

Ctte Date: July 13th, 2020

## **ITEM 2**

### **CHANGE OF USE FROM B8 to B2 Industrial use AT UNIT 5 , PLOT 2 MARKHAM VALE INDUSTRIAL PARK, MARKHAM LANE, DUCKMANTON, CHESTERFIELD FOR ESF CHESTERFIELD LTD**

Local Plan: Economic Growth Area  
Ward: Hollingwood & Inkersall

#### 1.0 **CONSULTATIONS**

Ward Members	no representations received.
Environmental Services	Comments received – see report.
DCC Highways	No objection
Staveley Town Council	No comments received
Neighbours/Site Notice	No objections received.

#### 2.0 **THE SITE**

2.1 The application site extends to an area of 2.391 hectares and comprises of the warehouse building formerly occupied by Andrew Page Ltd at plot 2 south , Markham Lane at Markham Vale.

2.2 The site is to the west of the link road through to Erin Void Waste Disposal site and on the opposite side of the road is Inspirepac Smurfit Kappa. To the south between the two roundabouts is the offices and yard of WS Transportation

Tanker Logistics and the western boundary of the site is formed by the M1 motorway corridor. The south bound slip road to junction 29A runs along the edge of the site arriving at the traffic roundabout at the south west corner of the site. To the north of the site on plot 2 north is Gould Alloys.

- 2.3 The building, which is currently vacant is being used on a temporary basis by DCC for food parcel distribution to shielded households during the Covid 19 pandemic. The building is a rectangular block extending to 9,524 square metres (including mezzanine) within a 2 bay, 14 metre high typical warehouse type unit. The building is served by two access / egress arrangements which separate cars from service vehicles. Both are from the link road running along the east boundary of the site. The car entrance used by staff and customers is towards the south east corner of the building via a gated arrangement and which provides access to areas of car parking (61 spaces) at the south and south east corner of the site. Covered cycle parking facilities are also available. The offices and entrance to the building are located at this end. The service entrance is located at the northern end of the building and which provides access to the western side of the building where loading and service bays are provided.



2.4 Landscaping around the building is now maturing and provides an attractive surrounding to the unit.





### 3.0 **RELEVANT SITE HISTORY**

- 3.1 CHE/0502/0312 – Outline for commercial (not major retail) office industrial & warehouse development, new and altered roads (including a new motorway junction), land reclamation ground re-modelling, drainage, landscaping and re-use of railheads on 360 hectares of land at Markham Colliery site was agreed on 16/5/05.
- 3.2 CHE/11/00592/REM – Reserved Matters for Warehouse and Distribution Depot (B8) , ancillary offices, access, car parking and associated infrastructure was conditionally agreed on 14/11/11.
- 3.3 CHE/12/00073/DOC – Discharge of conditions 2 and 3 agreed 08/03/12
- 3.4 CHE/12/00004/ADV – 3 Illuminated signs agreed 24/4/12

3.5 CHE/12/00305/DOC – Discharge of conditions 7, 13 and 14 agreed 06/07/12

#### 4.0 **THE PROPOSAL**

4.1 The application seeks a change of use of the unit from B8 to B2 industrial to enable the use for operation of a separation and refined fuel production process for the manufacture of biomethane fuel and commercial nutrient products using Advanced Anaerobic Digestion.

4.2 The proposed operation utilises proprietary biogas production equipment and associated biomethane gas upgrading and methanisation technology to produce a product gas for export from site. The facility has been designed to process approximately 75,000 tonnes per annum of waste derived from feedstocks comprising a mixture of highly organic waste biomass materials. The processing activities employed at site will utilise Advanced Anaerobic Digestion (AAD), which forms part of a suite of technologies referred to as Advanced Conversion Technologies (ACT). AAD / ACT processes are routinely used to manufacture biomethane for use in the biofuel / renewable transport fuel sectors. Such processes also produce high nutrient fertiliser products which can be used in agriculture.

4.3 All biomethane produced by the site will meet the Transco Grid Injection Standard and be suitable for export from site, either by direct grid injection or by road tankers. Both ACT and AAD are recognised by Ofgem as a renewable energy generation technology and are a means of clean generation of energy.

4.4 The Applicant intends to use the site as a processing plant to produce biofuels feedstocks and clean methanated gas and nutrient products. A small amount of ancillary gas fired

combined heat and power (CHP) will also take place on site solely for the purposes of meeting the energy needs of the process, namely pasteurisation, tank heating and drying.

- 4.5 All the processing equipment and activities would be accommodated within the existing buildings. This includes all necessary deliveries, storage silos and tanks, incoming feedstock conveyors and processing plant, bioreactors, digestion tanks and separation equipment. The existing building requires minimal change to accommodate the proposed use and apart from the installation of a small ventilation stack extending to approximately 14.9m in height and a number of small ancillary process chillers and evaporative cooling towers along the east elevation, no material external building changes will be required.
- 4.6 All feedstock would be delivered into the site will be via the existing vehicular means of access on Markham Lane via the M1 Junction 29a.
- 4.7 The throughput of the plant is equivalent plant to 8.5 to 9 tonnes per hour and will have the annual capacity to process and recover approximately 75,000 tonnes per annum. Due to the nature of the processing, all feedstocks would be provided in sealed / enclosed vehicles and transferred directly into the sealed reception areas, feed systems and bioreactor tanks for processing.
- 4.8 Once operational, approximately 20 FTE jobs would be created on site. Based on the designed [75,000TPA] processing throughput, approximately 50 daily vehicle movements would be required (material deliveries, gas tankering, nutrient cake collections). All deliveries would be predominantly daytime weekday only, with minimal deliveries proposed over weekends and/or bank holiday periods.

4.9 The facility will be operated on a continuous 24/7 basis with deliveries, loading and unloading operations being carried out in accordance to the schedule below:

- Monday – Saturday: 06.00 - 18.00
- Sundays: No deliveries unless in emergencies
- Bank Holidays: No deliveries or collections unless in emergencies

All deliveries and collections will be carried out using the existing vehicular entrances on Markham Way.

4.10 The proposal was advertised by a site notice on 1<sup>st</sup> June 2020 and advert in the Derbyshire Times on 28<sup>th</sup> May 2020.

4.11 The application is supported by a number of planning decisions confirming the use as a B2 industrial use:

- 12/3024/CP: Lawful Development Certificate for use of the site for a propriety technology using an advanced process (gasification/pyrolysis) to convert biofuels and other suitable feedstock into clean gas to be injected into Transco National Grid Gas Distribution Network (Use Class B2). - Royal Greenwich LBC
- 2011/1319: Lawful Development Certificate: The use of former industrial building (Class B2) for the processing of end of life tyre to produce fuel and carbon black – Swansea City Council;
- N/00139/05/FUL: Certificate of Lawful B2 Use: Separation Process for Refined Fuel Production from Non-Hazardous Waste – Birmingham City Council;
- CL/340383/17: Certificate of Lawful B1/B2/B8 Use: Separation Process for Refined Fuel Production – Oldham Council;
- 09/01644/CLP: Certificate of Lawful B2 use: Refined Fuel production from Waste – Newham LBC

5.0 **CONSIDERATIONS**

## **The Development Plan**

5.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 require that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise'. Currently the relevant Development Plan for the area comprises of the saved policies of the Replacement Chesterfield Local Plan adopted June 2006 (RCLP) and the adopted Chesterfield Local Plan Core Strategy however the Emerging Local Plan (2018 – 2035) is also relevant and should now be taken into consideration and, in accordance with the criteria of para 48 of the NPPF, weight be given to it since the Inspector's final response has been received regarding the modifications process and the plan is to be considered for adoption by the Council on 15<sup>th</sup> July 2020. Adoption of the plan at that point will mean that the 2006 local plan and the 2013 Core Strategy cease to be of any relevance.

### 5.2 **Replacement Chesterfield Borough Local Plan Policies ('RCBLP')**

There are no relevant policies

### 5.3 **Chesterfield Local Plan: Core Strategy 2011 -2031 ('Core Strategy')**

- CS1 Spatial Strategy
- CS2 Principles for Location of Development
- CS3 Presumption in Favour of Sustainable Development
- Renewable Energy
- CS18 Design
- CS20 Influencing the Demand for Travel



#### 5.4 **Submission Local Plan 2019**

- LP1 Spatial Strategy
- LP2 Principles for Location of Development
- LP21 Design

#### 5.5 **National Planning Policies**

The Sections of the National Planning Policy Framework (NPPF) considered relevant to the decision are;

- 2. Achieving Sustainable Development
- 8. Promoting Healthy and Safe Communities
- 9. Promoting sustainable transport
- 12. Achieving Well designed Places

### **ASSESSMENT**

#### **Principle of Use**

5.8 Both the existing and emerging local plans support the development of the Markham Vale area for economic growth and Markham Vale is specifically referred to in policy CS1 of the 2013 Core Strategy and LP1 of the emerging Local Plan in so far as the principle of locating developments. Both policy CS13 and LP7 concerning economic growth state that

development should deliver sustainable economic growth by supporting existing jobs and businesses and delivering inward investment and that proposals that facilitate a mix of uses will be encouraged. The policies state that planning permission will be granted for new employment development which accords with the council's overall spatial strategy as follows:

- a) B1(a) Office development within and on the edge of existing town and district centres and at developments at Chesterfield Waterside and Markham Vale
- b) B1(b&c) Light Industrial in locations within and close to existing town and district centres

- c) B1(b&c) and B2 Industrial uses within Established Business Areas (as shown on the proposals map) and at areas at Markham Vale, the Staveley and Rother Valley Corridor, and the Chatsworth Road Corridor
- d) B8 uses at Markham Vale and the Staveley and Rother Valley Corridor. In other Established Business Areas, new B8 uses will be permitted where they would not have an unacceptable adverse impact as a result of traffic movements.

5.9 The scheme is for a change of use from B8 use to B2 industrial use and which therefore accords with the general policy position referred to above. It is clear that the proposed use is a B2 industrial use as opposed to any waste processing facility which would fall to the County Council to deal with. This conclusion is reached on the basis of legal judgements and appeal decisions and is based on the following factors:

- The feedstock would be non-hazardous organic feedstocks derived from the waste processing and agricultural sectors (Bennett Fergusson decision held that waste falls within the definition of an “*Article*” in the definition of an industrial process.)
- It has also been held that waste processing involving the sorting, processing and conversion of waste materials can amount to an industrial process. The Swansea and Greenwich decisions held that the processing of waste to produce fuel falls within Class B2.
- The proposed use involves a multi-stage process consisting of sorting, separation, bio-digestion, blending, drying, purification and methanisation. All are an integral part of the proposed plant and are consistent with a waste processing process that has been held to be an “*Industrial Process*”.
- All solid nutrient products and gaseous fuels that are produced by the “*Industrial Process*” are manufactured to a

strict specification and meet the accepted definition of a “*Product*”.

- The fact that biofuel is produced or the plant would be regulated under an environmental permit does not prevent the process being an industrial process falling within Class B2 [as the Swansea and Greenwich decisions demonstrate].
- None of the materials brought onto the site would be hazardous or disposed of by way of incineration, chemical treatment or landfill, which would otherwise not be an “*Industrial Process*” for the purposes of the Use Classes Order.

5.10 The building already exists in a warehousing use and the planning issues therefore primarily concern the detail of, and consequence of the change to an industrial process.

5.11 Another key component policy issue common to both the existing and emerging local plans concerns policy on renewable energy. The Councils policy as set out in the emerging LP13 is that it supports proposals for renewable energy generation particularly where they have wider social, economic and environmental benefits, provided that the direct and cumulative adverse impacts of the proposals on the following assets are acceptable, or can be made so:

- a) the historic environment including heritage assets and their setting;
- b) natural landscape and townscape character;
- c) nature conservation;
- d) amenity – in particular through noise, dust, odour, and traffic generation.

The policy states that proposals will be expected to reduce impact in the open countryside by locating distribution lines below ground where possible; include provision to reinstate the site if the equipment is no longer in use or has been decommissioned and incorporate measures to enhance biodiversity.

- 5.12 Strategic Policy 1 is for the Council to minimise greenhouse gas emissions in line with Government targets, increase the use of renewable energy and help the borough adapt to the effects of climate change and policy LP21 sets out that all development should, as far as possible contribute towards reduction of CO2 emissions and generation of renewable energy.
- 5.13 The proposal is clearly in line with the strategic objectives in that it delivers a site where refined biomethane fuel is produced creating a significant renewable energy opportunity. The scheme will significantly contribute to the regional landfill reduction targets and provide high value green technology jobs in what is an emerging renewables and advanced renewables fuel sector.

### **Design and Visual Amenity**

- 5.14 Policy CS18 of the Core Strategy and LP21 of the emerging local plan state that *'All development should identify, respond to and integrate with the character of the site and surroundings and respect the local distinctiveness of its context.*
- 5.15 The proposed use is comprised wholly within the existing building where all plant, machinery and silos for example would be located. The external changes are insignificant in so far as the addition of a flue at roof level and external chiller units on the east elevation and this would not be inappropriate in an area characterised by such buildings with plant and machinery. The occupied site will appear just as it does in its current appearance.

### **Amenity Issues**

- 5.16 Core Strategy Policy CS2 and Emerging Local Plan Policy LP15 comments that all development will be required to have an acceptable impact on the amenity of users or adjoining

occupiers, taking into account noise and tranquility, dust, odour, air quality, traffic, appearance, overlooking, shading (daylight and sunlight) and glare and other environmental impacts.

5.17 The proposed process is required to be regulated (in terms of its emissions) under the Environment Agency's Environmental Permitting Regulations (EPR), as required by the EU Industrial Emissions Directive to ensure that all impacts are acceptable.

5.18 The anticipated environmental emissions would be as follows:

*Emissions to Air* - The plant would generate a small quantity of combustion products from the combined heat and power plants. The key emissions would be NO<sub>x</sub>, CO and CO<sub>2</sub> and would be managed under the EPR.

*Emissions of Odour* - The buildings, industrial plant and processes will be required to be sealed and operated under negative pressure within the building to ensure that no offsite odour impacts are created. All buildings and process tanks will be fitted with odour abatement to ensure that all emissions meet with recognised Best Available Techniques (BAT).

*Emissions of Noise* - Noise emissions will be managed under the EPR. The principal noise source will be the internally housed engines, although these will be set within a noise abatement enclosure and which would be inaudible externally.

*Emissions to Water* - The only emissions to water will be surface-water runoff, which would be discharged to a sealed drainage system under EA consent.

*Emissions to Sewer* - All process effluents would be discharged to foul sewer under Yorkshire Water consent.

5.19 The Councils Environmental Health Officer has considered the proposal and concluded that on the basis that the use will

be regulated under an Environmental Permit issued by the Environment Agency then no adverse comments are made.

### **Drainage**

- 5.20 The building has an existing drainage system and the proposal does not significantly alter the existing situation raising no adverse planning impacts.

### **Highways Issues**

- 5.21 The site is situated within an economic growth area immediately adjacent to the M1 junction 29a and where easy access is available for all traffic associated with the scheme. The site has 61 No parking spaces, including 2 No disabled and a covered cycle shelter with 6 No cycle racks. There are considerable hardsurfaced service areas to the north and west of the building which are more than what is required for the proposed use. The proposed quantum of vehicle movements falls significantly below the currently consented use of the development and that which was operated by Andrew Page.
- 5.22 There are three times more parking spaces currently available at the site than the number of anticipated employees.
- 5.23 The County Highway Authority has raised no objection to the proposal on this basis.

### **6.0 Representations Received**

- 6.1 No representations have been received regarding the proposal.

### **7.0 HUMAN RIGHTS ACT 1998**

7.1 Under the Human Rights Act 1998, which came into force on 2<sup>nd</sup> October 2000, an authority must be in a position to show:

- Its action is in accordance with clearly established law
- The objective is sufficiently important to justify the action taken
- The decisions taken are objective and not irrational or arbitrary
- The methods used are no more than are necessary to accomplish the legitimate objective
- The interference impairs as little as possible the right or freedom

7.2 It is considered that the recommendation is objective and in accordance with clearly established law.

## 8.0 **STATEMENT OF POSITIVE AND PROACTIVE WORKING WITH APPLICANT**

8.1 The following is a statement on how the Local Planning Authority (LPA) has adhered to the requirements of the Town and Country Planning (Development Management Procedure) (England) (Amendment No. 2) Order 2012 in respect of decision making in line with paragraph 38 of the February 2019 National Planning Policy Framework (NPPF).

8.2 Given that the proposed development does not conflict with the NPPF or with 'up-to-date' Development Plan policies, it is considered to be 'sustainable development' and there is a presumption on the LPA to seek to approve the application. The applicant also sought pre application advice from officers of the Council. The application has been dealt with by the local planning authority in a sufficiently proactive and positive manner in proportion to the nature and scale of the development applied for.

8.3 The applicant / agent and any objector will be provided with copy of this report informing them of the application considerations and recommendation / conclusion.

## 9.0 **CONCLUSION**

9.1 The proposed development accords with the adopted and emerging Local Plans and is also supported by the principles of the NPPF. The scheme provides an appropriate user for a large vacant plot at this regeneration site which has to be welcomed. The use will have little local impact and provides a significant renewable energy opportunity. The scheme will significantly contribute to the regional landfill reduction targets and provide high value green technology jobs in what is an emerging renewables and advanced renewables fuel sector. There is therefore a presumption on the LPA to seek to approve the application.

## 10.0 **RECOMMENDATION**

10.1 That the application be **APPROVED** subject to the following conditions:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

*Reason - The condition is imposed in accordance with section 51 of the Planning and Compensation Act 2004.*

2. All external dimensions and elevational treatments shall be as shown on the submitted red line site location map contained within the SOL Environmental report accompanying the planning application with the exception of any approved non material amendment.

*Reason - In order to clarify the extent of the planning permission in the light of guidance set out in "Greater Flexibility for planning permissions" by CLG November 2009.*



## **Notes**

1. If work is carried out other than in complete accordance with the approved plans, the whole development may be rendered unauthorised, as it will not have the benefit of the original planning permission. Any proposed amendments to that which is approved will require the submission of a further application.