

SOUTH NORFOLK COUNCIL

APPEAL UNDER S.78 OF THE TOWN AND COUNTRY PLANNING ACT 1990

APPEAL BY: Deal Farm Biogas Limited against the refusal of planning permission for 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).

APPEAL SITE: Deal Farm, Kenninghall Road, Bressingham, Norfolk.

PLANNING INSPECTORATE REFERENCE: APP/L2630/W/23/3324060.

LOCAL PLANNING AUTHORITY REFERENCE: 2022/1108 (the “Refused Application”).

FURTHER SUBMISSIONS ON BEHALF OF THE LOCAL PLANNING AUTHORITY

1. INTRODUCTION

1.1 The following submissions have been prepared by the Council in order to:

- 1.1.1 Address new information which has recently been provided by the Appellant to the Council; and
- 1.1.2 Clarify the Council’s position in relation to Norfolk County Council’s Core Strategy (the “Core Strategy”); and Minerals and Waste Development Management Policies Development Plan Document 2010-2026 (the “Minerals and Waste DPD”).

1.2 The Council requests that this document supplements its Statement of Case. It has been provided in order to assist the Inspector and to ensure that the Appellant has the opportunity to address anything set out in these submissions through its proofs of evidence.

1.3 The Council notes the production of the new version of the NPPF and that paragraph numbers referred to in the decision notice have changed. The Council will address the updated version of the NPPF in its proofs of evidence.

2. **ADDITIONAL INFORMATION PROVIDED BY THE APPELLANT**

- 2.1 On 29 November 2023 the Council sent a number of questions to the Appellant (the email asking the relevant questions is at Appendix A to this statement).
- 2.2 The Appellant responded to the Council's questions on 14 December 2023 (the response and appended documents are at Appendix B to this statement).
- 2.3 The Council's anaerobic digestion ("AD") expert, Dr Gornall, has now had the opportunity to review the information which has been provided.
- 2.4 One document which the Council requested was a detailed process and mass balance calculation for the anaerobic digestion facility. A process and mass balance calculation is required in order to understand the outputs of the anaerobic digester including the digestate production and the split between liquid and solid phases and also the volumes of biogas that will be produced and how that will be split between the consumers, specifically the CHP, Boiler and Gas to Grid Equipment (i.e. how the energy produced will be used). At paragraph 6.6 of its Statement of Case, the Council raised concerns with regards to the assertions which had been made about the energy production of the digester and the fact that the Appellant had not factored in the addition of water and other liquids into its calculations which would have consequences for the amount of digestate produced.
- 2.5 As yet, the Appellant has not provided a process and mass balance calculation, and this is awaited by the Council. Nor has the Appellant detailed how water is to play into the AD process. In the absence of such a mass balance the Council's AD expert will produce a mass balance for the facility as part of his evidence. This will demonstrate that the failure of the Appellant to factor water into their calculations (which will be required for the AD process) means that the Appellant has underestimated the amount of digestate which the facility will produce.
- 2.6 A further piece of information which has been produced by the Appellant is details of the parasitic load of the CO₂ capture equipment (referred to at paragraph 7.15 of the Council's statement of case). It is clear that the parasitic load of this equipment will materially reduce the claimed benefits of the proposal. This will also be addressed in the Council's AD expert's evidence.
- 2.7 In its statement of case, at paragraph 7.15(a), the Council raised a query with regards to how the Appellant is proposing to control odour from the pasturisation process. The Appellant has now stated that some additional equipment (not shown on the application plans) will be required for this. Line 6 of the table at Appendix B states that 'Swan neck

valves on each of the pasturisation tanks shall be connected to feed either a carbon filter or acid scrubber filter for the treatment of displaced air within the pasturisers'. It is understood that a carbon filter and an acid scrubber would amount to built development. As such, it would appear that the scheme which has been proposed would not adequately control odour from the pasturisation 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.

- 2.8 Given the Appellant accepts that additional equipment is to be required, this may be an issue which is capable of resolution through a Grampian condition. The Council therefore invites the Appellant to demonstrate how this can be addressed to ensure that odour is adequately controlled.
- 2.9 The additional information provided by the Appellant has also (at line 5 of the table at Appendix B) stated that the noise rating of the CO2 capture equipment which may in due course be specified is 75dBA at 10m. This piece of equipment does not appear to have been assessed as part of the Noise Assessment submitted by the Appellant. The Council is concerned that this equipment has not been assessed by the Appellant. At present, it is unclear whether this noise impact can be mitigated. As such, the Council invites the Appellant to set out how the noise impact of this equipment would be mitigated so as to ensure that the conclusions of 'No Observed Adverse Effect Level' in its Noise Assessment remain valid.
- 2.10 In the event that the Appellant cannot demonstrate that the odour and noise can be addressed by condition so as preserve residential amenity, the Council considers that the proposal may breach policy DM3.13 of the South Norfolk Local Plan Development Management Policies document 2015.

3. **COUNTY COUNCIL'S CORE STRATEGY AND MINERALS AND WASTE DEVELOPMENT MANAGEMENT POLICIES DEVELOPMENT PLAN DOCUMENT 2010-2026**

- 3.1 As the Appellant notes in its Statement of Case, the Council did not assess the proposal against the policies of the Minerals and Waste DPD when determining the application. That is correct. This is because the Council considers that the facility is not to be treated as a waste facility under that document. The majority of the feedstock is non-waste, and the proposal is not a 'county matter'. Therefore, the Council's position is that the policies within the Minerals and Waste DPD do not apply.

- 3.2 However, for the avoidance of doubt, the Council has set out its position below on each of the policies which the Appellant states are relevant. These comments do not introduce new issues but simply apply the Council's conclusions on highways and landscape impact to those policies. The Council reserves its position in relation to the new information outlined above and the issue of residential amenity.
- 3.3 Policy CS3: Waste Management Capacity to be provided - 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 Minerals and Waste DPD.
- 3.4 Policy CS4: New Waste Management Capacity to be provided - 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 Minerals and Waste DPD.
- 3.5 Policy CS5: General Location of Waste Management Facilities - This policy sets out the criteria as to the locations that 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.

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.

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

It is also noted that this policy requires agricultural waste treatment plants to be in compliance with other relevant Core Strategy policies.

- 3.6 Policy CS6: General Waste Management Considerations - 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.
- 3.7 Policy CS7: Recycling, composting, anaerobic digestion, and waste transfer stations - 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 considers, for the reasons set out in the refusal of the Refused Application and in its Statement of Case, that there would be unacceptable environmental and highway impacts and therefore the development conflicts with this policy. As set out above, the Council preserves its position in relation to the new information provided by the Appellant and the issue of noise and odour.
- 3.8 Policy CS13: Climate Change and renewable energy generation – 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 Minerals and Waste DPD.
- 3.9 Policy CS14: Environmental Protection - 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 its refusal of the Refused Application and in its Statement of Case and therefore there is clear conflict with this policy. As set out above, the Council preserves its position in relation to the new information provided by the Appellant and the issue of noise and odour.
- 3.10 Policy CS15: Transport - 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 that the Council has identified, the Council considers that the development would conflict with criteria (a), (b) and (e).

- 3.11 Policy DM1: Nature Conservation - 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 Refused 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 the respect of nature conservation and therefore the proposal is considered to accord with this policy.
- 3.12 Policy DM3: Groundwater and Surface Water - 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 Refused 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.
- 3.13 Policy DM4: Flood Risk - 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 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 was provided which satisfied the Council that the development would not increase flood risk. As such the proposal complies with this policy.
- 3.14 Policy DM8: Design, local landscape and townscape character - 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 Refused Application and in the Council's Statement of Case, the Council does not consider 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.

- 3.15 Policy DM9: Archaeological Sites - 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 Refused 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.
- 3.16 Policy DM10: Transport – This policy 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 Appellant has 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.
- 3.17 Policy DM12: Amenity - 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 Appellant and the issue of noise and odour.
- 3.18 Policy DM13: Air Quality - 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 Refused 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.

4. **CONCLUSION**

- 4.1 The Council therefore relies upon the above submissions.

Birketts LLP
21 December 2023