
**FURTHER SUBMISSIONS
ON BEHALF OF THE
APPELLANT
NOVEMBER 2023**



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INTRODUCTION

- 1 These Further Submissions are prepared on behalf of the Appellant in response to the Statement of Case provided by South Norfolk District Council ("**Council**") prepared by Birketts LLP and dated 16 October 2023.
- 2 These Further Submissions respond to points that have been raised by the Council's Statement of Case ("**Council's SofC**"), and also the comments received from third parties.
- 3 The defined terms used in the Appellant's Statements of Case are utilised in these Further Submissions unless updated in these submissions.

SCOPE OF THESE FURTHER SUBMISSIONS

- 4 As the Appellant has provided a detailed Statements of Case it is not considered necessary at this stage to respond to each point raised in the Council's Statement of Case or third party comments at this stage.
- 5 Detailed responses shall be provided as part of the Appellant's proofs of evidence. These shall collectively demonstrate that the Development for which retrospective permission is sought is not only acceptable in planning terms and compliant with the development plan as a whole (which itself supports renewable energy developments), but very significant weight should be attached to the benefits of the proposals.
- 6 The Appellant will demonstrate that the very significant benefits of the proposals are not only confined to renewable energy production, where the need is even more acute since adoption of the Council's development plan. This is not of only national importance in terms of meeting the UK's zero carbon commitment, but recognised at district level through the Council's own Environmental Strategy and Delivery Plan (2023 – 2025) that acknowledges that the Council has a "*unique opportunity to lead the energy transition in our nation as we migrate from fossil fuels to clean sources of power*".
- 7 Other benefits include employment generation and significant bio-diversity net gain and landscaping enhancements that would not only integrate the proposals into the surrounding landscape, but reinstate the area's historic landscape character.

THE ENFORCEMENT NOTICE APPEAL AND FALL-BACK

- 8 As the Council notes in its SofC, the Council refused the CLOPUD on 17 May 2023 which sought to establish whether it would be lawful to demolish and remove the development currently on the Site and construct the anaerobic digestion facility in accordance with the 2015 Permission.
- 9 A copy of the Council's decision notice and delegated report have been provided with the Enforcement Notice Appeal and also alongside the Council's SofC¹. These set out the Council's full legal arguments to justify refusal, which the Appellant has responded to as part of its SofC for the Enforcement Notice Appeal².
- 10 Since this time, the Council now "*adds a further issue*" concerning the consistency of the approved plans within the 2015 Permission and as a consequence suggests that this undermines whether the 2015 Permission was capable of lawful implementation and whether the development pursuant to the 2015 Permission could be built out.
- 11 The Appellant has considered the position further in light of the Council's observations here and more generally in the context of these appeals. In light of the new point regarding inconsistency of plans raised for the first time now by the Council, the Appellant does not consider that it is a proportionate use of Inquiry time to debate the implementation of the 2015 Permission. As will be demonstrated through the inquiry and the proofs of evidence, the Appellant maintains that the Development should be permitted on its own merits and should be considered acceptable in its own right.
- 12 For this reason, the Appellant is not pursuing the fall-back argument in the context of the 2015 Permission and the Appellant will focus on the acceptability of the Development in isolation from that permitted in 2015³.
- 13 The Appellant therefore also withdraws the appeal against the Enforcement Notice. Whilst it is accepted that the Enforcement Notice would therefore take effect and require the steps to comply to be undertaken by 12 November 2024⁴, the Appellant would rely on section 180 (1) of the Town and Country Planning Act 1990 whereby the

¹ See pages 65 – 85 of the Council's bundle to the Council's SofC

² Appellant's SofC paragraphs 21 to 42

³ Save that it is a relevant material consideration that a similar form of development was deemed acceptable by the Council in 2015.

⁴ Being 15 months from the enforcement notice taking effect on 12 August 2023

Enforcement Notice shall cease to have effect insofar as is inconsistent with any permission granted pursuant to the current section 78 appeal.

RESPONSE TO THE COMMENTS ON THE S78 APPEAL

14 As explained above, the Appellant at this stage does not propose a detailed response to each of the points raised in the Council's SofC. The Appellant does comment generally on certain matters raised however, by reference to the headings used by the Council in its SofC.

15 **The Proposal**

15.1 The Appellant is not seeking to make any amendments to the 2022 Application Scheme.

15.2 It remains committed to the Development subject to this appeal and will demonstrate categorically at the inquiry why it is considered the Development is acceptable in all respects, and should be granted planning approval.

15.3 The reservation and reference to alternative details and options was simply a placeholder in case there were certain changes or amendments that the Council considered acceptable through determination of the 2023 Application which is currently pending determination.

16 **Explanatory Comments and Other Issues**

16.1 Paragraph 6.1 of the Council's SofC summarises what it considers to be the "main reasons for refusal". Whilst these reasons for refusal at 6.1 (a) – (d) are not disputed in that they were the reasons noted on the relevant decision notice, the Appellant notes the Article 35(1)(b) of the Town and Country Planning (Development Management Procedure) (England) Order 2015, which requires that "*where planning permission is refused, the [Council's decision notice] must state clearly and precisely their full reasons for the refusal*".

16.2 It is considered that the reasons for refusal at 6.1 (a) – (d) and as per the relevant decision notice should comprise the Council's full and only concerns with the Development.

16.3 In the Reasons for Refusal the Council did not refer to any technical issues and therefore, following input from the Council's witness concerning anaerobic

digestion matters, these are additional considerations which have been introduced at a late stage.

- 16.4 Notwithstanding this, the Appellant will respond to the technical concerns of the Council, and has instructed an expert witness in this regard⁵. The Appellant will therefore demonstrate that the Development suffers no technical constraints that prejudices delivery of the very significant benefits of the proposals.

17 **Inadequacy of the Highway Network and Transport Information**

- 17.1 The Appellant will demonstrate that the impacts of the Development are acceptable in highways and transportation terms and that it remains clear that pursuant to paragraph 111 of the NPPF⁶ there shall be no severe impacts on the road network, or unacceptable impacts on road safety.
- 17.2 The Appellant will also demonstrate, through the proofs and further evidence, that up to date baseline information robustly demonstrates that there shall be no unacceptable increase in traffic movements. This is particularly so when judged in the context of an area dominated by agricultural activity (not least by the landowner of the Site who controls significant agricultural holdings of over 300ha) and where there are no restrictions on highway use in connection with such uses.
- 17.3 The Appellant disputes the assertions⁷ by the Council that traffic movements cannot be satisfactorily controlled and will demonstrate why the imposition of planning conditions to limit traffic movements, control routing and limit feedstock. These conditions are commonplace not only for similar anaerobic digestion facilities, but also other types of development even of the largest scale.
- 17.4 In any event, whilst the Appellant does not consider that further controls over and above planning conditions is required, the Appellant will be preparing and negotiating an appropriate planning obligation pursuant to section 106 with the Council.

⁵ Mark Richmond, Technical Director, WRM

⁶ National Planning Policy Framework (September 2023)

⁷ See paragraphs 7.3 and 7.8 of the Council's SofC

18 Visual and Landscape Impact

- 18.1 The Appellant will demonstrate that the landscape and visual impacts of the Development are acceptable.
- 18.2 It is acknowledged that the off-Site mitigation proposed is not currently in the control of the Appellant. Such works may be secured adequately by way of a Grampian condition and the Appellant shall demonstrate why this should be considered a routine and robust mechanism to secure such works.
- 18.3 In any event, the mitigation works may also be secured through planning obligation with the relevant land bound into the terms of the section 106 agreement. The Appellant will provide a draft for the Council's consideration in due course.
- 18.4 The Council asserts that the delivery of pipelines will not be acceptable in landscape terms⁸. The Appellant does not consider this is a relevant consideration in the determination of the S78 Appeal.
- 18.5 Planning permission for the pipelines was not sought as part of the Refused Application and it is acknowledged that most of the pipelines will be provided off-site to the two lagoons. Therefore the details provided are deliberately indicative and not necessarily final.
- 18.6 Furthermore, the Council has previously accepted, through the grant of the 2015 Permission, that it is a legitimate approach to include a Grampian style condition to require approval and delivery of the pipelines, which in turn will ensure that the pipelines are acceptable. It will also be demonstrated that there are no immediate technical or environmental constraints that would prejudice the grant of planning approval, based on the technical evidence obtained to date.
- 18.7 The Appellant also notes the availability of permitted development rights over the Site (and indeed wider agricultural holdings) pursuant to Part 6, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015. Such rights permit the erection of agricultural buildings of up to 12

⁸ See paragraph 7.12 of the Council's SofC

meters in height, and other structures that may be comparable to many components of the Development subject to this appeal.

18.8 The Appellant may therefore demonstrate, notwithstanding the acceptability of the Development in its own right, that the landscape and visual impacts of the Development should be assessed against the reality of what agricultural development may otherwise come forward pursuant to permitted development rights. The Development must be judged against that context.

19 **Benefits**

19.1 The Appellant will demonstrate through its expert witness that the benefits of the Development are substantial and there are no technical issues that prejudices acceptable operation of the Development.

CONCLUSIONS

20 The responses provided above also address those same matters raised by third parties. Any further points of detail will be addressed through the proofs of evidence, which shall demonstrate the complete acceptability of the proposals.

21 The Appellant maintains, as will be demonstrated at the inquiry, that the Development is in accordance with the Council's development plan and in any event the material considerations and benefits associated with the proposals are so significant so as to justify approval.

Howes Percival LLP

22 November 2023