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Tiverton
Devon
EX16 6PP

Councillor Joanne Manley
Chairman of Overview and Scrutiny Committee
Torrige District Council
Riverbank House
Bideford
EX392QG

6 December 2021

Dear Cllr Manley,

I am writing as Chairman of the Mid Devon District Council's (MDDC) Scrutiny Committee to establish whether your authority would be willing to work with us to undertake a review into the planning controls and regulatory requirements associated with the bio-energy industry within Devon.

You may appreciate that bio-energy is an expanding industry within Devon as well as the wider South West region. At its hub are a network of Anaerobic Digester Plants located in rural settings. Importantly, it is recognised that the industry has some valuable green credentials but at the same time has adverse impacts on our county, notably on local amenities, the landscape, transportation of products over our narrow country roads and the spreading and storage of digestate. These impacts are of some considerable concern to local residents within the Mid Devon District. It is hoped that an inter-authority review may develop guidelines for good practice affecting development controls in Devon or help to raise the matter nationally if the review discovers national regulatory measures are needed. Such an inquiry could for example examine the business structure, funding, history and impacts of the bio-energy Industry in Devon, including the history of planning applications.

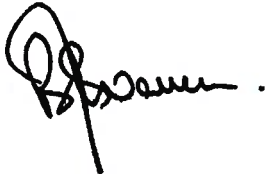
The matter was discussed at our Scrutiny Committee Meeting on 8th November 2021 and the full reports are available at Agenda Item 11 Pages 59 to 63 on our website. A precis of the report is attached together with the full copy of the committee minute for ease of reference.

At this stage we are looking for expressions of interest and your views on how to take forward this type of inter-authority inquiry. It would be helpful if you would

acknowledge this letter and let me know, when if at all, you will be able to raise this with your appropriate committee.

I look forward to hearing from you.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Barry G J Warren', followed by a period. The signature is written in a cursive style with a large initial 'B'.

Barry G J Warren
Chair of Scrutiny Committee
Independent Councillor
Lower Culm Ward
Mid Devon District Council

Bioenergy industry-MDDC proposal for Devon wide Inquiry

(Paper prepared by Cllr G Barnell, Member of Scrutiny Committee, Mid Devon District Council)

BACKGROUND

How does this industry work?

Bioenergy is a rapidly expanding industry in both Devon and the South West as a whole. At its hub are a network of large AD (Anaerobic Digester) plants located in rural settings.

Anaerobic Digestion is a natural process in which micro-organisms break down the organic matter found in biomass waste (such as sewage sludge, animal manure, slurry, and waste food) and energy crop feedstocks (such as maize, miscanthus and straw) in the absence of oxygen, to produce biogas (a mixture of methane and carbon dioxide) and digestate (a nitrogen rich fertiliser).

The biogas can be burned directly in a gas boiler to produce heat or burnt in a combined heat and power unit to produce heat and electricity. Alternatively, the biogas can be cleaned to remove the carbon dioxide and other substances, to produce biomethane. This can be injected into the national gas grid to be used in the same way as natural gas, or used as a vehicle fuel. AD plants are fed by a complex interconnected supply chain of biomass product that is often transported regionally using HGV and large tractor/trailer combinations.

As well as energy the AD plants produce an important subsidiary digestate by-product that requires a network of large storage lagoons and a distribution chain involving farms willing to buy the product for spreading on the land. All this again requires a large geographic distribution network involving routine transportation either by large tanker lorries or tractor/trailer combinations. The network of different companies involved in the developments of AD plants and digestate storage lagoons gives the initial impression of a diverse and competitive industry based on local farming businesses.

However in Devon the set up costs of this industry appear to be supported and funded primarily by a single London based venture capital company. The activities and interests of this company are extended via the creation of a number of localised Joint Investment Companies that either bring in additional investment from landowners and farmers and/or are responsible for the day to day operation of the plants.

This is all qualitatively and quantitatively different to small scale AD plants based on local farm activity and product.

Isn't the bioenergy industry green?

The Biofuel business is a rapidly growing regional and national industry based on government "green subsidies" (e.g. energy tariff subsidies, subsidies for monocultural fuel crops like maize). Both Bio-Gas and the feedstock required for its production are both heavily subsidised by the taxpayer as so called "green" energy.

The industry requires the transportation of large volumes of bio-fuel from a widespread network of growers to energy generating AD plants. The distribution of large quantities of waste "digestate" is then sent to a network of storage lagoons across Devon. From there it is distributed to a wider network of local farms for use on the land. All this involves thousands of, often lengthy, journeys involving large HGV's and tractor/trailer combinations, all powered by large diesel engines.

The claim that this Industry is "green" is therefore, at best, unproven. Planning applications for new bioenergy installations and the industry's claims for taxpayers subsidies are routinely based on assertions that the industry is environmentally friendly. It is therefore, vital that these claims are independently checked and evidenced.

Isn't this industry regulated?

There is no national policy or set of policies on the regulation and development of the bioenergy industry. There is a plethora of complex and sometimes overlapping planning and regulatory responsibilities that fall between the various local planning authorities, the Environment Agency and OFGEM. There is a history of confusion, lack of joined up action and the passing on of responsibility between these agencies. To date it has not been possible to establish and implement consistent regulatory policies across Devon. Neil Parish MP has had discussions with the Chief Executive of the Environment Agency (EA) and asked for legislation to give more powers to the EA.

How have Planning Authorities responded?

It is alleged that the bio energy industry actively exploits the widespread confusion that exists between its activities and those of local farmers running small scale AD plants and digestate distribution based on local farms. The latter

are clearly a legitimate and largely beneficial approach to recycling bio-mass and producing green energy. It is said that the bioenergy industry uses this confusion to convince Planning Authorities and local authority members into believing that their industry is eco-friendly diversification on local farms.

In the experience of many elected members the initial planning applications submitted by the biofuel industry are on the basis that the given enterprise will be limited in scope, be a natural extension of local agricultural activity, and, therefore, be based on one local farm or a small number of neighbouring farms. The argument is that the enterprise, is “stand alone” and is about improving the efficiency and productivity of the local farm or farms.

In our experience the initial planning consents are then quickly followed by subsequent applications seeking to significantly increase the volumes of bio feedstock, energy production and the tonnage of digestate to be stored and distributed.

In considering the individual planning applications relating to the bioenergy industry Local Planning Authorities have often tended to accept, uncritically, the industry’s own narrative about the green credentials of the business and its roots in local agriculture and farming. Planning authorities have usually allowed the definition of this activity as “agricultural” within the National Planning Policy Framework (NPPF).

This interpretation of the NPPF supports a piecemeal approach to the expansion of an interconnected and well organised industry that is being superimposed on the countryside. It obviates the need for collaboration between neighbouring Planning Authorities and usually prevents the application of the Environmental Impact Regulations (2017) that should apply to Industrial concerns like Bio Energy Generation. In turn this results in the impacts of the industry, especially the impact of heavy goods traffic on local communities, either being ignored or downplayed as “agricultural”.

This situation has been made worse because neither DCC Highways nor Local Planning Authorities see it as their job to assess or understand the impact of large increases in heavy goods road traffic on the lives and wellbeing of local communities. There appears to be little recognition or understanding that the harm caused by this traffic is not limited to the physical suitability of, and/or damage to, the roads nor even the risk of accidents. Important impacts are

therefore not recognised or assessed as part of the planning process and Planning Policies referring to such harm are not applied or implemented.

As the industry has grown so has the impact of this industry on local communities and the road network, particularly in rural areas. Planning Authorities have sometimes attempted to limit the impact of this industry by setting planning conditions that attempt to determine the volume of product, transport routes and type of vehicle used to transport bio-fuel crops and the waste digestate from AD plants and from lagoons to farms. In practice enforcement of these conditions has usually proved either very difficult or impossible, partly because of the remote locations of the AD plants and lagoons and partly because Local Authorities lack the resources and the practical ways of monitoring activity.

Speaking in February 2021 at a Scrutiny Committee meeting of Mid Devon District Council, Neil Parish MP recognised the impacts on local communities, in particular the transportation of feedstuffs going into the industrial-scale AD plants and the liquid digestate coming out as a by-product.

We understand he said, "ADs are getting bigger and bigger and getting out of all proportion. While they were a good thing in using them for waste to produce gas or electricity, what you have now is a huge amount of crop being used in them and they are becoming vast. In becoming so big they are moving stuff around all of the time. There are problems all over the place. I am trying to collate all the problems across the country to get the Government to take some action."

THE PROPOSED INQUIRY- WHAT NEXT?

The Scrutiny Committee of MDDC are proposing:-

1. An inter-authority inquiry into the bioenergy industry in Devon led jointly by the Scrutiny Committees of as many of the Devon LPAs as wish to participate.
2. This inquiry to be jointly commissioned by the Scrutiny Committees of those Devon Planning Authorities that are willing to take part. This work is not something that can be done effectively by a single authority.
3. The Inquiry examine the business structure, funding, history and impacts of the bioenergy industry in Devon including the history of planning applications.

4. The Inquiry examine the adequacy of the national and local framework of regulation and policies and make recommendations for changes to that may be required including:-

- local and national planning arrangements and policies, including the possibility of joint planning approval and enforcement.
- regulation of environmental and health impacts.
- highways management policies.
- energy tariff arrangements.

5. The work of commissioning and overseeing this Inquiry is led by a committee of elected members chosen from each of the participating authorities.

Why this proposal?

The proposal for a Devon wide, Scrutiny led, Inquiry is an attempt to achieve a credible and unquestionably independent investigation into the bioenergy industry that will be difficult to ignore or marginalise. It is envisaged that this Inquiry will lead to an objective and evidence based evaluation of the industry's benefits and its impacts both on the environment and on local communities. We also need an informed appraisal of the policies and practices of the Devon planning and regulatory agencies to the development and growth of the Industry.

In turn it is hoped that this Inquiry will make recommendations that will inform the policies and behaviour of Devon planning authorities both in the way they work together and in the way they deal with planning applications and enforcement arising from the Industry's activities.

It is anticipated that a joint view of several authorities will carry more weight than one or two in influencing the behaviour of other regulatory bodies like the EA and Ofgem.

This proposal is borne of discussions with various members from different political groups within MDDC. It has cross party support.

It is envisaged that this Inquiry will need to be carried out by an independent agency with credibility and expertise in this area. To be successful this work will require not only the support of the various Scrutiny committees but also the approval and financial backing of the Authorities involved.

MID DEVON DISTRICT COUNCIL

MINUTES of a **MEETING** of the **SCRUTINY COMMITTEE** held on 8 November 2021 at 2.15 pm

86 **BIO ENERGY INDUSTRY PROPOSAL FORM (00-50-04)**

The Committee had before it a *work proposal form on the Bio Energy Industry and were requested to decide whether the item should be added to the work programme.

The Chairman stated that the proposals before the committee were a general overview of issues with regard to the bio energy industry and that no particular applications could be discussed at this time, there was a need to protect members of the Planning Committee whose future decisions with regard to any particular application must not be compromised.

Cllr Barnell outlined the contents of his paper highlighting the issues across the county and that those issues needed to be addressed by an inter authority inquiry led by local authority Scrutiny Committees. The impact of the industry on the local communities and the planning system needed to be highlighted and addressed. He explained the need for the industry to be regulated and the need to involve other agencies in this work. There was a need for an independent investigation to inform the policies of local planning authorities in Devon.

With regard to the questions asked in public question time, he stated that there were no guarantees but that a coordinated approach was required.

Consideration was given to:

- The lack of coordination nationally, good use of AD infrastructure could help the climate situation and the need for joined up recommendations so that Government could be lobbied effectively
- How the AD position had been discussed for many years and the need to involve other local authorities now

It was **AGREED** that:

1. An inter-authority inquiry into the Bio-Energy Industry in Devon led jointly by local authority Scrutiny Committees be progressed.
2. This inquiry to be jointly commissioned by the Scrutiny Committees of those Devon Planning Authorities that are willing to take part. This work is not something that can be done effectively by a single authority.
3. The Inquiry examine the business structure, funding, history and impacts of the Bio Energy Industry in Devon including the history of Planning applications.
4. The Inquiry examine the adequacy of the national and local framework of regulation and policies and make recommendations for changes to that may be required including:-

- local and national planning arrangements and policies, including the possibility of joint planning approval and enforcement.
 - regulation of environmental and health impacts
 - highways management policies
 - energy tariff arrangements
5. The work of commissioning and overseeing this Inquiry is led by a committee of elected members chosen from each of the participating authorities.

Further **AGREED** that the initial task would be for the Chairman of the Scrutiny Committee to write to his counterparts from across the county including Devon County Council to seek their involvement in the inquiry.

(Proposed by Cllr G Barnell and seconded by Cllr Mrs E Lloyd)

Notes:

- i) Cllr Mrs F J Colthorpe requested that her vote against the decision be recorded;
- ii) *Work Proposal Form previously circulated, copy attached to minutes.