

**Our ref: OXF11780**

Date: 1 September 2021

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Dear Claire

**Application to discharge planning condition 66 of planning permission ESS/34/15/BTE on Land at Rivenhall Airfield, Coggeshall Road (A120), Braintree, CO5 9DF.**

On behalf of our client, Indaver, please find our application to discharge condition 66 of planning permission ESS/34/15/BTE. The appropriate planning fee has also been paid.

As we have previously discussed, and as you are aware, development has already commenced in connection with the above development, including significant earthworks, and with the procurement process in connection with the delivery of the IWMF very well advanced. To that extent, you as planning authority and other interested parties, may take some comfort from the fact that after many years of difficulty and delay, development of the site is finally underway. The first component of the waste management infrastructure within the IWMF building that is likely to be realised is the CHP plant and equipment. The commissioning of this part of the plant is not expected until 2024/5.

Notwithstanding the above, condition 66 on the planning consent requires us to address the timing of the delivery of the permission if it is not able to be brought into beneficial use within the stated time frame. Condition 66 states that:

***In the event that the IWMF is not brought into beneficial use within 5 years of commencement of the development (as notified under condition 1) the operator shall within 6 months of the end of the 5 year period submit a plan of action for an alternative use or a scheme of rehabilitation for the site for approval by the Waste Planning Authority. The plan of action for an alternative use or scheme of rehabilitation shall be implemented within 6 months of approval by the Waste Planning Authority.***

***Reason: Reason: To ensure that if the development of the IWMF is not progressed to a beneficial use within a reasonable period, that the site is either planned for an alternative use or the site rehabilitated in the interests, of minimising the adverse environment impacts of incomplete implementation and in accordance with WLP W8A, W10E and MLP DM1 and BCS policies CS5 and CS8.***

In summary the policies referred to in the reason relate to:

W8A - Preferred locations for waste management

W10E - Development control criteria

DM1 - Development management criteria

CS5 - Countryside CS6 - Promoting accessibility for all

CS8 - Natural Environment and Biodiversity

We have explained that as we will be unable to bring the development into 'beneficial use' until 2024/5, we are faced with needing to address this condition now. Therefore, for the avoidance of doubt, the date by which 'a plan of action' or 'scheme of rehabilitation' needs to be submitted for your approval is 5 years and 6 months from the date stated on Condition 1. The condition 1 date is 2 March 2016, so Indaver is required to submit a plan of action or scheme of rehabilitation by 2 September 2021.

As you know, we have sought to meet with you to discuss the precise approach and detail required to enable us to discharge the condition, but unfortunately despite arranging a date your authority subsequently had to cancel as you had not received the advice you were seeking on matters in connection with this condition.

In the circumstances, given that time is running out, we have taken our own view as to what information you may need to allow you to approve the discharge of this condition.

## **Our Approach**

Firstly, it is worth noting that Condition 66 (and clauses in the s106 agreement) appears to have been imposed on the permission due to the fact that, looking back through its history, there seems to have been considerable doubt as to whether it would be developed at all.

It is certainly a complex development and there have been challenges along the way, legal and otherwise, that have meant the development has been unable to start in earnest until recently. However, development is now well underway, and arguably condition 66 might be regarded as redundant in these circumstances.

Nevertheless, having reviewed possible approaches to discharging this condition, we have settled upon a submission of a 'plan of action'. A 'scheme of rehabilitation' makes little sense as we have already commenced development and it is the stated intention of Indaver to build out the development within the terms of the current planning permission.

In light of the above, we present a plan of action below which we hope will allow this condition to be settled and for all parties to move forward.

## **Plan of Action**

RPS proposes the following staged plan of action which we believe reflects the circumstances and decisions we currently face. They are presented in a manner which aims to provide the planning authority with transparency in relation to our intentions for the site. In sequence the plan is:

### **1. To build out the permission as authorised by the Planning Permission.**

Indaver regard this permission as valuable commercially and necessary to deal with the waste management needs arising in the area. As is well known, their immediate focus is to deliver the CHP (or Energy from Waste (EfW)) component within the approved building. They are looking at developing the other consented waste management and energy components too, with the help of GFC, but we cannot yet confirm details of these and when they might be brought forward.

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If, in the event that for technical or commercial reasons, Indaver is unable to bring forward all parts of the consented development e.g. the market or technology has changed, then they are likely to wish to resort to options under stage 2 or 3 of the plan of action, as set out below.

2. **Build out those elements within the consent which are technically and commercially viable, all within the building which currently has consent, and/or;**
3. **Submit an application for consent for alternative waste management and/or energy generation uses.**

Option 2 allows for the possibility of us not building out certain elements of the consented scheme if they prove untenable technically or commercially. In particular, we are concerned that at present the paper pulp plant may fall into this category, and therefore lead us to initiate options 2 or 3 of the plan.

I realise there has been some speculation about the lawfulness of not building out *all* of the various waste management components as consented, but we are aware of what the law allows us to do, and not do, with respect to the terms of the existing permission, and we have already begun dialogue with you in this regard to enable us to form some common ground on this matter. Suffice to say we will always comply with the terms of the permission, complex though this is, and we would be more than happy to continue to explore that with you going forward, as and when required. It is important that we do this to avoid any misinterpretation.

Finally, in terms of Option 3, we are exploring the possibility of increasing the power output of the EfW to above the 50 MWe threshold, which would require consent from the Secretary of State under the Planning Act 2008 (a Development Consent Order). Option 3 of the plan caters for this scenario. In addition, although not currently planned, should we wish to apply for something that falls outside the scope of the current planning permission, we will of course approach you and the local liaison committee in advance to set out those plans.

I hope the above is sufficient to allow to progress our application and I look forward to discussing and hopefully agreeing the above 'plan of action' at your earliest convenience given we fell short of time to do so before we were obliged to submit.

Kind Regards,

Yours sincerely,  
for RPS Consulting Services Ltd

**Data Protection Act**

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