

Planning Committee

28 April 2015

Agenda Update Sheet

Report by County Planning Manager

Agenda Item No.	Update	Source/Reason
6.	<p>Email from Chichester District Council – 17 April 2015 – to request clarification on enforcement matters at Crouchland Farm</p> <p>Dear Anna,</p> <p>With reference to your recent emails, I can now advise that I have met with Andrew Frost and Nicola Golding to discuss this matter. We have reviewed the details provided within the PCN and the information set out in the County Council's Planning Committee Report of 3 March 2015 and have a number of comments.</p> <p>WSCC as the planning authority issued Enforcement Notices in April 2014 against the unauthorised development/change of use of land. It appears that, you therefore considered in April 2014 that the operator was processing waste at the AD Plant. The County Council then invited a planning application (which was part retrospective), which was submitted in July 2014 and you were content to deal with it as a County Matter waste processing operation/energy from waste at some 34,755 tonnes throughput p/a; We are aware that the application has now been refused permission and I understand that you are preparing to take a report back to Committee in respect of the options for enforcement action in accordance with the committee resolution. It is clear therefore that up to this point you have been satisfied that WSCC is the appropriate local planning authority for dealing with this matter and we do therefore need to understand why you now appear to believe that this position may have changed.</p> <p>On closer examination of the figures provided in the PCN and within your email, we consider that a number of questions arise:</p> <p>1. Why does the County Council appear willing to accept the figures set out in the PCN given that it was content to deal with the planning application which was submitted one month after it is alleged that food</p>	<p>To provide members of the Planning Committee with sight of recent correspondence between West Sussex County Council and Chichester District Council of relevance to the consideration of the Enforcement Report at the Planning Committee meeting on 28 April 2015.</p>

Agenda Item No.	Update	Source/Reason
	<p>waste importation ceased? At the time of processing the application, you were, I assume, satisfied that the use amounted to an energy from imported waste operation?</p> <p>2. If the figures set out in the PCN are in fact accurate then the implication is that information provided in the Committee report to Members must have been incorrect? Do you accept this and if so what do you intend to do in response?</p> <p>3. You have provided two separate sources of information from the operator – the weekly % of imported material calculated per annum and figures from a 2 monthly period Feb-March 2015. These appear to be substantially inconsistent with one another, for example in relation to non-imported waste used ...FYM – 112 tonnes weekly av. as opposed to 196 tonnes weekly av. over 2 month period!). It does appear that the operator is now alleging that there has been a substantial increase in tonnage from FYM and imported crops/farm produce over last 2 months which is not reflected in the interpolation of the figures in the PCN. We consider that you should question this and other associated inconsistencies.</p> <p>4. Why have you not requested figures over a longer period than two months, e.g. for the 10 month period since the operator now states that he ceased importation of treated food waste. The inconsistencies in the figures now produced by the applicant do in our view need to be investigated further and could include undertaking other investigations to check the veracity of the figures for example by contacting the Environment Agency to check records held by them and requesting copies of lorry load certificates/records;</p> <p>5. On review of the planning application, we note that the applicant was content to view this as a County Matter. As set out in the DAS, the anaerobic digestion process will comprise operations to use a digestate produced from the separation of solids and liquid fraction...some solids will be re-used in the digestion process. This is clear evidence of a waste processing activity. Furthermore it states in the PCN that submission of the CLUED will be to certify the lawful use of the existing development on site for the importation of waste, the processing of imported waste for the purposes of Anaerobic Digestion....</p> <p>6. Within the PCN, the applicant advises that he is considering submitting a CLUED to WSCC as the planning authority and lodging an appeal against the recent refusal of planning permission by your authority. These will be matters that we would expect WSCC to deal with.</p>	

Agenda Item No.	Update	Source/Reason
	<p>In conclusion and for the reasons set out above, we see no persuasive evidence that material matters have changed since May 2014 sufficient to warrant this case now being considered as a District matter. We consider that the information submitted by the operator in the PCN needs to be challenged further by the County Council rather than apparently being readily accepted. As set out above, it appears to contain inconsistencies and also to conflict and contradict information on which the County relied upon in determining the recent planning application. These matters flow from the County Council's involvement and actions in relation to this site and I therefore confirm that on the basis of the current position, the District Council is satisfied that the County Council remains the relevant LPA in respect of enforcement action and any applications or appeals arising from the current operation.</p> <p>I trust this clarifies the District Council's position on this matter.</p> <p>Thanks,</p> <p>Reg Hawks Assistant Manager DC Enforcement Chichester District Council</p> <p>Response from West Sussex County Council – 22 April</p> <p>Reg,</p> <p>Thank you for your email dated 17 April 2015. I attach the committee report regarding enforcement action at Crouchland Farm as requested by the County Council's Planning Committee; hopefully the report will help to clarify our position.</p> <p>In response to your initial comments, the fundamental point is that there is a distinction in law between the responsibility for determining planning applications and responsibility for taking enforcement action (see paragraphs 4.6 and 4.7 of the committee report). With the exception of minerals development, the</p>	

Agenda Item No.	Update	Source/Reason
	<p>statutory responsibility for enforcement rests with the district planning authority. Where the case involves a 'county matter' (for example, waste or mixed-use development), the district planning authority should consult with the county planning authority prior to taking enforcement action. In a case that "<i>should properly be considered a county matter</i>", the county planning authority could choose to take on responsibility for enforcement.</p> <p>In this specific case, it was agreed by both authorities in April 2014 that the County Council would take the investigation forward (because the unauthorised activities were likely to involve the processing of a substantial amount of imported waste). However, the importation of the food waste ceased in May 2014 and it was replaced as feedstock by local crops.</p> <p>The applicant was then advised by the County Council that, reflecting this change to the make-up of the feedstock, they could submit a 'district matter' planning application to the District Council. However, as the applicant wished to retain the option to increase the waste proportion of feedstock and operate as a commercial waste plant (should a local source of suitable waste be found), it was submitted to the County Council and determined as a 'county matter' application.</p> <p>As set out above, statutory responsibility for enforcement rests with the District Council and, as you are aware, enforcement is not based on potential future activity, or the content of any planning proposals, but on the current operation. Furthermore, the current operation of the AD plant only involves the importation of waste that equates to only 3% of the feedstock. Therefore, it cannot properly be considered a 'county matter' and it is for the District Council to bring enforcement action to regularise the activity on the site.</p> <p>With regard to your specific questions, our response is as follows:</p> <p>1. Why does the County Council appear willing to accept the figures set out in the PCN given that it was content to deal with the planning application which was submitted one month after it is alleged that food waste importation ceased? At the time of processing the application, you were, I assume, satisfied that the use amounted to an energy from imported waste operation?</p> <p>As above, these are different matters. Enforcement considers the operations being undertaken on site, while applications can include future scenarios. In this instance, the planning application was intended to</p>	

Agenda Item No.	Update	Source/Reason
	<p>allow the proportion of imported waste to increase, should a source of local waste be found. Therefore, the potential suitability of the site as a commercial waste operation was under consideration (in addition to the consideration of operational development - plant and machinery - some of which had already been placed on the land), not the current activity on the site.</p> <p>2. If the figures set out in the PCN are in fact accurate then the implication is that information provided in the Committee report to Members must have been incorrect? Do you accept this and if so what do you intend to do in response?</p> <p>As above, to the best of our knowledge, the PCN figures are correct and reflect the site's existing throughput. The figures in the planning application are different because the applicant wanted to secure the importation of a specified tonnage of local material - whether crops or waste. Furthermore, it should be noted that the proportions of the material making up the feedstock were not fixed in the planning application because the applicant wanted the option to bring in a higher proportion of waste than at present.</p> <p>3. You have provided two separate sources of information from the operator – the weekly % of imported material calculated per annum and figures from a 2 monthly period Feb-March 2015. These appear to be substantially inconsistent with one another, for example in relation to non-imported waste used ...FYM – 112 tonnes weekly av. as opposed to 196 tonnes weekly av. over 2 month period!). It does appear that the operator is now alleging that there has been a substantial increase in tonnage from FYM and imported crops/farm produce over last 2 months which is not reflected in the interpolation of the figures in the PCN. We consider that you should question this and other associated inconsistencies.</p> <p>The figures in the PCN are an average over the last full calendar year; therefore, they do not reflect current operations, as they include food waste which the site ceased importing in May 2014. Therefore, the operator was asked for, and provided recent figures (i.e. from the last two months), to reflect the operation which is currently taking place.</p> <p>4. Why have you not requested figures over a longer period than two months, e.g. for the 10 month period since the operator now states that he ceased importation of treated food</p>	

Agenda Item No.	Update	Source/Reason
	<p>waste. The inconsistencies in the figures now produced by the applicant do in our view need to be investigated further and could include undertaking other investigations to check the veracity of the figures for example by contacting the Environment Agency to check records held by them and requesting copies of lorry load certificates/records;</p> <p>We have asked for current figures, as it is the current operation on which enforcement action must be considered. I have checked the figures with the Environment Agency (EA) for the full calendar year of 2014, and their records support our information from the operator. The importation of 15,818t of food waste ceased in the second quarter of 2014 (i.e. in May 2014).</p> <p>Other waste through the full year was recorded as follows: 6,200t farmyard manure from Crouchland Farm, 5,400t cow slurry from Crouchland Farm, 691t imported mushroom waste, and 2,647t imported fruit waste.</p> <p>The EA have confirmed that the crops and agricultural produce used in the facility (which replaced the imported food waste) are not classified as waste, and the importation of them at this site is not reported to or recorded by the EA.</p> <p>5. On review of the planning application, we note that the applicant was content to view this as a County Matter. As set out in the DAS, the anaerobic digestion process will comprise operations to use a digestate produced from the separation of solids and liquid fraction...some solids will be re-used in the digestion process. This is clear evidence of a waste processing activity. Furthermore it states in the PCN that submission of the CLUED will be to certify the lawful use of the existing development on site for the importation of waste, the processing of imported waste for the purposes of Anaerobic Digestion....</p> <p>As explained above, the planning application was determined by the County Council as a county matter due to the applicant's requirement that the importation of waste, rather than crops, be permitted (should a local waste source be identified in future).</p> <p>The AD process produces gas and fertiliser from organic material. Yield is maximised by feeding digestate back into the plant until the AD process is complete. This fact does not make the operation on the site a</p>	

Agenda Item No.	Update	Source/Reason
	<p>commercial waste processing activity because refeeding digestate back into a plant can also be part of the process for an AD facility that is ancillary to an agricultural use. The key factor is the composition of the feedstock - if the facility is used 'wholly or mainly' for the purposes of processing and disposing of imported waste, then the operation is a county matter. Clearly this is not the case at Crouchland Farm where the majority of imported material is purchased crops, and less than 3% of feedstock is imported waste.</p> <p>If a CLUED application is submitted to the County Council, we will take a view at that time regarding the appropriate planning authority to determine the application. If it relates substantially to the importation of waste, this would be a matter for the County Council.</p> <p>6. Within the PCN, the applicant advises that he is considering submitting a CLUED to WSCC as the planning authority and lodging an appeal against the recent refusal of planning permission by your authority. These will be matters that we would expect WSCC to deal with.</p> <p>If the applicant appeals against the recent refusal of planning permission, the County Council, as the determining authority, will defend its decision. However, even though the County Council refused planning permission, it does not necessarily follow that the County Council is then responsible for determining any future CLUED application by the operator. This is because responsibility for determining a CLUED application depends upon the nature and extent of the current 'lawful' development on the site as specified in the application. Therefore, it is not possible to pre-determine which planning authority should properly determine such an application.</p> <p>I hope that the above clarifies the County Council's position on this matter.</p> <p>Regards,</p> <p>Anna</p>	