnecessary visual impact and reducing energy benefits due to higher running costs associated with an over-sized plant.
- 4.13 It is also the case that circumstances have changed since the 2015 permission. A significant part of the case for granting the 2015 permission was that it resulted in the revocation of two other consents for anaerobic digestion facilities. It is also true that different Local Plan policies were in place, albeit that they didn't result in a significantly different policy context.
- 4.14 Further, this proposal has attracted an objection from the statutory Highway Authority, whereas there was no such objection to the 2015 application. This is a materially different circumstance.
- 4.15 Finally, it is clear that the evidence now available to the Council and the Inspector regarding this application is wholly different to that which was provided in 2015. This relates to (a) the operation of the facility, (b) highway impact and (c) landscape impact.
- 4.16 As such, the Council considers that the 2015 permission is clearly distinguishable from this application and therefore the principle of consistency in decision making does not apply here. Therefore, whilst it forms part of the planning history of the site no weight should be given to it. Ultimately this application should be considered on its own merits and on the basis of the evidence which is now available.

Alterations to the Appellant's Case

- 4.17 As outlined elsewhere in this proof and in the evidence of the other witnesses, during the course of the various applications referenced above the information provided by

the appellant has significantly varied. This has continued since the refusal of the 2022 application and the submission of the appeal.

- 4.18 As is addressed in the evidence of Mr Hanner (CD11.5) and Dr Gornall (CD11.1) which the appellant has provided throughout the application and appeal process has often been inconsistent in material respects. This is particularly relevant to the traffic generation of the proposal.
- 4.19 At the time of the decision on the 2022 application the Council accepted the information submitted as to the process of anaerobic digestion, albeit (on the advice of the Highway Authority) it did not consider that sufficient information had been provided to demonstrate that the proposed development would not be prejudicial to the satisfactory functioning of the highway and highway safety (as set out in the second reason for refusal). Ultimately, the Council had no reason at that stage not to accept at face value information as to the anaerobic digestion process. However, during the appeal process the Council instructed an expert in anaerobic digestion (Dr Gornall) to scrutinise both the 2015 permission and the application which is the subject of this Appeal. This led to significant concerns being raised with regards to certain claims made by the appellant.
- 4.20 These are addressed further in Dr Gornall's proof of evidence (CD11.1). In summary they relate to: the claimed benefits of the proposal and its outputs particularly in relation to the amount of digestate which the facility will produce. The concerns raised by Dr Gornall also relate to whether the proposal includes equipment necessary for it to function in the way described by the appellant, namely in relation to the processing of straw and also the control of odour from the pasteurisation process.
- 4.21 On numerous occasions the Council has requested additional information from the appellant to assist it in understanding how the AD plant will operate, its impacts and how the appellant proposes to mitigate these impacts. At the time of drafting this proof of evidence the appellant has been slow to provide the requested information, provided insufficient information or failed to provide the information. In particular:
- a) **Mass balance calculation:** this was first requested by the Council on 29 November 2023, and further requests were made on 22 December 2023 and then on the 2nd, 3rd and 5th January 2024. To date the mass balance calculation has not been provided. It is understood from Dr Gornall that this calculation is necessary to understand the outputs from the digester.
 - b) **Digestate recirculation:** – details requested on 29 November 2023. The information has not been provided
 - c) **Confirmation of source of water for the process:** – details requested on 29 November 2023. Response received on 13 December 2023.

- d) **Straw storage and processing equipment:** – details requested on 29 November. Inadequate response received on 13 December 2023.
- e) **Specification of CO2 capture equipment:** – requested 29 November 2023. Confirmed on 13 December 2023 that the specification was not available.
- f) **Tanker offtake points:** – request to understand if these were no longer part of the proposal on 3 and 5 January 2024. Informed on 8 January 2024 that full details to be provided in proofs
- g) **Draft section 106 agreement:** – requested 28 November and 8, 12 and 19 December 2023. Incomplete draft provided on 22 December 2023 but title information remains incomplete at the date of preparing this proof
- h) **Draft conditions:** – first requested 28 November 2023 but not provided until 5th January 2024.

4.22 The failure of the appellant to provide full details of the operation of the AD facility has meant that that the Council has had to request that Dr Gornall undertakes a considerable piece of work to understand the operation of the AD facility and to estimate what the likely outputs of the facility are.

4.23 Furthermore, on 22 December 2023 the appellant sent the Council wholly new information in a document entitled 'Transport Skeleton Proof' (CD5.15). The tables below set out some of the key information which was amended by the appellant's latest submissions. Significantly, this contained wholly new information in relation to (a) the operation of the AD facility, and (b) expected transport movements. This information, provided on the last working day before Christmas and less than four weeks before the deadline for proofs, is inconsistent with the case which the appellant had set out in its application and appeal documents. In particular, in the application and appeal documents the appellant has promoted its scheme on the basis that it would reduce transport movements. However, it now accepts that transport movements would increase.

4.24 The detail of the many inconsistencies are set out in the evidence of Dr Gornall (CD11.1) and Mr Hanner (CD11.5). However, I have summarised the main inconsistencies in the table below:

	Net change in vehicle movements once AD operational
Transport Statement June 2022	Minus 435

Transport Statement Addendum 27 October 2022	Minus 984
Transport Statement 7 June 2023	Minus 984
Transport Planning Skeleton Proof 22 December 2023	Plus 3,413

Process Additives and Material Exported				
	Co2 (tonnes)	Propane (tonnes)	Solid digestate (tonnes)	Liquid digestate(tonnes)
Transport Statement June 2022	4,835		10,339	10,310
Transport Statement Addendum 27 October 2022	4,835	572	10,339	10,309
Transport Statement 7 June 2023	4,835	572	10,339	10,309
Transport Planning Skeleton Proof 22 December 2023	3,285	170	20,075	14,235

- 4.25 The changing figures of the appellant have significant implications for the potential traffic generation of the appeal proposal. Further, the failure of the appellant to support its figures with a full mass balance means that the traffic generation figures relating to the outputs of the proposal are based upon assertion as opposed to being justified. The evidence of Dr Gornall (CD11.1) demonstrates that the figures, particularly those relating to the production of digestate, cannot be relied upon.
- 4.26 Overall, the Council is concerned that the recent information which the appellant has produced in relation to this Appeal undermines previous assessments and claims made relating to (a) the benefits of the proposal, (b) water use and digestate

production, (c) transport movements, and (d) amenity impacts. The Council has sought to address all of the information which has been provided by the appellant in the limited time available. However, it has significant concerns that key parts of the documents which have been consulted now appear to be accepted as incomplete and / or incorrect.

- 4.27 Finally, as part of the submission of the new Landscape and Visual Impact Assessment (CD5.14) far more extensive planting is now being proposed than was proposed at the time of determination of the planning application which has resulted in the need for the Council to re-consider the landscape and visual impact of the development.

5. Benefits of the Proposal

- 5.1 The appellant has suggested that the proposed development would provide a number of benefits. The appellant summaries the benefits they consider arise from the development in paragraph 17 of their Statement of Case as follows:

- Provision of renewable energy and carbon reduction
- Economic benefits from the development
- Carbon capture and associated commercial benefits
- Reduction in diffuse pollution from the replacement of open field storage and spreading of manure
- Landscape enhancements and Biodiversity Net Gain
- Highway improvements and traffic reduction

Provision of renewable energy and carbon reduction

- 5.2 The most significant benefit listed is the production of renewable energy and consequent carbon reduction. The appellant alleges that this will consist of 39,000MWh of biomethane, which the appellant states is enough energy to serve approximately 3,250 homes. However, the calculations in the evidence provided by the Council's AD expert, Dr Gornall (CD11.1), note that ~~in order to produce this amount of energy would require a 4.5MW electrical generator running 8,760 hours and a feedstock 3.5 times the 23,950 tonnes per annum—a total of 83,825 tonnes per annum plus dilution water.~~ w With a cap on the feedstock at 23,950 tonnes per annum the level of energy generated would be materially reduced.

5.3

- 5.4 Energy production and carbon reduction were given significant weight at the time of the determination of the refused application. The reduction of these benefits in accordance with the evidence of Dr Gornall is not immaterial.-
- 5.5 Further, it is clear from the evidence of the Highway Authority (CD11.5) that there will be an increase in traffic movements. These vehicle movements will include agricultural vehicles and heavy goods vehicles, some of which will almost certainly be diesel fuelled vehicles thereby producing additional carbon emissions which have not been assessed by the appellant and included in its calculations.
- 5.6 Secondly, as documented in paragraph 98 of the evidence of Dr Gornall (CD11.3), operating the plant at a lower capacity (in this case underloaded by a factor of about 2x) is inefficient with higher energy costs per tonne of feedstock. This further reduces the level of benefit which can be attributed to the proposed development in respect of the provision of renewable energy and carbon reduction.
- 5.7 Overall, whilst the quantity of renewable energy created and the level of carbon reduction may be disputed for the reasons set out above, the plant will still produce renewable energy and in accordance with both the national and local policy support documented in section 2 of my proof this must be given considerable weight, albeit not to the degree contended by the appellant.

Economic benefits from the development

- 5.8 The appellant has asserted that the development will create up to three full time jobs, which is likely to be one skilled manager, one semiskilled operator and one general operator. It is not clear whether there are any agricultural jobs that would be lost or diverted away from the existing holding by the creation of these new jobs. If these are three entirely new employment opportunities then there is an employment benefit, but the creation of three jobs, of mixed skill requirements, is of relatively limited benefit and the weight I therefore give this is limited accordingly.
- 5.9 The appellant also contends that the development could result in a reduction in energy cost inflation. However it is considered that the contribution to this from a plant of this size would be relatively minor compared to other factors causing energy cost inflation and therefore little weight is given to this.
- 5.10 It is acknowledged that the NPPF (CD8.1) states in paragraph 88 (formerly paragraph 84) that planning policies and decisions should support the sustainable growth and expansion of all types of businesses in rural areas and the development and diversification of agricultural businesses, whilst Policies 5 and 17 of the Joint Core Strategy support rural economic growth and diversification and Policy DM2.1 of the

Local Plan Development Management Policies (CD7.1) supports proposals that create new employment opportunities and inward investment. This development enables some level of diversification through the development of renewable energy, albeit the applicant for the development itself is not the farmer, through supporting the existing farm enterprise. This is to be given some weight, however this is limited in scale given that no evidence has been provided that the development is critical to the ongoing viability of the farm enterprise or that the farmer is unable to sell the crops produced on the land to the market.

Carbon capture and associated commercial benefits

- 5.11 The application has noted that there would be benefits from carbon capture from the subsequent sale of the captured carbon dioxide for industrial purposes. This is not in itself disputed as a benefit. However, the evidence of Dr Gornal is that this has been overestimated by the Appellant. Nonetheless, it is a benefit and I consider significant weight can be given to it.

Reduction in diffuse pollution from the replacement of open field storage and spreading of manure

- 5.12 Further benefits are provided from the digestate that is a byproduct of the AD process and which can be used as instead of fertilisers or manure. The appellant notes that this will result in a reduction in diffuse pollution from reducing the use of fertilisers. The exact level to which diffuse pollution would be reduced has not been quantified and it is also of note that no measures are proposed to prevent the use of fertilisers in the future on the land. Nonetheless, the production of digestate from the process that can be used as a substitute for fertiliser or manure is not in doubt and therefore it is a fair assumption that this would lead to at least some reduction in the use of fertilisers or manure and consequent diffuse pollution. It is therefore accepted that this is another benefit, notwithstanding the doubts raised about the output of the process with the feedstock quoted.

Landscape Enhancements and Biodiversity Net Gain

- 5.13 The appellant also contends that there will be a biodiversity net gain from the provision of significant amounts of new planting and consequent habitat creation.
- 5.14 As set out in the evidence of Ms Sechi (CD11.3) and in section 6 of this report it is the Council's view that the development will result in significant harm to the landscape. It is also unclear as to how much of the planting will be secured. Little weight is therefore given to landscape enhancement as a benefit.

- 5.15 Given this planting is also integral to providing enhancements to biodiversity, it is considered that limited weight can be given to the biodiversity enhancements unless it can be secured in perpetuity in which case it will clearly provide a benefit notwithstanding the landscape impact. Whilst it is noted that accompanying the Ecological Impact Assessment there is a Biodiversity Metric Calculation Tool (CD1.24 and CD1.25) which calculates that if the planting can all be delivered there would be a 34.03% gain in habitat units and 100% gain in hedgerow units, this is dependent on the delivery of the planting. Even if the planting can be delivered, the biodiversity net gain will only be achievable if the development is acceptable in other respects.

Highway improvements and traffic reduction

- 5.16 The highway benefits listed by the appellant including a potential reduction in traffic movements are not accepted given the evidence from the Highway Authority (CD11.5) and as set out in section 6 of my proof. As I will set out, the traffic generation from the development is considered a significant harm rather than a benefit of the development.
- 5.17 Other highway benefits noted by the appellant are the proposed upgrade works of the designated haul route from the site to the A1066 are listed as a benefit. As is set out in the evidence of the Highway Authority there is considerable doubts over the deliverability of these improvements and safety concerns even if delivered due to the restricted nature of the route and also in regard to the junction where it meets the A1066. As such no weight is given to the asserted improvements to the local highway network. Indeed, they would be harmful.

6. Reasons for Refusal

Highway Impacts

- 6.1 As noted in section 2 of my proof, the primary policies that apply are policy DM3.11 which seeks to ensure that new development will not seek to endanger highway safety or the satisfactory running of the highway network, and policy DM4.1 in its reference to adverse effects being assessed against the benefits of renewable energy. In terms of whether sufficient parking and turning space is provided within the site, this has never been disputed and therefore the requirements of policy DM3.12 in regard to parking standards are considered to be met.
- 6.2 The Highway Authority has consistently objected to this application. As an expert statutory consultee, I consider that their views should be given significant weight.

- 6.3 At the outset it is necessary to highlight that the appellant's information as to the operation of the AD facility and its likely traffic generation has not been consistent throughout the application and appeal process. These discrepancies are highlighted in Mr Hanner (CD11.5) and Dr Gornall's evidence (CD11.1). Furthermore, much of the information has been based upon mere assertion without sufficient evidence to support the figures provided.
- 6.4 It is for the appellant to demonstrate the acceptability of its proposal. Given the level of discrepancies in the information provided and the lack of supporting information for key figures given, I consider that reason for refusal 2 (CD4.3) (application not supported by sufficient transport information) is justified.
- 6.5 Notwithstanding this, if the appellant's evidence is accepted then it is clear from the evidence of Mr Hanner that the proposal would have an unacceptable impact upon highway safety (reason for refusal 1, CD4.3).
- 6.6 It is the clear from Mr Hanner's evidence (CD11.5) that the Highway Authority have considerable concerns relating to the proposed development. The main areas of concern relate to:
- the suitability of the highway road network
 - the traffic generation outlined for both the existing and proposed scenarios
 - the offsite highway mitigation proposed by the appellant
 - the 'local' catchment serving the site
 - the capacity of throughput (feedstock) material; and the availability and effectiveness of measures to control and enforce this
- 6.7 As noted in section 3 of my proof in regard to the site and its context and detailed further in the proof of evidence of Mr Hanner, the local road network is heavily constrained. It comprises of typically single track lanes with little and usually informal parking provision and no pedestrian footways. Whilst there are a number of routes to the nearest main roads (the A1066 to the south and B1077 to the east), they all rely on the use of narrow and single track lanes with either no or very limited passing provision and no or very limited designated pedestrian facilities. They have been designated 'Quiet Lanes' as part of an initiative with CPRE which seeks to pay special attention to the needs of walkers, cyclists, horse riders and other vulnerable road users.
- 6.8 As a consequence of the lack of passing provision, the evidence provided by Mr Hanner (CD11.5) demonstrates that there is informal use of private accesses and field entrances by vehicles passing each other. This results in vehicle overrunning and leading to these informal passing places becoming rutted and uneven. This would be exacerbated by traffic generated by the development, made particularly problematic

by the size of the vehicles that would serve the development. This would result in hazardous reversing and manoeuvring resulting in a danger to users of the highway network.

- 6.9 In addition, an increase in vehicle movements of the size that would serve the development would also pose a safety concern for pedestrians and cyclists who also need to use the carriageway in the absence of any designated facilities. This is particularly the case where pedestrian and cyclists would need to pass the large vehicles needed to serve the AD plant.
- 6.10 Finally, the evidence from Mr Hanner (CD11.5) identifies a danger to highway safety from loose unbound material spreading into the carriageway as a result of overrunning the verges which would be exacerbated by vehicles serving the AD plant. This would result in an increase in skidding hazard, particularly for cyclists and motorcyclists.
- 6.11 It is therefore clear that the highway network is unsuited to use for large commercial vehicles and any material increase in traffic gives rise to serious safety concerns for reasons set out above.
- 6.12 During the application and also as part of their Statement of Case (CD5.1), the Appellant maintained that, if permitted, the proposals would lead to a substantial net reduction in highway movements per annum (for example in paragraph 30.7.1 of the Appellant's Statement of Case (CD5.1)). The Highway Authority has been consistent and clear in its position that the evidence does not support this conclusion and that the proposal would in fact lead to a material increase in traffic on the wholly unsuitable road network.
- 6.13 The appellant has now submitted information that accepts that there would be a material increase in highway movements as a result of the proposed development. This estimates that there will be some 3,413 new trips per annum will be associated with the proposed AD plant. It breaks this down on the assumption of 260 working days which equates to an increase of 2 HCV movements per day, and 13 car and LGV trips per day.
- 6.14 Mr Hanner concludes that this level of traffic generation would lead to an unacceptable impact upon highway safety (CD11.5).
- 6.15 In reality, however, as set out in the evidence of Mr Hanner (CD11.5), the traffic generation of the proposal would be much greater. First, this is because all traffic movements associated with the AD plant (i.e. including the delivery of feedstock and movement of digestate) should be considered new movements. Mr Hanner has reached this conclusion because (a) the application does not seek to limit the operation

of the wider farm enterprise and therefore there is nothing to prevent the farm from continuing to use areas within or close to Deal Farm for the storage and export of crops and manures and (b) the appellant's figures have not justified the levels of movement which are said to be existing.

- 6.16 Second, Mr Hanner concludes that even if some movements were considered to be replacement movements then the level of replacement movements has not been justified by the appellant and on the basis of the figures presented by the appellant has significantly overestimated the level of replacement movements. Overall, as set out in the evidence of Mr Hanner, the traffic generation of the proposal is considerably greater than that which is asserted by the appellant.
- 6.17 Mr Hanner explains that even if the traffic generation were simply the 3,413 new trips asserted by the appellant (though this figure has not been evidenced) then this would cause an unacceptable impact upon highway safety due to the increased risk in conflict between vehicles, conflict between vehicles and vulnerable road users and also the potential for the overrunning of the carriageway to lead to material to enter the highway and cause vehicles to lose control.
- 6.18 Clearly, if the traffic generation of the proposal were higher (including all or some of the feedstock and digestate trips, as set out by Mr Hanner) then the proposal would lead to an even more unacceptable impact upon highway safety.
- 6.19 In regard to the proposed off-site highway improvements, the Highway Authority have detailed in their proof of evidence (CD11.5) that they do not support the scheme noting that the route proposed is wholly inadequate to cater for any significant increase in traffic. They also identify a significant concern with the safety of the proposals including the nature of Halford Lane at its junction with the A1066 which could result in vehicles waiting on the A1066 or worse still reversing / manoeuvring out onto the A1066. The Highway Authority's concerns are supported by the appellant's own road safety audit (CD2.7).
- 6.20 However even if the mitigation scheme were to be acceptable in principle there are, as set out in their evidence, considerable doubts over the deliverability of the scheme and the ability to ensure that vehicles supplying the site use the route even if the works were delivered. Specifically, the drawings submitted are lacking in detail and do not include highway boundary or land ownership information, which is of particular concern given the narrow / banked verges and roadside third party ditches. Both the Council and the Highway Authority would expect to have confidence that any such off-site highway works could be delivered safely before we could give such a scheme any weight. On the basis of the information provided the ability to deliver the highway improvements has not been demonstrated.

6.21 Further, in seeking to address the highway impact of its proposal, including the fact that the capacity of the proposal is much greater than the proposed throughput, the appellant's case relies a great deal on the potential for traffic movements to and from the site to be controlled by condition and obligations through a section 106 agreement (CD5.6). These conditions are proposed to:

- restrict the feedstock to a maximum of 23,950 tonnes per annum;
- restrict the times at which heavy commercial vehicles (HCVs) can enter or leave the site;
- limit the numbers of HCV movements in and out of the site each day;
- require the submission of a Servicing and Delivery Plan, and
- require all commercial traffic accessing the site to adhere to the haul route which will be set out in that Plan.

6.22 For the avoidance of doubt, it is the Council's position that even if the Appellant's proposed conditions could be enforced the highway impact of the proposed development would still be unacceptable for the reasons set out in the evidence of Mr Hanner. In any event, the Council considers that the conditions proposed by the Appellant would not meet the relevant tests for conditions. The Council's concerns about the ability to enforce these conditions were first set out in paragraphs 5.34 to 5.40 as well as 5.56 of the Committee Report on this application. As set out there, any conditions need to comply with the six tests as set out in the PPG. For clarity they are set out again here, summarised from Circular 11/95:

1) Where they are necessary

Will it be appropriate to refuse the planning application without the requirements imposed by the condition?

2) Where they are relevant to planning

Does the condition relate to planning objectives and is it within the scope of the permission to which it is to be attached?

3) Where they are relevant to the development to be permitted

Does the condition fairly and reasonably relate to the development to be permitted?

4) Where they are enforceable

Would it be practicably possible to enforce the condition?

5) Where they are precise

Is the condition written in a way that makes it clear to the applicant and others must be done to comply with it?

6) Where they are reasonable in all other respects

Is the condition reasonable?

- 6.23 One of the Council's key concerns with how the conditions proposed could realistically be effective is the fact that the AD plant does not stand in isolation. Whilst the applicant may not be the farmer of Deal Farm as was the case in the 2015 permission, the AD plant would nonetheless still form part of the wider Deal Farm site. This in turn is, as mentioned above, linked to The Oaks site close by. These two sites generate a range of agricultural and commercial movements, many of which are similar in character to the movements to the AD plant. Indeed it is possible that at times some vehicle movements may serve both agricultural operations on the site and the AD plant given that it is proposed that the farmer will be heavily involved with supplying the AD plant with feedstock.
- 6.24 As such there would clearly be issues in distinguishing traffic movements between the AD plant and agricultural and other commercial operations on the wider site. This would be exacerbated by the fact that although the AD plant has its own access onto Common Road, there is the ability for vehicles to move between the existing agricultural site at Deal Farm and the AD plant within the site, as recognised by the appellant's own supporting documents which state that pig and chicken manure would be supplied from agricultural operations at Deal Farm to the AD farm site without needing to enter the highway network. It is also possible to use the existing access from Kenninghall Road to enter the AD plant site.
- 6.25 This would make the enforcement of conditions relating to number and timing of vehicles entering and leaving the site to serve the AD plant, as well as the routing to the site, extremely difficult to monitor and enforce against should a breach be suspected.
- 6.26 This has also been borne out in decisions by Planning Inspectors on appeals. For example, an appeal in West Sussex (Appeal Decision APP/L3815/C/15/3133236 and 3133237 – CD9.1) considered a similar development of an AD plant in a rural location. Amongst the issues considered were the ability of the local highway network to accommodate the development. It is of note that in paragraph 65 of the appeal decision, the Inspector notes that whilst they accept that conditions could control the flow of HGVs into and out of the appeal site, they were not persuaded that they could

be sufficiently effective. It is considered that the same concerns over the effectiveness of such conditions apply in this case.

- 6.27 As such I do not consider such a condition to be enforceable.
- 6.28 In regard to a condition setting an annual cap on feedstock well below the capacity of the plant, it should be noted that it is clear from Mr Hanner's evidence (CD11.5) that even with a reduced level of feedstock the impact on the highway network would still be unacceptable. Notwithstanding this, the Council does not have any way to actively monitor the feedstock being delivered as it cannot ensure that records kept are accurate. It is also the case that the plant could be run at reduced output for a portion of the year to comply with the condition capping the annual feedstock. This could result in a concentration of traffic movements during periods of the year when the output is increased with intensive traffic movements during that period. Coupled with concerns outlined above with conditions that seek to limit daily traffic movements, it is my view that such a condition in this instance would not provide the necessary control to ensure that traffic movements from the development are controlled to a level that is acceptable.
- 6.29 As regards to whether the Council could ensure through condition that vehicles supplying the development used the proposed haul route, I would consider that such a condition would be extremely difficult to enforce for similar reasons as set out above in regard to the proposed conditions limiting the numbers of Heavy Commercial Vehicles accessing the site. As noted in the evidence provided by the Highway Authority (CD11.5), the examples referred to by the appellant largely refer to construction schemes where the controlling of the traffic will be over a short controlled period rather than for the life of the development, as in this case. One example is given of an AD plant, however this plant is not comparable in that it benefits from access, via a private access road, directly onto an A class major road.
- 6.30 The Highway Authority's evidence (CD11.5) also highlights that good compliance can only realistically be expected where the route is a realistic route which vehicles accessing the site would take. In this case it would clearly not be a realistic route for vehicles accessing from the B1077 to the north and east of the site.
- 6.31 As such I remain of the view that the conditions proposed would be extremely difficult to enforce in practice and ultimately would not ensure that there is not an unacceptable impact on the local highway network if the Council's primary case were to be rejected, namely that the impact of the development upon the highway network is unacceptable even if the conditions were reasonable and could be enforced.

- 6.32 In addition, since the refusal of the planning application the appellant has also proposed a section 106 agreement (CD5.6) which is intended to bind the landowner of the surrounding farm. It is suggested that the planning obligation could require:
- that 5,500 tonnes of manure from the farm immediately adjoining the site will be provided for use in the anaerobic digestion plant;
 - that the remainder of the manure produced would continue to be spread within the owner's existing landholding with a further restriction that it is only spread on land within a 5km radius, and
 - dedicate a portion of the farmer's land to service the AD plant including the first 3,500 tonnes of maize, 5,000 tonnes of grass and 800 tonnes of straw
- 6.33 The planning conditions in the heads of term (paragraph 6) have required significant amendment and expansion to control the development in line with the parameters proposed by the appellant. The increase of HCV movements during the maize harvest by 60 movements per day, which was suggested in the heads of terms (paragraph 6.3) and the initial draft conditions from the appellant was not supported by the appellant's own transport analysis.
- 6.34 Despite the appellant's assertion in the heads that a section 106 agreement was not necessary (paragraph 14) a comprehensive section 106 agreement is required to secure a number of obligations due to their complexity (for instance the restrictions on feedstocks sourcing) and to bind land outside the Development boundaries (for instance provisions for landscaping on the surrounding farmland).
- 6.35 Whilst the draft section 106 agreement (CD5.7) provided by the appellant requires the surrounding land to supply feedstocks to the Development it did not restrict the use of additional feedstocks from further afield. The supplied section 106 agreement therefore secures the commercial relationship between the farmer and the Development's operator but does not secure the restrictions implied by paragraph 20 of the heads.
- 6.36 In contrast with paragraph 18 of the heads, the draft section 106 agreement is not accompanied by a full title. The documents that were supplied indicated that Desmond George Aves / R G Aves and Partners do not own a significant portion of the farmland that the appellant suggests should be bound by the agreement. It is not clear how the appellant considers this could operate.
- 6.37 As such there is still significant uncertainty about what other operations would continue on site or what other sources would be needed to supply the plant with sufficient feedstock up to the level of the cap on the feedstock, and therefore from where and what distance this additional feedstock would have to travel. The draft section 106 agreement also fails to clarify if the stipulations would be for the life of the development

and what would happen in the event that the farmer of the adjoining land or another third party supplier sold their land. In the absence of full details of what such a section 106 agreement would secure it is not possible to rely on this as part of a package of measures to ensure there is no adverse impact on highway safety.

- 6.38 At the time of writing this proof, the section 106 agreement under discussion with the appellant with a revised draft having been provided by the Council to the appellant. It is unclear whether the proposed drafting changes are acceptable to the appellant. The Council will comment upon any revised draft when it becomes available.
- 6.39 Overall, it is clear that the development would have a serious adverse impact on the safe functioning of the local highway network. As set out in paragraph 2.3 of my proof Policy DM3.11 (CD7.1) states that on all sites development will not be permitted that endangers highway safety or the satisfactory functioning of the highway network. The development therefore clearly conflicts with this policy. It is considered that great weight should be given to non-compliance with policy DM3.11 as it is a policy central to the Local Plan in ensuring that development does not result in unacceptable adverse impacts on highway safety. Policy DM3.11 is consistent with paragraphs 114(b) and 115 of the NPPF. Given the importance of policy DM3.11 I consider that breach of this policy is sufficient to represent a breach of the development plan as a whole.
- 6.40 The highway safety impacts also amount to significant adverse effects that result in a conflict with policy DM4.1.
- 6.41 In addition to the conflict with the Local Plan policies, the adverse impacts upon highway safety means that the application is also in conflict with key paragraphs of the NPPF (CD8.1). Specifically, the proposal fails clause (b) of paragraph 114 in that a safe and suitable access cannot be achieved due to constraints of the local highway network, and paragraph 115 in that the development would have an unacceptable impact on highway safety. Furthermore, the development conflicts with criterion (b) of paragraph 163 of the NPPF as its impacts cannot be made acceptable.

Landscape Impacts

- 6.42 In regard to landscape, the primary policies as noted in section 2 of my proof are policies DM4.5 of the South Norfolk Local Plan Development Management Policies document 2015 (CD7.1), and DM4.1 where consideration of the effect of renewable energy development on the character and appearance of the landscape is specifically referenced. The key test in policy DM4.5 is whether the development will cause significant adverse effects on elements of the local landscape character as well as the wider rural landscape.

- 6.43 At the time of refusal of the planning application the Council had strong concerns about the landscape and visual impact of this development. This stemmed in part from the visual impact of the plant itself, and in particular the domes. Whilst the planting as proposed could help mitigate closer views of the development such as from Common Road, or at least to some extent once the planting was established, this planting would be insufficient to mitigate against the impact in longer distance views where the domes would be seen as an incongruous feature in a number of long distance views. The second part of the Council's concern was of the lagoon to the south which would have involved banking and remodelling of the landform to create an artificial feature in the landscape which would not have related to any existing landscaping feature.
- 6.44 As part of this appeal, a new Landscape and Visual Impact Assessment (LVIA) (CD5.14) has been submitted by the appellant which includes considerably more mitigation through new planting proposals that did not form part of the application at the time of the refusal of the application. These consist of new screening boundary woodlands to the AD plant and lagoons, new screening woodland on the bund on the site boundary to the east and south of the AD plant structures, the establishment of a second line of mitigation along plateau lanes and public rights of way, and the location of specimen native trees in the existing hedgerow and along Stone Lane.
- 6.45 Notwithstanding this, the evidence of Ms Sechi (CD11.3) still shows that there are significant adverse effects on the following distinctive characteristics:
- a) The rural qualities of the local landscape due to the following key concerns:
 - Reduction of sense of openness due to sprawling of the existing nucleated farmstead's buildings cluster and introduction of mitigation planting which encloses views along footpaths and roads;
 - The digestive domes are atypical structures which do not reflect local rural architecture qualities; and
 - The lagoons will introduce intrusive engineered features.
 - b) Tranquillity of a rural, remote landscape due to the following key concern:
 - Increased traffic on the local network of secondary rural lanes
- 6.46 As also noted in the evidence of Ms Sechi (CD11.3), landscape effects are linked to the visual experience of the landscape and harm to local character can also translate into harm to the visual amenity. In visual terms, the key concerns are:
- c) The proposal will be visible by a number of sensitive receptors on the local network of public rights of way (PRoWs) introducing a built form of inconsistent scale, height and form with the contextual farming facilities.

- d) The proposal will cause a loss of sense of rural remoteness with the introduction of a disrupting, atypical built form.
 - e) The proposal will interrupt extensive vistas of the rural landscape by introducing hedgerows and trees along roads and PROWs.
- 6.47 The evidence of Ms Sechi (CD11.3) makes it clear that the digesters themselves are an inappropriate form of development for this location. This is because the domes and are taller than the existing farm context, they are an incoherent in architectural terms as they are domed rather than the pitched roof buildings that characterise the existing farm site, the double colour finish, and the extension of the farmstead area into the countryside. None of the round shape or height of the digesters, or the double colour finish is replicated anywhere else in the study area.
- 6.48 The landscape effects of the development's impact have been considered on the following receptors:
- Sense of openness, with a landscape consisting of extensive arable farmland with large scale fields and a noticeable absence of boundaries and with expansive skies and distant views
 - Farmstead composition and style, consisting of small scale farmhouses surrounded by some larger agricultural buildings but which are relatively low height and with pitched roofs
 - Vegetation cover, in regard to a landscape that has never been know for its woodland cover but has lost through time the historical hedgerow cover
 - Tranquillity, in regard to the network of quiet, narrow rural lanes in the area
 - The site, consisting of the AD plant site itself and the two proposed lagoons
- 6.49 It is clear that before the planting reaches some maturity the proposed development results in some moderate and major adverse effects on the identified receptors. These receptors are defining elements of the local rural character and therefore Ms Sechi's evidence (CD11.3) concludes that there would be adverse and major effects on the local rural landscape due to the considerable changes in its composition.
- 6.50 It is assumed that by Year 15 the proposed planting scheme will have reached sufficient maturity to become a noticeable feature which would affect the development of the identified receptors. In doing so whilst finding some benefit from the introduction of hedgerows and trees, Ms Sechi concludes that the planting will reduce the sense of openness resulting in major adverse harm to the scenic qualities of the receptor associated with the extensive rural vistas characteristic of this area. Ms Sechi also finds that the increased vegetation cover would have moderate adverse impacts on the distinctive sense of openness receptor. Similarly the introduction of a hedgerow pattern will increase the sense of enclosure limiting rural vistas, and therefore reinforcing the above described major adverse effects.

- 6.51 In regard to assessing the visual effects of the development Ms Sechi agrees with the key visual receptors set out in the appellant's LVIA as being:
- Motorists travelling along local roads and lanes
 - Walkers and cyclists using local footpaths
 - Cyclists and pedestrians using local roads and lanes
- 6.52 Ms Sechi has assessed the proposal from a slightly different selection of viewpoints from the LVIA (CD5.14). This is to provide for a selection of views for all the identified receptors, and to focus on views where the visual impact of the proposal is the greatest. The full detail of these viewpoints is set out in Ms Sechi's evidence (CD11.3).
- 6.53 Similarly to the landscape effects, there is assumed to be very little influence of the proposed planting scheme in Year 1 to 5. By Year 15, it is accepted that the proposed planting will have reached sufficient maturity to become a noticeable feature that achieves a level of screening of the development in a number of the viewpoints. However, the evidence of Ms Sechi (CD11.3) concludes in contrast to the findings of the LVIA (CD5.14) that there remain significant adverse effects. Ms Sechi notes that this discrepancy fully lies in the different considerations on the effects of the planting scheme, with the LVIA focusing on the screening that the planting provides, whilst Ms Sechi's evidence concludes that the effects on the loss of the sense of openness should be given considerable weight as it is a distinctive feature of the local landscape character.
- 6.54 It is also clear that the scale of the proposed development is much larger than the scale of development needed for operating a plant at the capacity the appellant is proposing. As a consequence regardless of what mitigation is put in place the visual impact is greater than it needs to be. Put simply, the proposed development causes unnecessary harms, the existence of which is considered further in section 7 of this proof.
- 6.55 Furthermore, given the context of the Government direction on retrospective application outlined in paragraph 2.20 of this proof of evidence it is not acceptable to try and justify this additional visual impact simply on the basis that it has been constructed as such even though that scale of construction is not required for the scale of the business envisaged.
- 6.56 There also remains some doubt as to the ability to deliver the planting due to the fact the majority of it will fall outside of the red line and is on land not under the applicant's control. At this stage no evidence has been provided as to how it will be secured and required to be maintained in perpetuity. It has also not been demonstrated that it could

be delivered without compromising highway safety from reduced visibility, although this could be achieved through details submitted in a section 106 agreement.

- 6.57 It is noted that in the appellant's further submissions of November 2023, reference is made to permitted development rights that exist for the erection of structures for agricultural use under Part 6 of The Town and Country Planning (General Permitted Development) (England) Order 2015 which they allege could include structures comparable to many components of the development that is subject to this appeal.
- 6.58 It is unclear at the time of writing this proof what point the Appellant wishes to make about this. I note that the relevant permitted development right that applies under Class A of the Part 6 of the General Permitted Development Order for the erection of a building that is 'reasonably necessary for the purposes of agriculture within that unit' and that such a building could be up to 12 metres in height. The appellant has not made any case that it is reasonably necessary for it to erect a 12 metre high building. Furthermore, even if it did seek to erect such a building then it would require prior approval for siting, design and external appearance. As such, the permitted development right does not represent a 'fallback position'. Finally, 12 metres is materially lower than the domes and also the lightning rods.
- 6.59 Further to the above there is potential landscape harm that has not been fully assessed due to the lack of information provided.
- 6.60 Firstly, there is a potential level of visual harm from the proposed works to upgrade the proposed haul route from the site to the A1066 given the current very rural character of the route. This was raised in the Officers Committee report (CD4.1) in paragraph 5.54 where it states that "*such improvement works could have an impact on the character of the area which would also need to be considered.*" This applies, in particular but not limited to Nordle Corner, Algar Road and The Valley where widening works would change their character and also potentially have landscape impacts from requiring the removal of vegetation and in the case of The Valley potential remodelling of the land. It is noted that in the Appeal Decision referred to in para 6.26 of my proof (ref: APP/L3815/C/15/3133236 and 3133237 – CD9.1) the Inspector there also gave weight in paragraph 66 about the harm the proposed highway improvements would cause to the rural character of a country lane.
- 6.61 A further potential harm is from the pipelines to the digestate lagoons. These are proposed to be laid underground. There is a possibility that this could affect the root protection areas of protected trees along Lady's Lane and around Folly Farm on the pipeline to the south of Deal Farm. The appellant has provided no evidence in relation to this.

- 6.62 Putting aside the issue of the haul route and the pipelines, it is clear from the evidence that there are major adverse effects of the development both in relation to landscape and visual effects and the loss of a sense of openness even assuming the planting can be delivered. It is for these reasons that the Council consider that the development will have significant adverse effects on elements of the local landscape character as well as the wider rural landscape and therefore the development conflicts with policy DM4.5 (CD7.1), as well as failing the test for significant adverse effects in policy DM4.1. It is considered that great weight should be given to non compliance with policy DM4.5 as it is a policy central to the Local Plan in ensuring that development does not result in unacceptable adverse impacts on the landscape of the district. The breach in the policies DM4.1 and DM4.5 are sufficient in my opinion to amount to a breach of the development plan as a whole.
- 6.63 Furthermore, the proposal conflicts with paragraph 135 of the NPPF (CD8.1) as the development does not add to the overall quality of the area, is not visually attractive, and is not sympathetic to the local character or landscape setting. It also conflict with paragraph 180 as it does not protect or enhance the landscape or recognise the intrinsic character and beauty of the landscape. As a result the proposal also conflicts with paragraph including 163(b) as the landscape impacts cannot be made acceptable.

Other Issues

- 6.64 At the time of determination of the application, the Council had concluded that concerns over noise disturbance were addressed by measures within the Noise Impact Assessment (CD1.30) and that any noise impact could be satisfactorily controlled through a condition proposed by the Council's Environmental Quality Officer (CD3.19) to ensure that any noise levels away from the site would not have an unacceptable impact, including on nearby residential properties. The Council had no reason to doubt the assessment which had been done.
- 6.65 Additional information submitted since the determination of the application has brought into question whether this conclusion is correct. As stated in paragraph 11 of the Council's Supplementary Statement of Case (CD5.5), the applicant has now submitted details of the noise rating of the CO2 capture equipment which may in due course be specified with a noise output of 75dBA at ten metres. This piece of equipment was not specified in the application and did not therefore form part of the Noise Assessment submitted with the application. In the absence of any such assessment, it is unclear whether this noise impact can be mitigated.
- 6.66 Equally, in regard to odour the Council in determining the application raised no concerns with the conclusions of the Odour Assessment (CD1.36) submitted with the application that predicted odour concentrations would be well below the relevant

benchmark level at all sensitive receptors. It had no reason to question the assessment prepared by professional consultants.

- 6.67 The appellant has since submitted details how they are proposing to control odour from the pasteurisation process. This consists of additional equipment which was not shown on the application plans. In Line 6 of the table at appendix B of the Council's Supplementary Statement of Case it is stated that 'Swan neck valves on each of the pasteurisation tanks shall be connected to feed either a carbon filter or acid scrubber filter for the treatment of displaced air within the pasteurisers'. It is understood that a carbon filter and an acid scrubber would amount to built development. As such and as set out in paragraph 9 of the Council's Supplementary Statement of Case, it would appear that the scheme which has been proposed would not adequately control odour from the pasteurisation process. Without such equipment, and in the absence of any assessment of this feature, the Council considers that the proposed plant would potentially have an adverse effect upon residential amenity.
- 6.68 On the basis of the information now before the Council we cannot conclude that the proposal would not have an adverse impact on amenity from noise and odour pollution, which would conflict with policy DM3.13 (CD7.1). The Council has therefore invited the Appellant to demonstrate how these issues can be addressed.
- 6.69 Moreover, the review of the application by Dr Gornall (CD11.1) has revealed two further issues with the application. Given the refusal of the appellant to provide full process calculations including the mass balance for its proposal it has been necessary for Dr Gornall to provide his own calculations. Dr Gornall has concluded that the application does not provide for enough storage of digestate in the proposed lagoons. The appellant has stated that nine months storage is required. However, the proposal does not include this. If nine months storage is required then it would appear that the appellant's proposal may be unworkable (unless the digestate can be sold or stored elsewhere). If it is unworkable then the benefits asserted by the appellant will not arise.
- 6.70 Furthermore, Dr Gornall has highlighted that the AD plant does not include a mechanism for the processing of straw. He explains that straw must be processed before it is fed into the anaerobic digester. If the application proposal does not include a mechanism for straw to be processed then it would again appear that the application proposal is unworkable and that the asserted benefits would not arise.

7. Unnecessary harm and alternatives

- 7.1 As stated above, the appellant is proposing to build an anaerobic digestion plant which is considerably larger than needed to process the amount of feedstock proposed. As well as reducing the benefits of the scheme due to the inefficiencies this creates (as explained in the evidence of Dr Gornall (CD11.1)), this also means that the scheme creates an unnecessary level of harm, in particular in landscape-visual harm as noted in paragraph 6.54. Put another way, the benefits of the scheme could equally be achieved by a less harmful development.
- 7.2 In my judgment, the fact that an alternative scheme could be designed which would deliver the same (or even greater) benefits whilst causing less harm is a material consideration weighing against the grant of planning permission. Furthermore, such a scheme would be much simpler to control in terms of vehicle movements by virtue of the feedstock input being physically limited by the constraints of the design of the plant.

8. Planning Balance

- 8.1 The NPPF (CD8.1) instructs local planning authorities to approve applications for renewable energy if the impacts can be made acceptable. Likewise, policy DM4.1 of the Local Plan (CD7.1) states that permission will be granted where there are no significant adverse effects or where any adverse effects are outweighed by the benefits.
- 8.2 There is a considerable benefit from the provision of renewable energy, albeit that the scale of the renewable energy able to be produced is likely to be less than the appellant has claimed for the reasons set out in the evidence of Dr Gornall (CD11.1) and summarised above. Likewise, there are considerable benefits from the reduction in diffuse pollution and the carbon capture element of the development.
- 8.3 As set out in section 5, there will also be more limited benefits in regard to a limited level of additional employment along with further benefits in terms of biodiversity net gain in the event that all the mitigation planting can be delivered.
- 8.4 However it is clear from section 6 of my proof along with the evidence provided by the Council's expert witnesses (CDs 11.1, 11.3 and 11.5) that significant harms would be caused by the proposed development. It is also the case that these benefits could be delivered by a less harmful scheme as set out in section 7.
- 8.5 It is acknowledged that the proposal complies with policies DM2.1 in that it provides for creation of new employment opportunities and inward investment, DM3.12 as adequate parking is provided on the site, DM3.14 in regard to wider pollution issues

(as opposed to specific local amenity issues such as noise and odour), DM4.2 in regard to flood risk and drainage, DM4.4 in regard to designated environmental assets (not including landscape impact covered by policy DM4.5) and DM4.10 in regard to the impact of the development on heritage assets. Compliance with policy DM4.9 is unclear due to the uncertainty over delivery. It is also considered that the development complies with Policies 3, 5, 17 of the Joint Core Strategy (CD7.0).

- 8.6 Despite compliance with these policies, there is a breach of the development plan as a whole.
- 8.7 First, in relation to the impact of the proposal on highway safety. This is an unacceptable adverse effect and a significant adverse effect that would in my opinion outweigh the benefits of the development even if they were as stated by the appellant, such that policy DM4.1 would not be complied with as the proposal would result in significant adverse impacts. Additionally, the proposed development conflicts with key Local Plan policy DM3.11 due to the development endangering highway safety and compromising the satisfactory functioning of the highway network. This issue is of sufficient weight to amount to a breach of the development plan as a whole even on its own.
- 8.8 It is also clear that the development would result in major adverse effects relating to landscape and visual effects and the loss of a sense of openness even assuming the planting can be delivered. These to constitute significant adverse effects that outweigh the benefits of the renewable energy such that policy DM4.1 would not be complied with. There is also a clear conflict with key Local Plan policy DM4.5. Again, I consider that this is an issue that is sufficient to amount to a breach of the development plan in and of itself.
- 8.9 As a consequence of failing to comply with policy DM4.1, the development cannot therefore comply with criterion 2c) of policy DM1.3 which sets out that development outside development boundaries where specific development management policies allow for it (policy DM4.1 being the relevant specific development management policy in this case). Criterion 2d) of policy DM1.3 does allow for development outside of development boundaries where it does not comply with a specific Development Management Policies if it is demonstrated that there are overriding benefits in terms of economic, social and environmental dimensions. For the reasons set out in the paragraphs above, it is considered that the harms are such that they are not outweighed by any economic, social or environmental benefits and as such it cannot be considered that there are overriding benefits in any of these respects.
- 8.10 It should also be noted that there are a number of other policies that the development does not comply with as a consequence of its failure to accord with the above key

policies. This includes policy DM1.1 as the Council have been unable to find solutions so that the proposal can comply with the Local Plan and be approved without delay, policy DM3.8 in that by virtue of its landscape impact and failure to comply with policy DM4.5 it cannot therefore be considered to be successfully integrated into its surroundings as required by this policy, and policy DM4.9 as the landscaping scheme cannot be considered acceptable given the failure of the wider scheme to accord with policy DM4.5. Similarly, as a consequence of its conflict with policy DM3.11 the proposal does not accord with Policy 6 of the Joint Core Strategy, and due to its failure to accord with policy DM4.5 the proposal is in conflict with the aspirations of policies 1 and 2 of the Joint Core Strategy which seek to protect environmental assets and landscape character respectively.

8.11 In regard to Section 38(6) of the Planning and Compulsory Purchase Act 2004, read together with section 70(2) of the Town and Country Planning Act 1990, consideration has been given to other material considerations, including all the benefits that are set out and considered in section 5. However for the reasons set out none have been identified that would lead the Council to a different conclusion. Indeed, as I have set out above, here a powerful material consideration is the fact that the benefits of the proposal can be delivered in a materially less harmful way. This weighs against approval of the scheme,

8.12 As set out in paragraph 2.9, the Council has also conducted an assessment of the development against the policies in the Norfolk Minerals and Waste Core Strategy & Development Management Policies DPD (2011) (CD7.2), should the Inspector consider these relevant. The Council has assessed the development against these policies and reached the following conclusions:

Policy CS3: Waste Management Capacity to be provided

8.13 This policy sets out the strategy for providing sufficient waste management capacity. It is considered that the proposal complies as it provides some additional waste capacity. It should be noted that compliance with this policy does not override the need to comply with other policies in the Plan.

Policy CS4: New Waste Management Capacity to be provided

8.14 This policy sets out the new waste management capacity to be provided over the plan period. It is considered that the proposal complies as it provides some additional waste capacity, which would contribute towards the 112,000 tonnes of recycling and composting facilities for 2020-26 set out in the policy. It should be noted that compliance with this policy does not override the need to comply with other policies in the Plan.

Policy CS5: General Location of Waste Management Facilities

8.15 This policy sets out the criteria as for in which locations waste management facilities will be considered acceptable. The proposed development falls within the criteria for

“Non-strategic” waste facilities within the policy. The policy states a preference for such facilities to be well related one of the main settlements, of which is Diss is listed. Notwithstanding this, it acknowledges that there may be sites that are not well related to such settlements but should be well related to the major road network or take advantage of cross-border opportunities or enable the re-use of brownfield sites unsuitable for other uses.

8.16 The site is some distance from Diss and in a clearly rural location and therefore not well related to that town. It is not considered to be well related to the major road network given the distance to the A1066 and the highly constrained nature of the road network in the immediate vicinity of the site, nor for similar reasons is it well placed to take advantage of cross-border opportunities. It is also not a brownfield site.

8.17 It is therefore considered that the development conflicts with this policy.

Policy CS6: General Waste Management Considerations

8.18 This policy sets out sites where waste sites would be acceptable. It is considered that the proposal conflicts with this policy as it is not land already in waste management use; existing industrial / employment land or identified for these uses in a Local Plan or Development Plan document; previously developed land; contaminated or derelict land; a site at an existing mineral working or landfill site, or an unused or under-used agricultural and forestry building or its curtilage. If the site is considered within the curtilage of an agricultural building then the policy only supports such development where ‘impacts on the rural environment’ are acceptable. The Council considers that the highway and landscape impacts of the proposal are not acceptable.

Policy CS7: Recycling, composting, anaerobic digestion, and waste transfer stations

8.19 This policy sets out that the expansion or development of new recycling, composting and anaerobic digestion facilities will be considered favourably, so long as they would not cause unacceptable environmental, amenity and / or highway impacts. The Council consider, for the reasons set out in the refusal of the planning application and in section 6 of this Proof of Evidence, that there would be unacceptable environmental and highway impacts and therefore the development conflicts with this policy. The Council preserves its position in relation to the new information provided by the Appellants and the issue of noise and odour.

Policy CS13: Climate Change and renewable energy generation

8.20 The proposal complies with this policy as a waste development that generates renewable energy. It should be noted that compliance with this policy does not override the need to comply with other policies in the Plan.

Policy CS14: Environmental Protection

8.21 The policy states that the protection and enhancement of Norfolk’s natural and built environments is a vital consideration of the development of waste management facilities in the County. It goes on to note that developments must ensure there are no unacceptable adverse impacts on, and ideally improvements to, a number of criteria including the character and quality of the landscape and residential amenity. The Council considers that the proposal would lead to unacceptable adverse impacts as a result of the landscape impact of the proposal for the reasons set out in the refusal of the planning application and in section 6 of this Proof of Evidence and therefore there

is clear conflict with this policy. As above, the Council preserves its position in relation to the new information provided by the Appellants and the issue of noise and odour.

Policy CS15: Transport

- 8.22 The policy states that waste development proposals will be considered acceptable where the anticipated HGV movements do not generate (a) unacceptable risks to the safety of road users and pedestrians, (b) unacceptable impacts on the efficiency of the highway network, (c) unacceptable impacts on air quality, (d) unacceptable impacts on the natural and historic environment and (e) unacceptable physical impacts on the highway network. Due to the adverse highways impacts and constraint of the local highway network which the Council has identified it is considered that the development would conflict with criteria (a), (b) and (e).

Policy DM1: Nature Conservation

- 8.23 This policy sets out that where development would harm locally designated nature conservation and geodiversity site and / or habitats, species or features identified in UK and Norfolk biodiversity and geodiversity action plans they will only be permitted where sufficient mitigation or compensatory habitats can be provided. In the consideration of the application it was established that the development could be constructed and operated with sufficient mitigation to ensure there would not be unacceptable adverse impacts in respect of nature conservation and therefore the proposal is considered to accord with this policy.

Policy DM3: Groundwater and Surface Water

- 8.24 This policy notes that applications will need to give due regard to Environment Agency documents regarding ground water and ensure that they do not adversely impact upon groundwater quality or resources and surface water quality or resources. In the consideration of the application it was established that the development could be constructed and operated without unacceptable adverse impacts in the respect of ground water and surface water subject to appropriate conditions and therefore the proposal is considered to accord with this policy.

Policy DM4: Flood Risk

- 8.25 This policy sets out where the Sequential Test, and if necessary the Exception Test, will need to be applied for new waste management facilities and also where a Flood Risk Assessment will be required. This development did not trigger the requirements for a Sequential Test or an Exception Test, whilst an adequate Flood Risk Assessment provided satisfying the Council that the development would not increase flood risk. As such the proposal complies with this policy.

Policy DM8: Design, local landscape and townscape character

- 8.26 This policy states that 'Development will be permitted if it will not harm the conservation of, or prevent the enhancement of the landscape and townscape... taking into account any appropriate mitigation measures'. It also notes the development must promote good design that is compatible with the surrounding landscape and sets out requirements or adequate assessment of the impact on the landscape. For the reasons set out in the refusal of the application and section 6 of this Proof of Evidence it is not considered that the proposal will be compatible with the surrounding landscape and that the development will result in harm to the landscape. As such it is considered that the proposal will conflict with this policy.

Policy DM9: Archaeological Sites

- 8.27 This policy sets out the requirements for the assessment of proposals on heritage assets and areas of high potential for archaeological interest. It also sets out that development will only be permitted if it would not adversely affect the significance of heritage assets. In the consideration of the application it was established that the development could be constructed and operated without adversely affecting the setting of heritage assets and with appropriate conditions in regard to archaeology. As such the proposal is considered to accord with this policy.

Policy DM10: Transport

- 8.28 Policy DM10 states that planning applications for new waste sites must be accompanied by a Transport Statement which demonstrates suitable highway access; a suitable route to the nearest major road (trunk road or principal road or main distributor road), which may need to be incorporated in a formal Routing Agreement; consideration of other roads users; consideration of sustainable drainage and pollution control measures, and measures to reduce car travel to the site. The Council considers that the Appellants have not demonstrated that a suitable route can be achieved without adverse effects upon highway safety and as a consequence full consideration of other roads users has not been given. It is therefore considered that the proposal conflicts with this policy.

Policy DM12: Amenity

- 8.29 This policy seeks to protect the amenity of people in close proximity to waste management facilities. As set out above, the Council preserves its position in relation to the new information provided by the Appellants and the issue of noise and odour.

Policy DM13: Air Quality

- 8.30 This policy requires that development would effectively minimise harmful emissions to air and would not impact detrimentally on existing Air Quality Management Areas, nor lead to the declaration of a new such Area. In the consideration of the application it was established that the development could be constructed and operated without adversely affecting air quality. As such the proposal is considered to accord with this policy.
- 8.31 It is therefore the Council's view the proposal conflicts with policies CS5, CS6, CS7, CS14, CS15, DM8, DM10 and DM12 of the Norfolk Minerals and Waste Core Strategy & Development Management Policies DPD (2011). It should be emphasised that the conflicts of the development with these policies are essentially the same as those found in the assessment of the development against the Council's own Local Plan policies.

9. Conclusion

- 9.1 The proposal breaches the development plan and material considerations do not indicate that a decision should be taken other than in line with the development plan in this case.

9.2 As such the Inspector is invited to dismiss the appeal.

Statement of truth

I believe that the facts stated in this proof of evidence are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.