



**Report FC/003/21**

**Agenda Item No:** 19a  
**Committee:** Full Council  
**Date:** 13th October 2021  
**Title:** Lagoon 3 update  
**By:** Catherine Nutting, Clerk & RFO  
**Purpose of Report:** To update the Council regarding the joint meeting with Chichester District Council (CDC) and Kirdford Parish Council (KPC) regarding progress of Enforcement action.

---

**Recommendations**

**Full Council is recommended:**

- a. To note the update from the virtual meeting which took place on Tuesday 5th October 2021.
- b. Cllr. Paul Jordan & Catherine Nutting, Clerk were in attendance.
- c. Report to be read in conjunction with the meeting agenda (appended).

---

**1. Introductions**

1.1 The last meeting was held on 26th May 2021.

1.2 Tony Whitty, Divisional Manager for Development Management, submitted a report to CDC's Planning Committee regarding Lagoon 3. Please see [below](#).

**2. Environmental Protection issues update from Alison Stevens, Divisional Manager for Environment**

2.1 A site meeting was conducted on 9th September 2021 between CDC, the Environment Agency (EA) and West Sussex County Council's Emergency Planning Team.

2.2 The EA undertakes a physical inspection of the integrity of the Lagoon's bund at these site meetings.

2.3 The lagoon's cover has been altered due to the owner collecting a content sample for analysis (see 4 below). At the time of the site visit it was not possible to see where the clover had been cut due to the area being underwater. The EA inspector checked for gas leaks and saw one or two bubbles. The EA are reportedly unconcerned by this.

2.4 The site meeting confirmed no significant change of the lagoon.

2.5 A multi-agency meeting is to be convened in October where the EA will formally share their report from the site visit and the emergency plan will be reviewed. The minutes of this meeting will be made available to the Parish Councils in due course.

### **3. Planning Issues update including report to Planning Committee, Tony Whitty - Divisional Manager for Development Management**

3.1 CDC have instructed their legal team to progress Enforcement action against the lagoon's owner.

3.2 The case is legally complex with significant amounts of evidence and relevant case law to be considered.

3.3 CDC have instructed a specialist barrister to review the case prior to it being lodged with the Court.

3.4 Once the legal papers have been submitted to Court, the matter and timescales will be determined by the Court.

3.5 Successful Court action does not necessarily deliver compliance with the Enforcement notice. If found guilty, the landowner would have a criminal record and could face a significant fine. However, the owner may still not decommission the lagoon.

3.6 Court action is less costly to CDC than Direct Action (bare the cost of the decommissioning themselves). The process to enact Direct Action requires Court action to be exhausted in the first instance. Seeking a prosecution is the first step in this process. If the Court action fails, or the landowner does not comply with the Court's ruling, then CDC will consider all other options at that time.

### **4. Question from Plaistow & Ifold PC: "Does CDC know, as the LPA, if Lagoon 3s owner, Mr Luttmann-Johnson, has done a regulated test of the lagoon's content?"**

4.1 CDC understand that the lagoon's owner may wish to seek a permit from the EA to spread the content to land.

4.2 The landowner has submitted a small sample of the lagoon's content to the EA for analysis. The results have been shared with CDC without specification.

4.3 A note on the sample analysis states that the sample was small, and it was difficult to complete all the requested/required testing.

- 4.4 At the point the landowner applies to the EA for a permit to spread the lagoon's content to land, the EA is likely to request a much larger sample to test robustly before approving the application.
- 4.5 The analysis suggests that the sample was not representative of the lagoon's contents, which will have many layers. The EA will ask the landowner all the necessary questions about how the sample was taken.
- 4.6 A Member of KPC asked CDC to notify local landowners if/when the lagoon's content is to be spread on land, due to potential water contamination. The Member indicated that adjacent landowners to the lagoon, such as himself, may wish to get the local waterways tested before the spreading begins as a point of comparison.
- 4.7 CDC reiterated that the EA are responsible for issuing permits once they are satisfied that the content is safe for spreading. However, CDC will notify the EA of the concerns. The permit application process may be subject to publication. CDC will make enquiries and update the group.
- 4.8 It was noted by the meeting that the lagoon's owner does not own land in the vicinity of the lagoon upon which to spread the digestate.

## **5. AOB**

- 5.1 It was noted that the public footpath around the lagoon remains closed by WSCC's Public Rights of Way (PRoW) Team. The PRoW Team are invited to the multi-agency meeting in October. CDC will query if the footpath needs to remain closed.
- 5.2 Next meeting agreed for three-months-time (January 2022).

# **Chichester District Council Planning Committee**

**Wednesday 7<sup>th</sup> July 2021**

## **Planning Enforcement Report**

**Crouchland Farm, Rickman's Lane, Kirdford, Billingshurst,  
West Sussex, RH14 0LE**

### **1. Contacts**

Shona Archer, Enforcement Manager [telephone number redacted by Parish Council]  
E-mail: [email redacted by Parish Council]

## **2. Recommendation**

**That Members of the Committee note the contents of this report.**

## **3. The site**

- 3.1 Crouchland Farm covers some 500 acres and is located on the west side of Rickman's Lane approx. 1.2km south east of the village of Plaistow and 2.8km north of the village of Kirdford. The area is rural in character and the site is surrounded by a mix of open countryside and blocks of woodland. Conserving the rural character of the area, with its high-quality landscape and environment, is considered a key planning objective.
- 3.2 The main farm buildings complex is located at the end of an access road which is also a bridleway open to all traffic (BOAT 643). The access road then continues north towards to Hardnips Copse [a block of ancient woodland] where it becomes a designated public right of way (PROW restricted byway 633). The site, the subject of this report, known as Lagoon 3, is located 500m to the west of the farm buildings, to the south of PROW 564/BOAT 3519 and covers an area equivalent to the size of two professional football pitches.
- 3.4 The nearest dwelling is situated within Crouchlands Farm and several properties are located approximately 400m to the north in Rickman's lane.

## **4. Introduction**

- 4.1 An appeal decision issued on 21 November 2017, relating to the development and use of Crouchlands Farm as a biogas plant, upheld the decision of this Council to issue two Enforcement Notices [PS/54 and PS/55 appended to this report] to require the use to cease, the plant to be dismantled and the removal of the lagoons and digestate from the land.
- 4.2 In reaching this decision, the period for compliance with the requirements of the notices was extended by the appeal Inspector to 18 months i.e. on or before 21 May 2019.
- 4.3 On 7 August 2017 administrators were appointed to Crouchland Biogas Limited and they decided to comply with the notices and bring about compliance. However, in doing so, they identified problems with the site including the scale of the decommissioning project and health and safety concerns.
- 4.4 The administrator alerted the Council that, as of the 1 October 2018, it was considering bringing the administration to an end having regard to the burden of the debt incurred and what was likely to be incurred in the future. Lagoon 3 was passed back to the original owner and the remainder of Crouchlands Farm was retained by the administrators.

4.5 On 17 October 2018, the Planning Committee considered whether the Council should extend the period for compliance with the enforcement notices. It was resolved that a further period of two years should be allowed due to the complex nature of the works required to remove and empty a lagoon of this size, the unknown composition of the digestate within it and the extent of the operational development involved. As such the compliance date was extended to 21 May 2021.

## **5. Main Report**

5.1 This report considers the circumstances of the Site and the works undertaken to comply with the extant Enforcement Notices.

5.3 As of 5 October 2018 the use of the land as a biogas plant had ceased and it was found that the administrators had undertaken significant works of compliance to dismantle the equipment and remove it from the land. However, Lagoon 3 remained in situ and there was further restorative work to the rest of Crouchlands Farm required in order to comply with the enforcement notice.

5.4 On 13 June 2019, the owner of Lagoon 3 advised planning enforcement that, further to a change in the legal management of the site, he now had sole responsibility for Lagoon 3 and its removal from the land. He set out his intention to find farmers to take the digestate to spread on their land over a two-year period; to “fill in the lagoon and return it to field” and to do so before the end of the compliance period.

5.5 A letter was sent to Mr Luttmann-Johnson on 3 September 2019 to inform him that planning enforcement would keep in contact with him regarding the need for compliance. By November 2020 it became clear that it was his intention to sell the site of lagoon 3 whereupon responsibility for compliance would pass to another party.

5.6 On 31 July 2020 the Council was informed by Artemis Land and Agriculture (“Artemis”), that removal of Lagoon 2 was imminent. Artemis had been working with a specialist environmental waste management company to consider its options and had decided to remove the waste from Lagoon 2 by tanker lorries.

5.7 A potential purchaser for Lagoon 3 was identified but the Council was advised that the cost of restoration was considered too much of a risk for them without any empirical evidence of the gases present and the composition and quantity of the digestate to be removed. For this reason, a land sale did not proceed.

5.8 In an attempt to overcome this obstacle to a land sale, the current owner of Lagoon 3 advised on the 13 May 2021 that sampling of the lagoon would be commissioned.

## **6.0 Current Position**

6.1 A site visit on 24 May 2021 – three days after the expiry of the compliance period – showed that Lagoon 3 remains intact on site with no indications within the site that any works of compliance had been attempted or that they were imminent. The visit did however confirm that the Crouchland Farm site [under

the management of Artemis] was compliant and that works required under the extant enforcement notices on land in its control had been carried out.

- 6.2 On 14 June 2021, the landowner advised that sampling of Lagoon 3 had taken place but a programme of works has not been forthcoming.

## **8. Conclusion**

- 8.1 Despite assurances from the owner of Lagoon 3 that steps would be taken to achieve compliance, no work has taken place.
- 8.2 The owner has reported that he faces legal and financial constraints, however at no point has a proposal beyond that 'sketched' out in February 2019 been presented to the Council; and an offer from planning enforcement of a meeting to discuss compliance was not taken up.
- 8.3 The additional two years of compliance, granted by the Council, has now passed without any physical change in the site having taken place. As such, Lagoon 3 remains in situ contrary to the requirements of enforcement notices PS/54 and PS/55.
- 8.4 This matter has now been passed to the Council's Legal Services team for its consideration of the offence of failing to comply with the enforcement notices. It is considered that this instruction is a proportionate response to the circumstances of this case which has a long and complex planning and enforcement history. Normally the next steps for the Council would be to seek a prosecution of the owner of the land, for failure to comply with the requirements of the enforcement notice. The purpose of such action is to seek to compel compliance. Following such action, if compliance is still not forthcoming, Council could consider further prosecution(s) (with a threat of a higher fine being levied for non-compliance). Should the status of the land remain contrary to the requirements of the notice, the other options available to the Council would be to seek an injunction or take direct action.

## **9 Legal Implications**

The Town and Country Planning Act 1990

- 9.1 Under section 179 of the Town and Country Planning Act 1990 it is an offence not to comply with an enforcement notice, once the period for compliance has elapsed, and there is no outstanding appeal.

A person guilty of an offence is liable on conviction to an unlimited fine.

Crime and Disorder Act Implications

- 9.2 There are no implications.

Equality Act Implications

- 9.3 As part of the decision-making process, under the Equality Act, public bodies must have due regard to the need to eliminate unlawful discrimination,

harassment, victimisation and any other conduct prohibited by the Act; advance equality of opportunity between people who share a protected characteristic and people who do not share it; and foster good relations between people who share a protected characteristic and people who do not share it.

- 9.4 In reviewing the planning issues set out in this report, it is concluded that a decision to increase the period of compliance would not adversely affect those with 'protected characteristics'.

#### Human Rights Implications:

- 9.5 The Human Rights Act requires the District Council to take into account the rights of the public under the European Convention on Human Rights and prevents the Council from acting in a manner which is incompatible with those rights. Article 8 of the Convention provides that there shall be respect for an individual's private life and home save for that interference which is in accordance with the law and necessary on a democratic society in the interest of (inter alia) public safety and the economic wellbeing of the country. Article 1 of the first protocol provides that an individual's peaceful enjoyment of their property shall not be interfered with save as is necessary in the public interest.
- 9.6 Any interference with these rights needs to be proportionate to the aims sought to be realised. The extension of the time to comply with the requirements of the Enforcement Notices was given to assist the removal of development that is considered to be in breach of planning control. The potential of the development to have significant environmental consequences it is considered to invoke the rights under Article 1 of the 1st protocol - Protection of property. Article 8 of the Convention (Right to respect for private and family life) for private landowners and occupiers of nearby properties.
- 9.7 In assessing the implications of the identified articles on the proposed enforcement action, it is noted that the Human Rights Act 1998 does not impair the right of the state or local authorities to enforce laws as it deems necessary in the public interest. It is therefore considered that the proposed prosecution of the failure to comply with the extant Enforcement Notice/s and their objective of securing compliance with planning control by removing the unauthorised development, supports the aims and objectives of National and Local planning policies and recognises the importance of protecting the amenities of local residents and the amenity of the area. This cannot be achieved by any lesser measures and therefore the action to be taken is considered proportionate to the circumstances identified. There is no interference with the rights of others, as the Council deems the proposed action to be necessary in accordance with the interests of those living in the vicinity.

#### **10.0 Recommendation:**

- 10.1 That the contents of this reported be noted.

#### **11. Background Papers**

- 11.1 Enforcement files PS/13/00015/CONCOU & PS/14/00104/CONENG;

Planning history

## **12. Appendices**

Appendix A – Enforcement Notice PS/54

Appendix B – Enforcement Notice PS/55

[Back to top](#)