
**SECTION 106 AGREEMENT AND PLANNING CONDITION
HEADS OF TERMS AND SUPPLEMENTARY NOTE**

Background

- 1 This supplementary note – including proposed draft section 106 heads of terms and planning conditions – is prepared for Deal Farm Biogas Ltd (“**Applicant**”) and relates to the following development (“**Development**”):

“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).”

- 2 The Development has been subject to a number of planning applications, the current being a revised application following the refusal of planning permission under 2022/1108 (“**Previous Application**”). This revised application provides an alternative design (including a reduced height profile for the digester tanks) to address landscape concerns.
- 3 A number of concerns were also raised through the Previous Application by Norfolk County Council as local highway authority. Whilst the technical detail of those concerns should be sufficiently addressed through the Applicant’s submissions to date, the intention of this note is to set out in further detail the proposed obligations and restrictions that may be secured through a combination of section 106 planning obligations¹ and planning conditions.
- 4 Ultimately, through planning conditions and if necessary planning obligation, it is considered that both the local planning authority and also the local highway authority may have sufficient confidence that the level of feedstocks being processed through the site and in turn the number of associated vehicle movements associated, in addition to the

¹ Pursuant to section 106 of The Town and Country Planning Act 1990

geographical restriction on the source of feedstock and digestate, is adequately controlled.

- 5 This will ensure that, in response to the local highway's authority concerns to date, that there will be adequate restriction limiting that feedstock will be sourced (and digestate transported) within the 5km local catchment only² and, in addition, ensure sufficient controls on the existing site to restrict vehicle movements.

Proposed Planning Conditions

- 6 The proposed draft planning conditions have been outlined in the submitted Transport Statement Addendum³. These include (noting the final wording may be agreed with the local planning and highways authorities in due course):

6.1 *"The annual throughput of material through the AD Plant shall be limited to a maximum of 23,950 tonnes per annum and records shall be kept for inspection by the County Planning Authority on request of the amount of throughput of material for the duration of operations on site."*

6.2 *"No heavy commercial vehicle (HCVs) shall enter or leave the site outside of the following times 0800 to 1700 Mondays to Fridays, 0800 to 1300 on Saturdays, and not at all on Sundays or Bank Holidays except as provided for in Condition 3."*

6.3 *"There shall be no more than 4 heavy commercial vehicle (HCV) movements per full working day, 2 movements to and 2 movements from the site, this would be limited to two HCV movements on Saturdays (1 movement to and 1 movement from the site) and zero HCV movements on Sundays. There shall be no more than 4 HCV movements in any hour, 2 movements to and 2 movements from the site. The maximum number of HCV movements in any 4-week period shall be 70 (35 movements in and 35 movements out).*

Records of all vehicle movements to and from the site, separately identifying commercial and agricultural vehicles, shall be kept and made available for inspection at the request of the Local Planning Authority. An HCV is defined for the purposes of this permission as a commercial vehicle over 7.5 tonnes laden weight. The above limits on HCV movements will be extended for a period of two weeks in any year, to allow for the maize harvest, during which period there

² Norfolk County Council consultation response to the Previous Application, 28 November 2022

³ Royal Haskoning DHV – 27 October 2022 ("**Transport Statement Addendum**")

shall be no more than 4 HCV vehicles per hour (2 movements in, 2 movements out) in addition to the number per hour set out above, with the other limits extended pro rata. Deliveries of feedstocks during the harvest period shall not occur between the hours of 2200 to 0700. The Local Planning Authority shall be informed of the dates of commencement and end of the two week extension within five days of its commencement”

- 6.4 *“Prior to first use of the consented AD plant, a Servicing and Delivery Plan will be prepared and agreed in writing with the highway authority. All commercial traffic will adhere to haul route and obligations established in that Servicing and Delivery Plan.”*

Note that the Service and Delivery Plan agreed may require certain provisions to be incorporated within the haulage contracts that require adherence to the haul route, which can be sufficiently monitored through the usual in-cab technologies and record keeping. Such a clause could include the following, which may be agreed through the Service and Delivery Plan, albeit there are a number of alternatives that may be considered (such as a dedicated helpline for the reporting and addressing of any non-compliance):

“All HCV movements to the site will be via the prescribed haul route identified in the consented Transport Assessment and associated Servicing and Delivery Plan. GPS Tracking Devices within the HCVs will monitor HCV’s movements to the site and any breaches will be confirmed and automatically registered in the Delivery Management System. These will be issued to each driver upon arrival at the site. Upon arrival at site, the Operators will verify the HCV by checking: a) delivery details against the booking; and b) route compliance through the GPS Tracking records. At regular intervals the Delivery Coordinator will review all non-compliance alerts generated within the system and take appropriate follow up action based on the severity of the noncompliance”

- 7 The above mechanisms should not be controversial and are considered to quite clearly meet the relevant legal tests⁴. There is little need to assess these tests in detail. The position should be accepted and is uncontroversial.
- 8 Tonnage and vehicle movement restrictions are commonly adopted for all types of commercial and renewable development – as are traffic management plans and travel

⁴ Contained in paragraph 56 of the National Planning Policy Framework (July 2021).

plans. Ultimately the objective is to agree a scheme that dictates the routes traffic may use and any other details to ensure the safe operation of the highway network. It is accepted that such planning conditions meet the legal tests, particularly in situations such as this where – from a monitoring perspective – a weighbridge has been installed and records will be maintained by the operator. In fact, regular record keeping in terms of delivery of feedstock and any exports from the site will need to be maintained for the purposes of the Environment Agency and to ensure compliance with the permitting regime.

- 9 Such records may be inspected by the local planning authority to ensure compliance – and is no more onerous than monitoring any other aspect of planning control – which is clearly enforceable.
- 10 There are many examples where similar restrictions and arrangements have been acceptable. Such mechanisms should not be considered controversial. In a residential context, for new housing development, travel plans are commonplace⁵. The same applies for other commercial developments⁶, which are analogous to the types of restriction required here.
- 11 Of course, there are also many anaerobic digestion facilities subject to similar conditions, where conditions limiting haul routes have been accepted on appeal⁷. We are also mindful that the development orders for some of the largest infrastructure projects, including HS2 and the Boreas Offshore Windfarm, include planning conditions or other agreed requirements that require agreement and compliance with haul routes⁸. The Construction Transport Management Plan – a condition of the 2015 permission - of this scheme was approved on the basis of agreed haul routes.
- 12 It is therefore clear to us that the proposed planning conditions are sufficient to ensure that the Development operates to those parameters set out in the transport evidence that supports the application – in terms of tonnages and resulting highway movements; and haulage routes to ensure that input and distribution of materials is limited to the 5km radius as proposed.

⁵ E.g. APP/V2635/W/19/3237042 – 600 dwellings etc – Knight's Hill Village, South Wootton – 14 July 2020 – conditions 11 and 12

⁶ APP/H4315/V/20/3265899 – logistics warehouse and associated development – Land at Omega Zone 8, E.g. South of the M62, St Helens – 11 November 2021 – condition 28

⁷ APP/E2001/W/19/3223211 - Park Farm, Market Weighton Road, Holme-upon-Spalding – conditions 14 and 15

⁸ E.g. Schedule 17 of the High Speed Rail (London to West Midlands) Act 2017, and the Norfolk Boreas Offshore Wind Farm Order 2021

- 13 The planning conditions will, of course, run with the land. They will be enforceable against any operator of the site in due course and cannot be varied without appeal unless the local planning authority agree. For this reason, and all those reasons above, it is not considered that any further mechanisms should be required to secure the proposed restrictions and control the Development in a manner to ensure acceptable impact on the highway network arising from the Development.

Proposed Section 106 Agreement

- 14 Notwithstanding our primary position, that no further mechanisms are necessary in addition to the imposition of planning conditions as detailed above, a section 106 agreement may also be considered – subject to detailed discussion and negotiation in due course.
- 15 Whilst the Applicant may agree to this if required by the local planning and highways authority, the section 106 agreement should not be used to duplicate those controls and restrictions already secured through planning condition⁹.
- 16 Instead a section 106 agreement could be used (subject to further discussion and negotiation) to bind the agricultural landholdings proposed to provide the muck and feedstock to be used for the Development – and in doing so demonstrate the local and agricultural nature of the facility.
- 17 This may enable a dual mechanism to control operations and for enforcement purposes, firstly against the operator (where planning conditions would regulate tonnages, movements and geographical radius), with the farmer responsible for providing the feedstocks and manure required – in essence – to service the Development.
- 18 The landowner to be bound in this case would be Desmond George Aves / R G Aves and Partners of The Oaks, Kenninghall Road, Bressingham, Diss IP22 2HG. Full title may be provided in due course.
- 19 An indication of the land to be bound is provided on the extract below – although a final plan may be provided and agreed, which reflects the indicative plan provided in the Transport Statement Addendum:

⁹ See Planning Practice Guidance - Paragraph: 011 Reference ID: 21a-011-20140306



- 20 The section 106 agreement may, for example, restrict / require:
- 20.1 That 5,500 tonnes of manure from the pig farm immediately adjoining the site will be provided to the Development for its use.
 - 20.2 The remainder of the manure produced (as per the existing situation) may be continue to be spread on fields within the owner's existing landholding, albeit the section 106 agreement may require that this is only spread within farms within a 5km radius – unless otherwise agreed in writing in advance with the Planning Authority that the more beneficial solution would be to process it within the total consented tonnage limit of the AD plant – thus displacing other delivered materials.
 - 20.3 That in any given year, at least 50% of the owner's land within a 5km radius will be used to service the Development.
 - 20.4 Usual monitoring requirements covering crop yields and distribution schedules, with the ability for the local planning authority to inspect records for compliance and monitoring purposes.

Conclusion

- 21 We remain satisfied that the suite of planning conditions proposed is sufficient to adequately control the scale of the Development, its nature as a local agricultural facility; and ensure acceptable impacts on the highway network.
- 22 If required by the local planning and highway authorities, a section 106 agreement may also be explored to provide additional protection in terms of restriction and enforcement as outlined above.
- 23 We recommend feedback is sought from the local planning and highways authority. If a section 106 agreement is required, and the principle of the same is agreed by all parties, we may provide more detailed heads of terms in due course.

Howes Percival LLP

17 January 2023