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Dawn de Vries
Planning Case Officer
Development Management
Sedgemoor District Council

16th December 2016

Dear Dawn

PLANNING APPLICATION 45/16/00037 - RETENTION OF CONCRETE SILAGE BASE, SECTIONAL CONCRETE CROP RETAINERS, 2 DRAINAGE LAGOONS, SCREENING BANKING TO THE NORTH, WEST AND SOUTH AND OTHER MINOR EARTH BANKING TO THE EAST AND RELATED GROUND LEVELLING WORK

CPRE Somerset wishes to object strongly to the retention of these large structures which have been built without due regard to planning legislation and which have resulted in the loss of around 7.2 acres of countryside. We wish to highlight the following concerns about this development:

PRELIMINARY ISSUE AS TO APPLICATION VALIDATION

CPRE remains particularly concerned about the purported validation of this application by your Council. It is our opinion - based on legal advice - that this validation is wrong, and indeed it is unlawful. Any grant of permission would be tainted by this illegality.

It is quite clear that a Design and Access Statement ('DAS') should have been submitted for this application. Your Council is rightly treating the application as a major application, that is, as major development. Your own 'Local Validation Checklist' (February 2016) requires a DAS (at page 26) and it is also a mandatory legal requirement for major development as set out in Article 9, paragraphs (1) and (2) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (the 'DMPO'). This development does not constitute engineering operations but building works (as said, we have Counsel's advice on this point).

There is no discretion as to whether a DAS should be asked for and supplied: it **must** be. Further, as said in my previous e-mail, your Council's 'Local Validation Checklist' creates a legal legitimate expectation that the guidance in it will be followed by your Council.

The Somerset Branch of the Campaign to Protect Rural England exists to promote the beauty, tranquility and diversity of rural England by encouraging the sustainable use of land and other natural resources in town and country.

No DAS has been submitted, as the supporting letter from the Applicant's agent (dated 15 November 2016) makes clear, based on the incorrect assumption that none is needed because "*the intended (sic.) works are not within a designated Conservation Area.*" Of course this is not the only criterion. We also comment that these works are not "intended"; they have been done.

It is our view that any further work on this application must now be put on hold until such time as the Applicant fully complies with all procedural requirements, including the provision of a DAS.

Further, if and when the application is properly validated, the time for the consultation process must be started again.

We have already written separately to you, as Planning Case Officer, for an explanation of why Sedgemoor DC has validated this application contrary to procedural requirements. We do not feel that your answer was satisfactory so we must reiterate our concerns as part of this objection. We ask for a specific and early response to our concerns about validation.

We would also like to point out that the fee charged for this planning application is much lower than expected for a development of this scale and size. CPRE is in receipt of legal advice which makes it clear that structures such as the lagoon and storage pad are classed as "buildings" under planning legislation, in which case the planning fee should be considerably more.

SUBSTANTIVE COMMENTS ON APPLICATION

Lack of Adequate Information Submitted with Planning Application

As indicated above, CPRE does not think that this application should have been validated as it is lacking in the detailed information required for a major planning application by the DMPO. Generally, the applicant's agent is dismissive of the need to submit a retrospective application in this case. As CPRE has expressed on many previous occasions, the original agricultural prior approval notification failed to meet the criteria for permitted development in at least 3 ways (size, need and non-agricultural use). What was applied for constituted a 'building', not engineering operations. Sedgemoor DC's demand for a full planning application is absolutely correct and it should not be compromised by reluctance from the applicant to submit the required reports to make this a valid application under the DMPO. Sedgemoor DC has no choice but to insist that this application complies in all respects with the DMPO procedural requirements, as set out above.

The developer's agent also goes on to dismiss the need for a Statement of Community Involvement, a Transport Assessment or any kind of Landscape Plan. The need for an Agricultural Appraisal is also dismissed yet this development has led to the destruction of over 7 acres of good agricultural land. Any application for development of this size and scale in a rural area should be accompanied by these reports so that Planning Officers, consultees, Councillors and members of the public can have a full understanding of the impact of this development when assessing the application.

Agriculture or Industry?

The development that is the subject of this application cannot be classed as "agricultural" for the following reasons:

- a) Despite the agent's statement, at least 80% of the material stored originates from widely spread landholdings. It should be recognised that the quoted figure of 810ha farmed by Mr Roe is irrelevant for planning purposes and is deceptive. The applicant's landholding comprises 158ha.
- b) Despite the agent's statement, none of the stored crops can currently be "used on the farm" as there is no farm site and no stock on the applicant's landholding. Even if some stock is acquired, the amount stored vastly exceeds any possible use on this landholding.
- c) The applicant states that stored material will be moved elsewhere.

The storage and trade of agricultural produce does not define an agricultural purpose. 'Agriculture' and 'agricultural' are clearly defined in section 336 of the Town and Country Planning Act 1990:

"agriculture" includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land,

osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and "agricultural" shall be construed accordingly

In fact what is described is a storage and distribution facility for crops, effectively a B8 storage and distribution use. This is a new, commercial use of a rural site designated as agricultural land. It requires, and always has required, express planning permission. If this retrospective planning application is approved, we must insist on the type of planning conditions which would be expected for a commercial site e.g. hours of operation, limits on number of vehicle movements, size of vehicles. We believe that, without these restrictions, to allow development to continue at Swang Farm would contravene Sedgemoor DC Local Plan Policy D11: Economic Prosperity which states *"In general employment proposals will be supported where they contribute to the following objectives:*

- *Are compatible with the scale and character of their location."*

Impact on local community

Impact on close neighbours: The siting of the development next to the edge of the property has led to the boundary hedge being damaged by the huge piles of rock. Run-off has been directed onto the neighbouring land without the owner's knowledge. This contravenes Sedgemoor DC's Local Plan Policy D2 - Promoting High Quality and Inclusive Design which states *"Development will need to demonstrate the following:*

- *That it does not harm the amenity value of the occupiers of nearby buildings or the wider area;*

Traffic & Highways: In recent months hundreds of tractor-trailer combinations, some travelling considerable distances, have brought crops to this site from other agricultural holdings. The amount of material moved amounts to several thousand tonnes. The applicant states that these crops will either be traded or "used on the farm".

As there is no farm in any meaningful sense and the applicant has supplied no information as to any "on farm" use it is reasonable to assume that all the crops stored will be traded. This may be to the adjacent digesters or to other customers. The digesters currently receive a waste tonnage close to their planning limit so the inescapable conclusion has to be that the stored crops will be traded to other, unspecified users and that the continued use of this large concrete storage pad, without planning conditions to restrict vehicle movements, will lead to an increased and unacceptable level of slow moving traffic on a busy stretch of the A39.

We note that Somerset CC's Highways Development Management team made no comment about the implications of this application. An explanation by their Helen Vittery reveals serious misunderstandings about the nature of Swang "Farm", the origin and use of the materials to be stored and the access to the site. In an email to a local resident of 12th December 2016, she says *"The highway comments are made in relation to this use, being in association with the existing uses on the wider Swang Farm site. There is no independent access proposed to this land and as such, it is assumed that all vehicle movements will be via the farm, and as such, there is no significant increase in movement on/to the A39 that give cause for concern."* Given that Helen has seen no DAS and no proper transport assessment or appraisal, it is difficult to see how she could have reached this conclusion.

In determining conditions for vehicle movements it should be recognised that Somerset's Senior Planning Officer has already limited the input to the adjacent digesters *"...in the interests of the local residential amenities and highway safety."*

We believe that this development contravenes Sedgemoor DC's Policy D10 - Managing the Transport Impacts of Development, which states that *"Development proposals that will have a significant transport impact should:*

- *Ensure that the expected nature and volume of traffic and parked vehicles generated by the development would not compromise the safety and/or function of the local or strategic road networks in terms of both volume and type of traffic generated;*

Landscape Impact: The Additional Information included within the application dismisses landscape concerns because the development cannot be seen easily. This is irrelevant. An area of countryside is no less valuable because it cannot easily be seen. In addition the applicant claims that the development is more acceptable because it is "screened" by rock banks built without permission from spoil from the lagoon. The developer suggests that these banks cannot be removed because of the pollution this would cause.

CPRE Somerset is appalled at this attitude and the potential precedent it may set if allowed. If Sedgemoor DC accepts this argument, then surely anyone could build huge banks around a piece of land and then argue that it is acceptable to build on the land because no one can see it? It is fundamentally wrong to argue that, even if the banks are unlawful by being in breach of planning control, they should remain in place because removing them would cause more problems.

Location and Scale

The application contains no information on why this large facility needs to be sited in this location. It is on the edge of the applicant's landholding in open countryside. The applicant owns another commercial site less than 400m away and a site next to this would have been more compatible with existing land use. The applicant has long claimed that the nearby digesters can process quantities of feedstock in excess of the permitted limit and has made it clear that waste input will decrease and be replaced by crops. In these circumstances we fail to understand why a further massive storage capability for crops is necessary.

We emphasise that had this development been subject to a full and open planning process before it started these vital planning considerations could have been discussed and resolved. But it appears that proper consultation with the local community is not considered to be important by this applicant.

SUMMARY

1. This application is invalid as it does not comply with the requirements of the DMPO and Sedgemoor DC's own local validation list.
2. This application describes a new, commercial business use in a rural site. The determination of this application must be on that basis.
3. The acceptance by Sedgemoor DC of alleged permitted development rights in this case was wrong in law; they are in any case irrelevant now that this application for express permission has been submitted. They should not be a factor in determining this application.
4. If permitted, this development (as with any commercial or industrial use) should be subject to clear planning conditions that minimise its impact on local people and the environment.
5. In the interest of proper planning control it is vital that no developer is seen to gain advantage in the planning process by carrying out works prior to obtaining the necessary permissions. When this happens, planning control should be rigorously enforced.

I hope you will consider our views when processing this application and accept that this commercial development is inappropriate in this rural area. As we have said above, if permission is granted, stringent planning conditions must be imposed to control the number and timings of vehicle movements to try to reduce the impact on the local community.

Yours sincerely

A handwritten signature in black ink on a light green background. The signature appears to read 'Becky Collier'.

Becky Collier
Branch Manager