

## Development Management Report

### Summary of Application

<b><u>Application Number:</u></b> 19/03637/VAR	<b><u>Parish:</u></b>	Cleobury Mortimer
<b><u>Proposal:</u></b> Variation of condition no.8a (max. tonnage of materials imported) pursuant of 15/02626/MAW to allow for an increase in tonnage per annum		
<b><u>Site Address:</u></b> Withypool Farm, Cleobury Mortimer, Kidderminster, Shropshire DY14 0DB		
<b><u>Applicant:</u></b> BK Hinwood And Son		
<b><u>Case Officer:</u></b> Graham French	<b><u>email:</u></b> <a href="mailto:planningdmc@shropshire.gov.uk">planningdmc@shropshire.gov.uk</a>	



**Recommendation:- Grant Permission subject to the conditions and legal obligation set out in Appendix 1.**

## REPORT

### 1.0 THE PROPOSAL

- 1.1 Planning permission was granted for an 800kw agricultural anaerobic digestion facility at Withypool Farm on 17<sup>th</sup> August 2015 (15/02626/MAW) and the facility has been operational since spring 2016. Feedstock is derived from an on-site poultry unit from crops including maize, grass silage, and whole crop silage which are grown on surrounding farmland. The “green energy” produced is used across the applicant’s holding. The digestate is used to fertilise the crops grown as feedstock for the digester.
- 1.2 The AD process occurs continuously with crops and manure being moved to the stationary feeder by a mechanical loader once a day, predominantly during daylight hours.
- 1.3 The agricultural buildings at Withypool Farm have historically been a focal point for farming activities and associated agricultural vehicle movements. The application for the AD facility stated that there was not anticipated to be any significant increase in HGV movements relative to historic norms although the nature of such movements may change. However, following the bringing into use of the facility objections were received from local residents regarding odour and an alleged intensification of heavy vehicle movements. Upon investigation of these complaints by the officer the applicant confirmed that feedstock input levels had increased above the currently permitted limit. This had been necessary in order to ensure that that the facility could reach its design capacity for energy production.
- 1.5 Condition 8a of the planning permission allows a maximum of 17,000 tonnes of feedstock to be used at the facility each year. The current application seeks to vary this condition in order regularise the situation by increasing the maximum feedstock level to 22,000 tonnes per year. There are no other proposed changes to the previously approved scheme.
- 1.6 No additional infrastructure would be required to accommodate the proposed increase in tonnage and the applicant states that the proposals would not change the energy rating of the facility. However, the applicant notes that as a result of ongoing discussions with the Environment Agency it may be necessary to place a dome on the digestate tank. This would form the subject of a separate planning submission.
- 1.7 The proposal is retrospective and the applicant is seeking to regularise the proposed variation through the current application.

### 2.0 SITE LOCATION / DESCRIPTION

- 2.1 The site (area 1.48ha) lies adjacent to the existing buildings of Withypool Farm which lies to the south of the A4117 highway running between Cleobury Mortimer and Doddington. Access is obtained from a minor road adjoining the A4117 some 0.5 miles to the north east.

2.2. The AD site has been located adjacent to the modern farm buildings at Withypool Farm, close to the primary sources of feedstock and to a local grid connection which receives exported electricity from the site.

2.3 The closest private residential receptors are Stable Tallet is over 600 metres to the south east and 3 properties at Hollywaste over 600 metres to the north east. The proposed development site is not located within a protected landscape area and is not near to any statutory environmental designations. The Shropshire Hills AONB extends to within 2.9km to the west of the site.

### 3. REASON FOR COMMITTEE DETERMINATION OF APPLICATION

3.1 The proposals have been referred to committee by Councillor Butler and the area development manager has agreed that relevant committee referral criteria are met under the Council's Scheme of Delegation.

### 4. CONSULTEE RESPONSES

4.1 Cleobury Mortimer Parish Council – Objection. The Town council discussed this application at its' meeting Monday 2nd September The Town council cannot support this application and Objects due to the concerns listed.

- The need to know results of Environmental health visit before a decision can be made.
- Concerned of public health issues and again require sight of Environmental Health report.
- Lack of public consultation previously and presently.
- Issues far greater that led to believe in 2015 at initial application.
- What can be done to mitigate current state first.
- All these needs answering before any decisions can be made.
- Needs to go to planning committee.

4.2ai. Environment Agency (23/09/19) - No objections. The changes proposed by this planning application will not breach the permit in terms of types or quantities of waste. These must however be managed appropriately to prevent pollution or increase the risk of harm to the environment or human health. We have completed 6 audits/regulatory inspections of the permitted activities since the biodigester began operating in April 2017. On all occasions we have not had any cause to record any breaches of the permit.

ii. The Environment Agency is currently investigating reports of odour from the local community. We have so far corroborated that there have been offensive odours during the spreading of digestate. We are currently investigating whether any of the offensive odours that have been reported are arising from the operation of the biodigester or storage of any materials associated with the biodigester as well as the other potential sources of odour in the area such as the cattle sheds. There is a strong correlation between land spreading of digestate from the farm and odour reports being made. At present the odour from spreading of the digestate and farm manures is not controlled by the Environment Agency, this is controlled under statutory nuisance legislation by the Council. We would advise that the views of Environmental Health are sought regarding the spreading and suitable controls.

- iii. Covering of slurry tanks is considered Best Available Techniques (BAT) within the intensive Environmental Permitting Regulations (formerly the Pollution Prevention and Control Regulations). The permit that the operator holds for this site is not an intensive farming permit, but the applicant may want to prioritise covering the digestate storage tanks as best practice.
  - iv. On 11 September 2019 my colleagues met with yourself after a request for our incident investigation log including the number of odour reports and inspections to the area to assess odour.
- 4.2b Environment Agency (23/01/20) As previously stated the changes proposed by this planning application will not breach the permit in terms of types or quantities of waste. I would reiterate the comments provided in my previous response but, additionally, can confirm that my colleagues have recently visited the site and continue to investigate reports of odour. We will be happy to provide an update on the outcome of this investigative work in due course.
- 4.2ci. Environment Agency (09/03/20) Further to my email of the 23 January 2020 I can provide an update on the investigative work currently being undertaken by my waste colleagues who regulate the above site.
- ii. My colleague Gareth Parsons attended an incident at Withypool Farm on Saturday 7 December 2019 while the site was in darkness. He rated the odour as a 6/6 on the road adjacent to the site. Madeleine Starks then attended on the Sunday 8 December and rated the odour as 3/6 on the road adjacent to the site. At the time of this incident neither Gareth or Madeleine were trained to conduct an inspection of an AD facility, however the primary objective was to verify the odours present; location, intensity, duration, type etc. Officers were not at the site to investigate the cause of the odour at the time. This was referred to the officer co-ordinating the regulation of the site (Gethin Bowley) in office hours on the Monday morning. This is standard practice for attendance of incidents out of hours unless the incident is very serious.
  - ii. Since this time we have updated the risk assessment for the facility to clarify to any officers attending where they can access safely at the site and that they must contact the farm owner whilst in the area. They should also observe what is happening at the farm to get the latest information. This information is now stored on our incident manual for all officers that are on duty to use. We have also escalated the issue to our national odour expert (Nick Sauer) to investigate further. He audited the site in January and met with both the local residents and the site operator. The audit has required additional data to be collected at the site which is being collated at present.

#### INTERNAL COMMENTS:

- 4.4 Regulatory Services – No comments received specifically in response to the current application. The officer was in dialogue with Regulatory Services in 2019 regarding odour complaints received from local residents.
- 4.5 WSP for Highway Authority – No objection. The proposal seeks to vary condition 8a attached to planning permission 15/02626/MAW to increase the annual tonnage of imported materials to 22000 tonnes. The figures submitted indicate that the increase in

tonnage will equate to (a worst-case scenario) of a further 1.3 vehicle movements per day and it is therefore considered that a highway objection to the variation of condition 8a would be unsustainable.

4.9 SC Historic Environment, Archaeology & Conservation: – No objections.

4.10 Flood & Water Management - No objection.

4.12 Councillor Madge Shingleton, Cllr Gwilym Butler (Cleobury Mortimer) – have been informed of the proposals.

#### Public Representations

4.13 The application has been advertised in accordance with statutory procedures. Objection letters have been received from 4 individuals. The main concerns can be summarised as follows:

- i. Odour: Since operations commenced in 2016 our lives have been blighted by bad odour smells from digestate/slurry spreading on the land close by and also the foul gas smell which blows up from the plant regularly on south westerly winds. The spreading of the digestate and slurry from this operation would also be increased by upping the tonnage. Last year Withypool rented more fields one of which is in full view of our kitchen window and one bedroom window. Aug 6th 2018 this black digestate and then slurry from the tanker/dribble bar was plastered on this field...about 20 yards from our kitchen and one bedroom window. At that time it was a heatwave and we couldn't sit in our own garden or open a window...we were imprisoned by this ammonia smelling stench. The smell from the Digester Plant and this digestate slurry spreading gives us terrible headaches and makes us feel nauseous which is a great concern to our future health. We have made many telephone calls to the Incident Hotline reporting these dreadful odours and have logged the Ref No's for future reference. The smell from the Digester plant and also from the digestate spread on the fields makes the washing smell and on many occasions has had to be re laundered. With other residents of Hollywaste we have visited the farmer Mr P Hinwood to talk the matter over and also had a site meeting with the E.A. on 21/1/19 because of the problems this is creating in our everyday lives. On that site visit with E.A. Officers Gethin Bowley, Mark Pearson & Madeline Starks and also Lucy Downes for Evolution Biogas plus Jack Hinwood it was found that one of the condensers was leaking gas and would have to be corrected. We are being plagued with noise and terrible smells which has caused serious harm to our health and wellbeing.
- ii. The smell is so bad we cannot open our windows, hang out washing, undertake gardening or outdoor activities. The smell can get so intense it gives me a headache, sore throat and I can be feeling sick and wheezy. This is seriously affecting the quality of life at Hollywaste. We have complained to the Environment Agency numerous times, reporting these issues regularly to them but they have not been able to remove the problems we have to face on a DAILY BASIS. Environmental Health at Shropshire Council are also aware of our problems and complaints have been made to planning and our unitary councillor. The smell occurs at various times of day and can be particularly bad late in the evening and at night. I am seriously concerned that the omissions from the site are not controlled and the EA will not provide us with any monitoring information. the applicant aims to increase the importation of off-farm waste

ie chicken litter, whey permeates, brewery washings and potato peel. I am seriously concerned about the 30% increase in tonnage to the site. Not only does this propose an increase in production but will increase the odour issues which are clearly not under control. I currently experience vile smells that penetrate my home, these will only be made worse if the tonnage is increased.

- iii. Please note that the original planning application to build the AD plant was granted permission on the basis that the AD process produces odourless waste (digestate). We have independent verification confirming that both dry and wet digestate is far from odourless. Wet digestate produces an evil pungent smell and is unbearable when spread. Last weekend (6th/7th/8th December) the smell coming from the AD plant was awful. No spreading had taken place. The smell was in our house, on washing hung on the line and made spending time outside unbearable. The community reported this to the EA hotline and EA Duty officer, Gareth Parsons, attended site on Saturday. He confirmed that the aroma was powerful enough to be rated 6/6. The 6/6 aroma rating was confirmed again by the attending EA officer on Sunday! Unfortunately we endured the same aroma issue yesterday, Saturday 14th December and intermittently today depending on wind direction. We have suffered the same type of aroma from the AD plant since it went into operation! Community calls to the EA have been documented and can be uploaded to this portal if required? We are nearly 12 months down the road from our site visit and yet we are still suffering the same vile aroma that we have done from the moment the plant was switched on. The community are prepared to work with the plant operators to reach an odourless conclusion.
- iv. Note that prior to the AD plant there were no complaints from the community about odours generated by standard farm practices. The post AD Plant aromas are not standard agricultural smells and do not follow the traditional agricultural calendar of aroma release. We are also experiencing more spillages of unbearably smelly material onto the road outside our property. There have been 2 spillages this week. If there is more movement of organic material then one can only assume that there will be the increased likelihood of road spillages. The smell currently generated by the plant is unacceptable. Surely the site must prove it has an effective odour management plan for its current approved tonnage? Following our Withypool site meeting the EA promised that a new OMP would be written and that they would submit the new proposal so that we would be able to read it. A time period of 6 weeks was suggested by the EA. Since that day, despite our requests, we have not seen the new OMP and the same gaseous smell continues to reach my home.
- v. Traffic: This digester has increased the traffic on these dangerous crossroads with contractors in convoy transporting harvested crops from Stottesdon area + at least twice a year using Common Lane which we live on...these big tractors/trailers take up the width of these lanes and the noise and speed which they travel destroy our peace and privacy. Large tankers and container lorries come regularly via the main A4117 from Cleobury or Clee Hill way and find it hard to negotiate the turn into the lane to get to Withypool Farm. Ironically a Council Rd sign reads "Unsuitable for Heavy Vehicles". The current proposal is to now have 50% of all input materials being imported and only 50% from farm manure and crops. This is not acceptable and makes the farm an industrial waste disposal site. The traffic generated from this industrial site in our rural community has increased dramatically with regular articulated lorries, numerous tankers and trailer loads of produce or waste travelling past our homes, down a single-track lane 'unsuitable for HGVs'.

- vi. The amount of traffic servicing the digester is already taking its toll on the lane leaving it damaged on the edges. The heavy lorries and huge tractors belch out diesel fumes when they rev up at the junction this will only increase. Are the 1.3 extra vehicle movements an average for 365 days, i.e. 1 year? Will the new material inputs be constant or will there be seasonal shifts based on the farms own material production? Will extra funding be provided by the Council to repair the single track road that has already deteriorated greatly from the current traffic increase caused by the digester? With a further predicted 475 vehicle movements per year the Council must consider its obligation to maintain the road, verges and passing points which will suffer further deterioration. The increase in the amount of traffic is huge. Artic lorry and tractor movements are constant. Hauling organic material to the farm and taking spent material away has caused the lane to deteriorate very significantly. If the digester is to consume more material the council have an obligation to improve the road which cannot cope with the current traffic levels.
- vii. Noise: The noise from the engine room etc is obviously more prominent at night and is like a combine running....not very environmental friendly and it's a case of throwing the covers over your head and not opening a window and worse when wind direction coming this way which is south westerly mainly in the summer months. The noise from the CHP unit/transformer is constant. This unit is running 24/7 and the noise can be heard from inside my house, half a mile away, due to location of the site. It is completely unacceptable that this noise permeates residential dwellings, especially during the night.

## 5. THE MAIN ISSUES

- Justification for the proposed increase in tonnage
- Odour control;
- Traffic;
- Noise.

## 6. OFFICER APPRAISAL

### 6.1 Justification for the proposed increase in tonnage:

- 6.1.1 Having operated the facility for 3 years the applicant has found that in order to maximise the production of renewable energy from the plant the volume and calorific content of the feedstock needs to be increased. The increase in feedstock volume is required to improve the volume, quality and consistency of gas production.
- 6.1.2 The applicant has also found that the home grown crops introduced into the AD facility are subject to variations in calorific value which can affect volumes of gas production. There has also been a significant reduction in herd size at the farm which affects the availability of liquid slurry feedstock within the unit. The alternative of introducing borehole water into the AD process to compensate for the loss of slurry volume was not considered to be sustainable. Re-circulation of digestate was also discounted as this can lead to a build-up of contaminants such as ammonia over time.
- 6.1.3 The new feedstocks include a proportion of agricultural wastes not available within the agricultural holding including chicken litter, whey permeates, brewery washings and

potato peel. It is proposed that these are additional feedstock types are imported from local agricultural processors with a 50:50 mix of imported to on-farm derived materials. The more diverse feedstock mix would allow the applicant to control the AD operations to produce a more stable and optimised gas yield. The Government now requires all new AD facilities are required to process at least 50% wastes to qualify for Renewable Heat Incentive and Feed In Tariff subsidies.

6.1.4 The application relates to a renewable energy scheme and the Government aims to increase the supply of renewable and low carbon energy (NPPF paragraph 151). The NPPF states (para 154) 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; and
- b) approve the application if its impacts are (or can be made) acceptable'.

Shropshire Council recently declared a climate emergency and renewable energy plants such as the current site are one way in which the climate emergency can be addressed at a local level.

6.1.5 Given the national and local support for renewable energy and the technical considerations put forward by the applicant it is considered that the justification for the proposal can be supported in principle. This is provided that any effects caused by the proposals are acceptable or can be made so.

## 6.2 Consideration of environmental effects

6.2.1 The main objections raised by local residents relate to odour, traffic movement and noise. These concerns must be assessed against the baseline of the existing planning consent for an AD facility processing up to 17,000 tonnes of feedstock per year. The proposal to increase feedstock to 22,000 tonnes per year represents an increase of just over 25%. There are no other changes to the currently approved scheme of operations.

6.2.2 The comments of 4 local residents are listed in section 4.13 of this report. It is clear that operation of the facility has given rise to amenity concerns centred mainly around the small settlement of Hollywaste some 800m north of the AD facility. These concerns are acknowledged and it is necessary to assess the extent to which any valid concerns can be mitigated or may be exacerbated by the current retrospective proposals. Mitigation might include tightening of existing planning conditions and / or requiring additional measures at the site.

### Odour

6.2.3 The principal concern raised by local residents relates to odour, with concerns both about odour from the AD facility itself and from the spreading of digestate on surrounding farmland, some of which is close to areas of residential property. The original AD planning application indicated that digestate would not generally have a strong odour and would be considerably less odorous than cattle slurry from the farm which has historically been spread in its raw state on surrounding fields. However, problems in securing the correct balance of feedstocks has led to the resulting



digestate having a generally stronger odour than had been anticipated. This has in turn led to complaints when the digestate is spread on surrounding land.

- 6.2.4 The applicant advises that whilst the current proposals involve an 25% increase in the level of feedstock this would actually allow a more balanced feedstock mix to be achieved. As such, the anaerobic decomposition process would be more effective and the resultant digestate would be expected to have a lower odour. There are currently over 20 operational AD sites in Shropshire, most of which are on-farm facilities like the current site which use agriculturally derived feedstocks. In general there has not been any significant history of odour complaints relating to the operation of these facilities or to the associated spreading of digestate on surrounding land. This supports the conclusion that when the AD process runs efficiently the resulting digestate does not have an offensive odour and is far less odorous than spreading of raw poultry manure or slurry.
- 6.2.5 The application is retrospective and the increased feedstock levels have been received at the facility for over 1 year. The most recent odour complaint which the Planning Authority was notified of dates from April this year and refers to 'muck spreading'. It is not clear whether this actually relates to digestate spreading. The complaint was investigated by Regulatory Services in association with the Environment Agency and the conclusion was that the farm was operating in accordance with the DEFRA code of good practice for land spreading. No further action was taken.
- 6.2.6 The Environment Agency has provided records of 2 site inspections carried out in summer 2019 when no odour or a slight odour was observed. The officer also inspected the site in summer 2019 when no odour was observed. Subsequently the Environment Agency inspected the site twice in December 2019 when a strong odour and a milder odour were observed. The Environment Agency subsequently referred the matter to their national odour expert but no further updates have been received.
- 6.2.7 The Environment Agency has confirmed that land spreading is being undertaken in accordance with the DEFRA good practice code. As such, the proposed 25% increase in feedstocks would not result in any greater application of digestate in any given area (as the DEFRA code sets out tonne per hectare limits) but would instead lead to an extension of the area in which digestate is spread. It is understood that the applicant has acquired more land to facilitate this spreading. Digestate is applied via a dribble bar and then is immediately ploughed into the land, As such, whilst digestate odour issues have been encountered an increase of 25% in feedstock levels is considered unlikely to exacerbate these issues in any given area. As indicated by the applicant it is to be expected that any digestate odour would reduce as the AD process becomes more efficient due to the proposed increase in feedstock types.
- 6.2.8 Regarding odour at the site itself it is understood that a faulty seal had previously led to a release of odour at the time of the Environment Agency's December 2019 inspection but that this problem had been rectified. It is also understood that the digestate holding tank may also be a source of odour at some times. The Environment Agency has advised that it is good practice to cover the digestate tank. The applicant has indicated that the Environment Agency might require a dome to be erected and this would require a separate planning permission. However, floating covers are also understood to be available and would not require planning permission. If permission is granted it is

recommended that a condition is imposed requiring a scheme to be submitted which provides for a cover to be installed on the digestate tank.

- 6.2.9 The original AD planning application is accompanied by an odour management plan and condition 11a of the permission requires operations to be in accordance with this plan, including:
- i. Management and containment of stored feedstock materials to reduce odour emissions;
  - ii. Ensuring that all site personnel recognise the importance of odour minimisation and that relevant personnel are aware of how to control odour emissions;
  - iii. Provision to cover the digestate storage tank if necessary in order to further reduce the potential for odour emission.

The original Odour Management Plan (OMP) was prepared and submitted by planning consultants in June 2015 as part of the background papers for the planning documentation. The site implements a revised up to date OMP as part of the Environmental Management System which is regulated by the Environment Agency. The OMP is reviewed and revised on an annual basis or more frequently if required.

- 6.2.10 Given the concerns raised by local residents in relation to odour it is considered appropriate that the OMP should be updated as a planning document to include consideration of odour from digestate spreading. Whilst digestate spreading is not directly controlled under the current planning consent or the Environmental Permit it is considered appropriate that an assessment of digestate odour is undertaken before digestate is exported from the site for spreading on fields and that particular care is taken in the manner and timing of such spreading in proximity to residential property. Appropriate conditions and advisory notes on odour has been recommended in Appendix 1.
- 6.2.11 Additional control over odour is exercised by the Environment Agency under the Environmental Permitting regime and by Regulatory Services under the statutory nuisance procedures. It is considered that the recommended conditions will provide improved planning control of odour issues relative to the current situation and that refusal of the proposed variation on odour grounds would not be justified in the context of the existing AD permission.

#### Noise

- 6.2.12 Objectors have complained that the gas engine is audible at night time. Condition 9 of the existing planning consent requires that night time noise from the site at the nearest noise sensitive property shall be limited to less than 5dBA above background noise levels. The officer's day time site investigation indicated that the gas engine was not audible at the site boundary which is considerably closer than the nearest private residential properties. However, ambient noise is quieter at night time. In view of the complaint which has been received it is considered that a condition should be imposed requiring the applicant to monitor night time noise at the site boundary to determine whether condition 9 is being complied with. It should be noted however that the gas engine operates on a 24/7 basis under the existing planning consent and that there would be no change to this under the proposed variation.

### Traffic

- 6.2.13 The original 16000 tonne per annum feedstock volume was identified as generating 3.4 'external movements per day' (assuming a 6 day week). This was considered acceptable in the context of the local highway network. Taking the same 'worst case' approach the proposed 22000 tpa would result in 4.7 'external movements' per day (assuming a 6 day week). However, the majority of farm derived feedstock is brought to the farm via the local roads and internal farm tracks and delivered directly from the farm to the AD facility. In a 'no AD facility' scenario this traffic would make the same journey to the farm and then the produce would be exported onto the primary road network.
- 6.2.14 Assuming a 'worst case' 50:50 split between farm derived and imported feedstock then 50% of the 22000 tpa would be on the primary road network (i.e. 11000 tpa) which equates to 3.2 movements per day (6 day week). Therefore, the applicant advises that even with the introduction of the maximum 11000tpa of imported feedstock there is still a nett reduction of traffic on the primary road network compared to the 'no AD facility' scenario.
- 6.2.15 Regarding export of digestate the existing consent envisaged the production of 13600 tpa of digestate (i.e. based on 17000tpa of feedstock) yielding 10,890tpa liquid and 813tpa of fibre. This equates to 735 movements per annum which over the 7 months comprising the 2 digestate spreading windows averages 4.3 external movements per day. The 22000tpa increases this to 5.6 external movements per day.
- 6.2.16 The applicant advises that the movements of digestate derived fertiliser are direct replacements for movements of farm yard manure and artificial fertilisers which would apply in the 'no AD facility' scenario. As such, the applicant concludes that the use of digestate derived fertilisers has a neutral effect when compared to the 'no AD facility' scenario and a nett reduction in traffic on the primary road network when artificial fertilisers are used.
- 6.2.17 The Council's highway advisor WSP has advised that the figures submitted indicate that the increase in tonnage will equate to a worst-case scenario of a further 1.3 vehicle movements per day and a highway objection would therefore be unsustainable.

### 7.0 CONCLUSION

- 7.1 The application has attracted objections from local residents on the grounds principally of odour and traffic and Cleobury Mortimer Town Council has requested further reassurance in relation to these matters.
- 7.2 The application must be assessed in the context of the existing permission for a 17,0000 tonne per annum on farm AD facility and having regard to the advice of statutory consultees. The Environment Agency has not objected and has confirmed that odour management is being actively considered under the Environmental Permitting system. The existing permit already allows for the currently proposed feedstock tonnage without the need for modification.
- 7.3 Whilst the Government advises against the duplication of controls in different regulatory regimes odour also remains a material land use issue and Environmental Permit controls

are tightly limited to the consented area. It is appropriate therefore for some additional planning controls to be recommended in Appendix 1 in order to address the concerns which have been raised. Subject to this it is not considered that the additional 25% of feedstock proposed under the current application would result in new issues which were sufficient in their own right to justify planning refusal.

- 7.4 The concern of some local residents in relation to traffic are noted. However, the Council's highway advisor has not objected and the applicant has indicated that the level of vehicle movements generated by the facility is less than that which could potentially be generated in a non-AD scenario. Notwithstanding this, an advisory note advocating the adoption of a voluntary traffic management code has been recommended in Appendix 1.
- 7.5 In terms of concerns expressed about night time noise from the gas engine this element of the facility is not proposed to change. However, a night time noise monitoring condition has been recommended in Appendix 1 to ensure that the facility remains compliant with the existing night time noise limit.
- 7.3 The NPPF requires that applications for renewable energy should be approved if the impacts are, or can be made, acceptable (s98). It is concluded on balance that the proposals are capable of being accepted in relation to relevant development plan policies, guidance and other local considerations. This is having regard to the detailed planning controls listed in Appendix 1 which would be supplemented by the controls environmental permitting regime.

## 8. RISK MANAGEMENT AND OPPORTUNITIES APPRAISAL

### 8.1 Risk Management

8.1.1 There are two principal risks associated with this recommendation as follows:

- As with any planning decision the applicant has a right of appeal if they disagree with the decision and/or the imposition of conditions. Costs can be awarded irrespective of the mechanism for hearing the appeal, i.e. written representations, hearing or inquiry.
- The decision may be challenged by way of a Judicial Review by a third party. The courts become involved when there is a misinterpretation or misapplication of policy or some breach of the rules of procedure or the principles of natural justice. However their role is to review the way the authorities reach decisions, rather than to make a decision on the planning issues themselves, although they will interfere where the decision is so unreasonable as to be irrational or perverse. Therefore they are concerned with the legality of the decision, not its planning merits. A challenge by way of Judicial Review must be made a) promptly and b) in any event not later than three months after the grounds to make the claim first arose.

Both of these risks need to be balanced against the risk of not proceeding to determine the application. In this scenario there is also a right of appeal against non-determination for application for which costs can also be awarded.

### 8.2 Human Rights

8.2.1 Article 8 give the right to respect for private and family life and First Protocol Article 1 allows for the peaceful enjoyment of possessions. These have to be balanced against the rights and freedoms of others and the orderly development of the County in the

interests of the Community. First Protocol Article 1 requires that the desires of landowners must be balanced against the impact on residents. This legislation has been taken into account in arriving at the above recommendation.

### 8.3 Equalities

8.3.1 The concern of planning law is to regulate the use of land in the interests of the public at large, rather than those of any particular group. Equality will be one of a number of 'relevant considerations' that need to be weighed in Planning Committee members' minds under section 70(2) of the Town and Country Planning Act 1970.

### 8.4 Financial Implications

8.4.1 There are likely financial implications of the decision and/or imposition of conditions if challenged by a planning appeal or judicial review. The costs of defending any decision will be met by the authority and will vary dependant on the scale and nature of the proposal. Local financial considerations are capable of being taken into account when determining this planning application – in so far as they are material to the application. The weight given to this issue is a matter for the decision maker.

## 9. BACKGROUND

### RELEVANT PLANNING POLICIES

#### Central Government Guidance:

### 9.1 National Planning Policy Framework (NPPF) (DCLG – July 2011)

9.1.1 The National Planning Policy Framework (NPPF) established a presumption in favour of sustainable development. The Government's objective is that planning should support the transition to a low carbon economy in a changing climate, for instance, by the development of renewable energy. To help increase the use and supply of renewable and low-carbon energy, local planning authorities should recognise the responsibility on all communities to contribute to energy generation from renewable or low-carbon sources. They should:

- have a positive strategy to promote energy from renewable and low-carbon sources, including deep geothermal energy;
- design their policies to maximise renewable and low-carbon energy development while ensuring that adverse impacts are addressed satisfactorily;
- consider identifying suitable areas for renewable and low-carbon energy sources, and supporting infrastructure, where this would help secure the development of such sources;
- support community-led initiatives for renewable and low carbon energy, including developments outside such areas being taken forward through neighbourhood planning; and
- identify opportunities where development can draw its energy supply from decentralised, renewable or low carbon energy supply systems and for co-locating potential heat customers and suppliers (s97).

9.1.2 When determining planning applications, local planning authorities should apply the presumption in favour of sustainable development and:

- not require applicants for energy development to demonstrate the overall need for renewable or low-carbon energy and also recognise that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions; and
- approve the application if its impacts are (or can be made) acceptable. Once opportunity areas for renewable and low-carbon energy have been mapped in plans, local planning authorities should also expect subsequent applications for commercial scale projects outside these areas to demonstrate that the proposed location meets the criteria used in identifying opportunity areas (s98).

Special tests apply however for development affecting National Parks and AONB's and such areas should be afforded the strongest protection. Planning permission should be refused for major developments in these designated areas except in exceptional circumstances and where it can be demonstrated they are in the public interest.

## 9.2 Core Strategy:

### 9.2.1 The Shropshire Core Strategy sets out strategic objectives including:

- To rebalance rural communities through the delivery of local housing and employment opportunities (objective 3);
- To promote sustainable economic development and growth (objective 6);
- To support the development of sustainable tourism, rural enterprise, broadband connectivity, diversification of the rural economy, and the continued importance of farming and agriculture (objective 7);
- To support the improvement of Shropshire's transport system (objective 8);
- To promote a low carbon Shropshire (objective 9) delivering development which mitigates, and adapts to, the effects of climate change, including flood risk, by promoting more responsible transport and travel choices, more efficient use of energy and resources, the generation of energy from renewable sources, and effective and sustainable waste management.

### 9.2.2 Core Strategy policies of relevance to the current proposals include:

- CS5: Countryside and Green Belt;
- CS6: Sustainable Design and Development Principles;
- CS13: Economic Development, Enterprise and Employment;
- CS14: Managed release of Employment Land
- CS16: Tourism, Culture and Leisure
- CS17: Environmental Networks
- CS18: Sustainable Water Management

### 9.2.3 Site Management and Allocation of Development Document (SAMDEV) –

- MD2 – Promoting sustainable design;
- MD7 – Managing development in the countryside (seeks to protect heritage, landscape and biodiversity assets);
- MD9 – Safeguarding and improving employment investment (includes seeking to protect existing employment sites in rural areas);
- MD12 – Protecting and enhancing Shropshire's natural and historic environment.

## 10. RELEVANT PLANNING AND SITE HISTORY:

- PREAPP/09/00337 Wind Turbine proposal PRRQD 19th August 2010
- 09/01290/FUL Erection of 11kw wind turbine 18.3m above ground level mounted on free standing tower with dual blade rotor with diameter of 13m GRANT 25th August 2009
- 10/01146/DIS Discharge of Condition 3 of Planning Permission 09/01290/FUL DISAPP 22nd April 2010
- 14/01487/AGR Agricultural Building for Storage PNR 1st May 2014
- 16/00984/DIS Discharge of Conditions 5 (Construction Management Plan), 15 (External Materials), 18a (Drainage), 19a (External Lighting) and 22 (Landscaping) attached to Planning Permission 15/02626/MAW DISAPP 14th September 2016
- 17/04589/AGR Proposed roads for agricultural purpose PNR 11th October 2017
- 17/06090/FUL Change of use of farm office to a dwelling GRANT 27th July 2018
- 19/03637/VAR Variation of condition no.8a (max.tonnage of materials imported) pursuant of 15/02626/MAW to allow for an increase in tonnage per annum PDE
- SS/1/08/21206/F Erection of a 7.5 metre windcharger and associated solar panel. PERCON 24th November 2008
- SS/1/07/19991/F Erection of an agricultural building (for storage) (Delegated matter) PERCON 26th October 2007
- SS/1/7448/P/ Erection of an agricultural building for lambing and machinery PERCON 16th January 1997
- SS/1/6331/K/ Erection of a fodder store/straw store PERCON 9th January 1996
- SS/1/4877/K/ Erection of an agricultural storage building. PERCON 9th August 1994
- SS/1/3589/K/ Construction of a farm pond and erection of a grain store PERCON 10<sup>th</sup> June 1993
- SS/1/598/P/ Retention of mobile home PERCON 27th July 1990
- SS/1/8691/P/ Use of building for light industrial use (B1) PERCON 14th April 1998
- SS/1988/321/P/ Retention of mobile home. (Renewal of 86/144/P). PERCON 13th June 1988
- SS/1984/649/P/ Erection of a general purpose agricultural building. PERCON 16th January 1985
- SS/1986/144/P/ Use of land for the stationing of a mobile home. PERCON 9th May 1986
- SS/1982/324/P/ Erection of an agricultural building. PERCON 12th August 1982
- SS/1984/265/P/ Erection of a grain store. PERCON 5th June 1984
- SS/1975/308/P/ Erection of an agricultural building and alterations to existing vehicular access. PERCON 25th February 1976
- SS/1/01/12357/F Change of use agricultural building to offices (B1), change of use of domestic/agricultural curtilage to commercial, and erection of a shed. PERCON 2<sup>nd</sup> August 2001
- SS/1/01/12556/NT Erection of an agricultural building (for the maintenance of agricultural equipment). PERCON 10th September 2001
- SS/1/99/009934/NT Erection of an agricultural building. NOOBJ 18th May 1999
- 15/02626/MAW Installation of a 800kW Agricultural Anaerobic Digester Plant GRANT 17th August 2015
- 19/03637/VAR Variation of condition no.8a (max. tonnage of materials imported) pursuant of 15/02626/MAW to allow for an increase in tonnage per annum PDE

List of Background Papers: Planning application references 19/03637/VAR, 15/02626/MAW and associated location plan and documents

Cabinet Member (Portfolio Holder) Cllr G. Butler

Local Member: Cllr Madge Sheinton, Cllr Gwilym Butler (Cleobury Mortimer)

Appendices: Appendix 1 – Conditions

## **APPENDIX 1.**

### **Conditions**

Condition 8a of permission reference xxx is hereby varied to read:

- 8a The maximum tonnage of materials imported to the Site in any calendar year shall not exceed 22,000 tonnes. For the avoidance of doubt a calendar year shall comprise the period between 1st January and 31st December

Reason: To define the permitted tonnages at the facility.

The following conditions shall also apply.

#### COMMENCEMENT OF DEVELOPMENT

- 1a. The variation hereby approved shall be deemed to have commenced beginning with the date of this permission.

Reason: To comply with Section 91(1) of the Town and Country Planning Act 1990 (1a).

#### DEFINITION OF SITE AND DEVELOPMENT

2. This planning permission shall only relate to the area edged red on the approved planning application boundary plan accompanying planning application reference 15/02626/MAW (drawing number SA19489/01) hereinafter referred to as "the Site".

Reason: To define the area to which this planning permission relates.

3. Except as otherwise provided in the conditions attached to this permission the operations and uses hereby permitted shall be carried out strictly in accordance with the approved scheme comprising permission reference 15/02626/MAW as varied by this permission and by non-material amendment permission reference 17/02404/AMP. For the avoidance of doubt the details approved under permission reference 15/02626/MAW comprise:-



- i. The application form dated 12<sup>th</sup> June 2014 and the accompanying information including:
  - Planning Statement (Berrys);
  - Flood Risk Assessment;
  - Odour Management Plan;
  - Environmental Permit Compliance;
  - Extended Phase 1 Assessment, Pearce Environment.
- ii. The permitted drawings accompanying the planning application. For the avoidance of doubt these include:
  - Drawing no: SA19489/01 – Location plan;
  - Drawing no: SA19489/02 – Site plan;
  - Drawing no: SA19489/03 – North East Elevation;
  - Drawing no: SA19489/06 - North West Elevation;
  - Drawing no: SA19489/04 - South East Elevation;
  - Drawing no: SA19489/05 – South East Elevation;
  - Drawing no: SA19489 07 - Land Farmed.

Reason: To define the permitted development.

#### TRAFFIC AND ACCESS

4. The sole means of access to the site shall be as shown on the approved site plan (plan reference SA23176/01).

Reason: In the interests of highway safety.

5. *Notes:*
  - i. *The Construction Management Plan required under condition 5 of permission reference 15/02626/MAW was approved under discharge of conditions reference 16/00984/DIS.*

*ii. The applicant is encouraged to adopt a voluntary traffic management plan including implementing a one way system where appropriate during more intensive periods of HGV activity at the AD site to limit the potential for adverse effects on the public highway.*

6. The site access, internal circulation areas and secondary access road shall be cleaned as necessary with a tractor mounted brush or other similar device in order to prevent the trafficking of mud onto the public highway.

Reason: In the interests of highway safety.

#### USE OF THE FACILITY AND CONTROL OF TONNAGES

7. The principal uses of the Site shall be restricted to:
  - i. the anaerobic digestion process and the associated receipt, handling and storage of agricultural wastes and crop products;

- ii. generation of electricity and heat and other ancillary operations associated with the above activities.

Reason: To define the type and sources of materials permitted to be managed and handled at the Site in accordance with the approved scheme, in the interests of general amenity and to protect surface and groundwater from pollution.

8a. *Note: Condition 8a has been amended to provide an increase in the annual feedstock tonnage which can be imported to the Ad facility from 17,000 to 22,000 tonnes per annum.*

- b. The Site operator shall maintain a record of the tonnage of materials including energy crops and agricultural wastes delivered to the Site and the numbers of associated HGVs and tractor and trailer loads. The record shall be made available to the Local Planning Authority upon prior written request.

Reason: To ensure that the development remains within the general levels of activity specified in the planning application in the interests of highway safety and general amenity whilst having regard to the fact that different potential feedstocks may have different calorific values (8a). To facilitate monitoring of tonnages imported to the anaerobic digestion facility by the Local Planning Authority (8b).

#### NOISE

9a. Noise from the operation of plant in the engine room (together with noise from system pumps, and from any other associated plant) shall be attenuated to achieve a calculated level which does not exceed 5 decibels (dB(A)) above the night time background noise level outside the nearest privately occupied noise sensitive property.

- b. The applicant shall provide details of noise monitoring to ensure compliance with condition 9a.

Reason: To protect the amenity of the occupiers of nearby properties.

10a. Notwithstanding condition 10a and b, the following noise attenuation measures shall be applied during operation of the site:

- i. All vehicles and mechanical plant employed at the Site shall be fitted with effective exhaust silencers which shall be maintained in good efficient working order.
- ii. Machines in intermittent use shall be shut down or throttled down in the intervening periods when not in use or throttled down to a minimum.
- iv. All ancillary plant such as generators, compressors and pumps shall be positioned so as to cause minimum noise disturbance;

- b. All fixed and mobile plant based at and operating within the Site which are required to be fitted with reversing alarms shall be fitted with attenuated reversing alarms.

Reason: To minimise the possibility of adverse noise impact from Site operations at the closest receptor locations, including properties adjacent to the access from the public highway.

## ODOUR AND AIR EMISSIONS

### \*New condition

- 11a. Subject to Condition 11b odour shall be controlled in accordance with the approved Odour Management Plan accompanying the application and in accordance with the following measures:
- i. Management and containment of stored feedstock materials to reduce odour emissions;
  - ii. Ensuring that all site personnel recognise the importance of odour minimisation and that relevant personnel are aware of how to control odour emissions;
  - iii. Provision to cover the digestate storage tank if necessary in order to further reduce the potential for odour emission.

- b. The approved odour management plan shall be updated to take full account of odour from the spreading of digestate exported from the site, including timings for despatch of digestate and assessment of odour of dispatched digestate to ensure that the the amenity of nearby residential property is protected.

*Note: The applicant is encouraged to adopt a voluntary digestate spreading plan in support of this condition which amongst other measures secures rapid incorporation of digestate into the soil horizon by ploughing in or injection, with particular emphasis on receiving fields within 250m of private residential property.*

- c. A scheme providing for the digestate tank to be covered within an agreed timescale shall be submitted for the approval of the Local Planning Authority within one month of the date of this permission. The digestate tank cover shall be installed in accordance with the approved details.
- d. In the event that an odour complaint is received and is subsequently validated by the Local Planning Authority in consultation with Shropshire Council Regulatory Services and / or the Environment Agency then the AD site operator shall implement a formal investigation of the complaint within 3 working days of notification to this effect by the Local Planning Authority. The scheme shall makes provision for mitigation measures to be implemented within an agreed timescale where appropriate. Any schemes submitted under this condition shall be implemented in accordance with the approved details.

Reason: To reduce the impact on local amenities of odour arising from Site operations.

12. All yard surfaces and circulation areas within the Site shall be swept as necessary to remove mud / debris and water shall be applied to such areas as appropriate during dry conditions in order to prevent the generation of dust.

Reason: To reduce the impact on local amenities and air quality of dust arising from Site operations.

#### PEST / VERMIN CONTROL

- 13a. Pest and vermin control shall be managed in accordance with the scheme approved under discharge of condition approval reference 16/00984/DIS.

Reason: To ensure that appropriate measures are in place to control the possible effects of pests and vermin.

#### HOURS OF OPERATION

- 14a. With the exception of use of the generator and normal continuous running of the anaerobic digestion process no operations hereby permitted shall be undertaken at the Site, except during the following hours:

Mondays to Fridays	07.00 to 21.00 hours
Saturdays:	07.00 to 21.00 hours
Sundays / Bank Holidays	08.30 to 18.30 hours

- b. Notwithstanding Condition 14a, provision shall apply for extended working for not more than 10 periods in any calendar year in order to cater for exceptional circumstances. During periods of extended working no operations hereby permitted shall be undertaken at the Site, except within the hours specified in Condition 14a above and during the following hours:

Mondays to Fridays	05.00 to 23.00 hours
Saturdays:	05.00 to 23.00 hours
Sundays / Bank Holidays	06.30 to 20.00 hours

Records of extended working under this condition shall be maintained and shall be provided to the Local Planning Authority upon request.

*Note: Wherever possible, the Local Planning Authority should be notified in advance of any proposed periods of extended working under the terms of Condition 14b.*

#### BUILDINGS, STRUCTURES AND PLANT

15. *Note: The detailed specifications and surface treatments for the anaerobic digester facility required under Condition 15 of permission reference 15/02626/MAW were approved under details submitted pursuant to discharge of conditions application reference 16/00984/DIS.*

16. All buildings, hard surfaces and fencing within and on the boundaries of the Site shall be maintained in an orderly state and fit for purpose, including maintenance of even, pothole free running surfaces in circulation areas for vehicles and plant.

Reason: To ensure that the Site is maintained to an acceptable standard in the interests of health and safety and general amenity.

## GENERAL PERMITTED DEVELOPMENT ORDER

17. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no buildings, demountable structures, fixed plant, or structures of the nature of buildings or fixed plant, and no fence or soil mound, in addition to those shown on the approved plans listed in condition 3 above, shall be erected at the Site unless approval in writing for their details and specification has first been obtained from the Local Planning Authority.

Reason: To maintain control over the appearance of the site and ensure that the development is in accordance with the permitted details.

## POLLUTION CONTROL AND DRAINAGE

18. *Note: The detailed specifications of the proposed soakaways for the anaerobic digester facility required under Condition 18a of permission reference 15/02626/MAW were approved under details submitted pursuant to discharge of conditions application reference 16/00984/DIS.*

### Notes:

- i. *All concrete areas where feedstock and digestate are handled should have a system in place to allow for water that may be contaminated to be diverted away from the clean water disposal route in to the dirty water system.*
- ii. *Any contaminated/dirty wash water should be collected via impermeable surfaces and disposed of to an appropriate system. The applicant should incorporate measures to prevent the transmission of oils, fuel, or other hazardous materials from entering the AD process. For example, a separate sealed drainage system for areas likely to be contaminated with any wheel washing or oils etc. should be installed, perhaps with a sump system for disposal elsewhere in the absence of a mains foul sewer connection.*
- iii. *As part of the sustainable urban drainage scheme ('SUDS'), the applicant is encouraged to employ the following measures:*
  - *Permeable paving;*
  - *Rainwater harvesting system;*
  - *Greywater recycling system;*
  - *Green roofs;*
  - *Water Butts.*

## LIGHTING

- 19a. *Note: The lighting details for the anaerobic digester facility required under Condition 19a of permission reference 15/02626/MAW were approved under details submitted pursuant to discharge of conditions application reference 16/00984/DIS.*

## ECOLOGY

20. *Note: A bat box is required to be installed at the site under Condition 20 of permission reference 15/02626/MAW.*
21. *Note: Work to construct the site was required to be undertaken in strict accordance with the Reasonable Avoidance Measures detailed in the 'Extended Phase 1 Survey, Proposed AD Plant, Withypool Farm, Kidderminster', June 2015, by Pearce Environment Ltd.*
22. *Note: The landscaping scheme for the anaerobic digester facility required under Condition 22a of permission reference 15/02626/MAW was approved under details submitted pursuant to discharge of conditions application reference 16/00984/DIS.*

#### CESSATION OF USE

- 23a. Not less than 2 weeks prior notice in writing shall be provided to the Local Planning Authority of the permanent cessation date for the operations hereby approved, or for any temporary cessation of operations for in excess of one month.
- b. Not less than 6 months prior to the planned date for any permanent decommissioning of the development hereby approved the operator shall submit proposals for decommissioning of the development within an agreed timescale for the approval of the Local Planning Authority. Such plans shall make provision for leaving the site in a condition suitable for future development, with provision to remove all buildings, hardstandings and structures which are not required in connection with the Site's subsequent afteruse.

Reason: To ensure that the Site is left in a tidy condition capable of a beneficial afteruse in the event of any permanent decommissioning of the development hereby approved.