

## Item C2

### **TW/06/1646 – Change of Use from Agricultural Use to New Green Waste Open Windrow Composting Facility at Little Bayhall Farm, High Woods Lane, Tunbridge Wells**

A report by Head of Planning Applications Group to Planning Applications Committee on 12 December 2006.

TW/06/1646 – Change of use from agricultural use to new green waste open windrow composting facility at Little Bayhall Farm, High Woods Lane, Tunbridge Wells, Kent (MR. 096 901)

Recommendation: Refusal.

Local Member: Mr J Scholes

Classification: Unrestricted

#### **Background**

1. Members will recall considering a similar planning application under reference TW/05/3222 for a green waste composting facility at Little Bayhall Farm at the March 2006 Committee meeting. Given the lack of information submitted at the time which failed to demonstrate the special circumstances required to override the normal policy presumption against this type of development being located in such areas together with insufficient information on the potential impact of passing places upon landscape and nature conservation interest in the adjacent hedgerows, the application was refused. The Applicant has now submitted a second application, which seeks to address the previous reasons for refusal, set out in full below<sup>1</sup>.
2. A site location plan is attached.

#### **Site Description and Current Proposal**

3. The application site is located within the Metropolitan Green Belt and High Weald Area of Outstanding Natural Beauty. The site is located to the east of Tunbridge Wells Town Centre. The existing site is currently used as an agricultural and organic farm.
4. This is a retrospective application which proposes a change of use from agricultural use to a permanent green waste open windrow composting facility which operate for a period of three months every year, processing an average of 4000 tonnes of material. The applicant states that source separated green waste would be collected by Tunbridge Wells Borough Council contractors and local landscape specialists and delivered to Little Bayhall Farm for processing.

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<sup>1</sup> See paragraph 20

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5. The proposal would generate a maximum of 4 vehicle movements per day (2 in/2 out), although the applicant states that an average of 2 movements is more likely. Vehicles would access the site via High Woods Lane, a Public Bridleway and privately owned road which the applicant considers to have sufficient passing places along its route to accommodate passing vehicles.
6. Upon delivery to the site, it is proposed that green waste would be stored within the reception area for a maximum of 24 hours before being checked for non compostable waste and shredded to optimal particle size. Non compostable waste would be stored in a skip on site and returned to the Borough Councils sorting station at North Farm on a weekly basis. The applicant states that shredded material would be placed in open windrows (identified by the applicant as High Rate Composting) for between 10-12 weeks and turned whenever necessary. Compost would then be transferred to the Low rate Composting area for a further 3 – 14 days until the material has transformed to *odourless compost*.
7. Upon completion of the process, finished compost would be spread on adjoining agricultural land farmed by the applicant and would not be available for sale on the open market.
8. The proposed operating hours would be between 0700 and 1700 Monday to Friday only and whilst in the main the applicant proposes to use existing farm equipment, the only additional equipment required would be a shredder at the front end of the process.

### **Planning Policy Context**

9. The National and Development Plan Policies summarised below are relevant to the consideration of the application:

**National Planning Policy** – National Planning Policies are set out in PPS10, PPS23 and Waste Strategy 2000 (as amended in July 2005).

**Regional Planning Policy** – the most relevant Regional Planning Policies are set out in RPG9 and the emerging South East Regional Waste Strategy. GOSE has published the changes to RPG9 in August 2005.

**(i) The Kent & Medway Structure Plan: Adopted July 2006:**

<b>Policy SP1</b>	Seeks to conserve and enhance Kent's environment and ensuring a sustainable pattern of development.
<b>Policy SS8</b>	Non-residential development in rural Kent should amongst other matters re-use, adapt or redevelop an existing rural building where the change is acceptable on environmental, traffic and other planning grounds.

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<b>Policy E1</b>	Kent's countryside will be protected for its own sake. Development in the countryside should seek to maintain and enhance it.
<b>Policy E4</b>	Protection will be given to the nationally important landscapes of the Kent Downs and High Weald Areas of Outstanding Natural Beauty.
<b>Policy E5</b>	The primary objective in Special Landscape Areas will be the long term protection and enhancement of the quality of the landscape.
<b>Policy E9</b>	Tree cover and hedgerow networks in the County will be maintained and where possible enhanced.
<b>Policy QL1</b>	All development should be well designed, of high quality and should amongst other matters protect the amenity of residents. Development detrimental to the built environment, amenity, functioning and character of settlements or the countryside will not be permitted. Existing built environment of high quality and character will be protected and enhanced.
<b>Policy QL6</b>	The primary planning policy towards conservation areas is to preserve or enhance their special character and appearance.
<b>Policy QL17c)</b>	The rights of way network will be protected and enhanced and the provision, protection and improvement of routes and networks open to equestrians will be supported.
<b>Policy TP15</b>	Development which generates significant increases in traffic, especially heavy goods vehicles, will not be permitted if it is not well related to the primary and secondary road network, or would result in a significant increased risk of crashes or traffic delays unless appropriate measures to mitigate the effect of the development have been secured.
<b>Policy EP7</b>	Provision for small-scale business development should be appropriate to the scale of the settlement and without detriment to its amenity, character or setting.
<b>Policy NR5</b>	The quality of Kent's environment will be conserved and enhanced.
<b>Policy WM1</b>	Provision will be made for the integrated management of waste reflecting Best Practicable Environmental Option (BPEO), the national waste hierarchy and national targets for waste management.

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**Policy WM2** Proposals for the treatment, storage, transfer, processing or disposal of waste will be required to show that they represent the most efficient and environmentally sustainable method of managing a specific type of waste.

**(ii) Kent Waste Local Plan, 1998:**

**Policy W1** The local planning authority will make provision for waste arising in Kent to be dealt with in Kent, based on the following hierarchy: I) reduction, (ii) re-use, (iii) recovery (including composting) and (iv) disposal.

**Policy W2** Waste Management proposals will not be permitted if they would cause a significantly adverse impact in areas including: Special Landscape Areas, Conservation Areas and sites and settings of buildings of historic interest.

**Policy W3** Proposals, which involve only waste processing at locations outside those identified on the proposals map will not be permitted unless they are located within or adjacent to existing waste management operations or avoid the need for road access.

**Policy W4** With the exception of temporary proposals related to the restoration of mineral workings, there will be a general presumption against proposals for any built waste management developments within the Metropolitan Green Belt.

**Policy W6** Where a planning application is submitted for waste management development on a site outside a location identified as suitable in principle in the plan and demonstrable harm would be caused to an interest of acknowledged importance, need will be a material consideration in the decision.

**Policy W10** Proposals for composting and digestion plant will be permitted subject to their satisfying the following criteria:

- a) That the site is within an established or committed industrial area (with the exception of proposals for composting by windrowing, which in principle are better suited to a rural area).
- b) That the proposal would not cause significant harm to residential amenities due to noise, dust, smell or visual impact.
- c) That the site has, or is planned to have, ready accessibility to the primary or secondary route network.

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- d) That the proposal would not be unduly obtrusive in the landscape.
- e) That impact on the natural environment would be minimised.

- Policy W16** When considering applications for waste management facilities, the planning authority will have regard to the industry's past record in respect of the environmental management of comparable operations.
- Policy W18** Before granting permission for a waste management operation the planning authority will require to be satisfied as to the means of control of noise, dust, odours and other emissions, particularly in respect of its potential impact on neighbouring land uses and amenity.
- Policy W20** Before granting planning permission the planning authority will require to be satisfied that proposals have taken into account land settlement, land stability, safeguarding of land drainage etc.
- Policy W21** Before granting permission for a waste management proposal the Planning Authority will need to be satisfied that the earth science and ecological interests of the site and its surroundings have been established and provisions made for the safeguarding of irreplaceable and other important geological and geomorphological features, habitats, or species of wildlife importance. Where an overriding need requires some direct loss or indirect harm to such features, habitats or species, where practicable suitable compensatory mitigation measures should be provided.
- Policy W22** When considering applications for waste management facilities the planning authority will:-
- (i) normally refuse permission if it is considered that the proposed access, or necessary off-site highway improvements or the effects of vehicles travelling to and from the site, would affect in a materially adverse way:-
    - (a) the safety of the highway network
- Policy W27** Where proposals to establish a waste management facility could adversely affect a public right of way, when determining the application the planning authority will secure the interests of the users of the right of way. The use of primarily pedestrian rights of

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way to gain vehicular access to a proposal will normally be resisted.

**Policy W33**

The planning authority requires all waste management activities to take place within planning control and the appropriate planning permission obtained.

**10. Consultations**

**Tunbridge Wells Borough Council:** Raise objections to the proposal, for the following reasons:

- (1) Insufficient information has currently been supplied to fully assess the impact of the proposed development and therefore the recommendation is to refuse until further details are supplied. These details should include:
- Traffic Impact Assessment
  - Landscape Impact Assessment
  - Details of total level of activity/waste levels
  - Realistic assessment of traffic movements
  - Assessment of alternative sites not included within the Metropolitan Green Belt

**Countryside Agency:** No comments received.

**Environment Agency:** No objection raised.

**Divisional Transportation Manager:** No objections raised in principle however he has raised some concerns over possible pedestrian vehicular conflict along High Woods Lane.

**Jacobs (Landscape Consultant):** No objections raised.

**Jacobs (Noise, dust and Odour):** – no objection raised.

**Countryside Policy and Projects (Biodiversity Officer):** No comments received.

**Environmental Management Officer, Public Rights of Way:** No objection raised subject to a condition restricting daily vehicle movements to 4 (2 in/2 out) per day and provided the passing places indicated in the application are of sufficient size.

**Ramblers Association:** No views received.

**British Horse Society:** No views received.



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**Local Member**

11. The Local County Member, Mr Scholes was notified of the application on 14 June 2006.

**Publicity**

12. The application was publicised by the posting of a site notice, advertisement in the local newspaper and individual notification of 16 neighbouring properties including those who made written representations on the previous planning application.

**Representations**

13. 5 letters of representation have been received to date objecting to the proposal. Those objections can be summarised as follows:

- ❑ High Woods Lane is in a very poor state of repair is not suitable for heavy goods vehicles;
- ❑ High Woods Lane is a private road with long stretches of road between the Bowls Club and little Bayhall Farm without suitable passing places;
- ❑ High Woods Lane is busy at weekends with visitors to the Bowls Club as well as users of the PROW and Bridleway;
- ❑ Given the current activity along the Lane, any 'industrial type' activity could cause conflict;
- ❑ The number of vehicle movements proposed is unclear;
- ❑ Not sufficient space for large vehicles to pass safely along the stretch of High Woods Lane between the Bowls Club and Little Bayhall Farm;
- ❑ High Woods Lane is too narrow to allow pedestrians, cyclists and horses to safely pass a large vehicle;
- ❑ How would the use of green waste on the land be restricted?
- ❑ Concerns at potential for the site to generate unacceptable noise, odour and pollution levels.

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**Discussion**

14. The application is for a change of use from agricultural use to a green waste open windrow composting facility. It represents a departure from the Development Plan. Given its location in the Green Belt where this is a requirement to maintain the open character of Green Belt land. In addition, long term protection should be provided for designated AONBs and conservation and enhancement are priorities in such areas. There is therefore a strong policy presumption against this type of development in such areas and very special circumstances would need to be demonstrated in order to allow what would normally be considered as inappropriate development in such areas.
15. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the development plan unless material considerations indicate otherwise.
16. Prior to the publication of PPS10 and revisions to Waste Strategy 2000 in July 2005, former advice required planning authorities to consider whether waste planning applications constituted the Best Practicable Environmental Option (BPEO). Case law established that consideration of BPEO to individual applications should be afforded substantial weight in the decision making process.
17. PPS10 moves the consideration of BPEO principles to the Plan making stage where it is to be considered as part of the Sustainability Appraisal (SA) / Strategic Environmental Assessment (SEA) process applied during the preparation and review of existing development plans. However, where planning authorities' current development plan policies have not been subject to the SA / SEA process (as is the case with the Kent Waste Local Plan) it is appropriate to consider planning applications against the principles of BPEO.
18. Until such time as the Kent Waste Development Framework (WDF) which is at a relatively early stage in its preparation reaches a more advanced stage, applications will be considered against Policy WM2 of the Kent & Medway Structure Plan to ensure that they deliver facilities that are "*of the right type, in the right place and at the right time*" in accordance with paragraph 2 of PPS10. This approach is also consistent with the underlying principles of the emerging South East Regional Waste Strategy / RSS for the South East.
19. The principles of 'location' for green waste composing proposals are set down in the Adopted Kent Waste Local Plan which considers rural locations to be the most appropriate for the windrowing method of composting. However, given the proposed site is within the Green Belt and AONB it will need to be demonstrated that special circumstances exist sufficient to override the normal policy presumption against such development being located in these areas.
20. Members will recall the previous application determined under reference TW/95/3222 was refused on the following grounds:

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- (1) The proposal represents inappropriate development in the Green Belt and Area of Outstanding Natural Beauty and the applicant has failed to demonstrate the special circumstances necessary to override presumption against permitting the proposal. I therefore consider the proposal to be contrary to Policies ENV1, ENV3 and MGB3 of the Adopted Kent Structure Plan, Policies WM2, E1 and E4 of the Kent and Medway Structure Plan (Deposit Draft) and Policies W2 and W4 of the Kent Waste Local Plan.
- (2) The proposal lacks in sufficient detail to enable a proposed assessment to be made of the potential impacts from the development to be properly enforced should planning permission be granted. The proposal is therefore contrary to Policy W33 of the Kent Waste Local Plan.
- (3) The proposal lacks sufficient information to ensure that the spreading of the end product on agricultural land would not exceed the Nitrate Vulnerable Zone.
- (4) No details assessing the potential impact of the passing bays has been provided both in terms of impact upon landscape itself and of nature conservation interest in the adjacent hedgerows. The proposal therefore is contrary to policies W2, W4 and W21 of the Kent Waste Local Plan, policy ENV2 of the Kent Structure Plan and Policy E3 of the Kent and Medway Structure Plan (Deposit Draft).

21. To be considered favourably it is therefore incumbent on the applicant to address all these previous reasons for refusal in his current application. I therefore take each ground for refusal in turn:

*Refusal Ground (i)*

22. Whilst the site is located within a rural location, which in principle is supported in the Waste Local Plan as suitable in principle for green waste open windrowing, this site is located within the Metropolitan Green Belt (MGB) and High Weald Area of Outstanding Natural Beauty (AONB). The limited details submitted under the previous application failed to demonstrate the special circumstances necessary to override a presumption against permitting the proposal in the Green Belt and AONB.

23. The applicant was therefore advised prior to submission of this second application to provide an alternative site assessment having regard to other potential locations not subject to such policy designations and taking into account the proximity of these to the source of the waste material to enable him to demonstrate the special circumstances necessary to overcome this reason for refusal. It should be noted that the Borough Council in objecting to the proposal have also raised this issue. In my opinion given no built development is proposed an assessment of whether this small-scale proposal constitutes inappropriate

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development in this sensitive location would also be dependant on whether grounds (ii) to (iv) for refusal listed above, have been satisfactorily addressed.

*Refusal Ground (ii) and (iv)*

24. Policy W10 c) of the Kent Waste Local Plan requires consideration be given to whether proposals have ready access to the main road network. The applicant states that vehicles visiting the site would use the existing private High Woods Lane which is currently maintained by the applicant and would generate a maximum of 4 daily vehicle movements (2 in/2 out) as a result of this proposal. Notwithstanding the comments of the Borough Council, who have recommended a Traffic Impact Assessment be submitted in support of the proposal, both the Divisional Transport Manager and Public Rights of Way officer are of the opinion that in terms of pure numbers the vehicle movements proposed are negligible when compared to the amount of traffic which will continue to use this route as part of the current agricultural activities, particularly during certain times of the year. However, the previous proposal left doubts as to whether the applicant was proposing additional passing places or whether they already existed along High Woods Lane. Given the uncertainty at the time, the landscape and biodiversity officers had concerns that should some form of hedgerow removal be necessary to facilitate additional passing places, the applicant would need to provide further supporting information by way of a landscape impact assessment and biodiversity assessment with the application. The applicant has now clarified that no hedgerow removal is required, and that some 13 natural passing places already exist along the Lane. In recognition of this, Jacobs, our landscape advisors, raise no objection to the proposal. In addition, both the Divisional Transport Manager and the Public Rights of Way Officer raise no objection subject to a planning condition restricting an upper limit of vehicles visiting the site. In my view it would be difficult to justify a traffic assessment based on the limited vehicle movements proposed, however, I have reservations as to the ability of the applicant to secure the passing places. In the absence of the control of the passing place there is likely to be a detrimental impact on highway and pedestrian safety along High Woods Lane.

*Securing the maintenance of the proposed passing places*

25. As already stated above, High Woods Lane runs alongside a Public Right of Way and Bridleway. Whilst the application proposes a maximum number of 4 vehicle movements a day, the PROW officer has indicated he has no objection to the proposal provided a restriction be placed on vehicle movements to and from the site and on the proviso that the Highway Authority is satisfied that the proposed passing places are of sufficient size for safe passing of vehicles and pedestrians. The Divisional Transportation Officer has raised no objection in principle to the proposal given, in his view, the minimal numbers of vehicle movements proposed and that as the lane does not form part of the adopted highway, there would be no impact on the public highway itself. However he recognises that passing places are few and far between and that there is likelihood of conflicting vehicles where there would be no space to pass or where there is poor visibility along the lane. Thus he suggests that any reversing vehicles could have possible consequences for the safety of users of the PROW. On the basis of this advice, in my opinion should the proposal be granted planning

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permission as a minimum requirement the maintenance of all the current passing places along the lane should be secured to maintain highway and pedestrian safety for the duration of operations. In order to secure this by condition, the applicant would have to be sole owner of the access and the passing places included in the application. However it has come to light that notwithstanding the submission of an ownership certificate A, which indicates sole ownership, the applicant is not able to demonstrate that he has the necessary ownership or control over the passing places. In his letter dated 22 September 2006, the applicants states that “*some of the passing places are gateways and access points to other properties e.g. the bowls club*). *As such they are (in the applicants view) suitable passing places but not under my control beyond the confines of the lane.*”

26. The applicant was advised that in order to progress his application, and given some of those passing places indicated in the application are privately owned access points and cannot be maintained by him, the Waste Planning Authority would require a guarantee that the passing places could be maintained to ensure highway and pedestrian safety in the event of any future grant of planning permission. Failure to have such control would make any planning condition unenforceable. Thus far the applicant has failed to do so therefore I cannot guarantee the safety of users of the PROW. In my view therefore it does not fully address ground (ii) of the previous reasons for refusal and in addition also, the proposal clearly conflicts with Policy QL17c) of the Structure Plan and Policies W22 and W27 of the Kent Waste Local Plan.

*Refusal Ground (iii) - Nitrate Vulnerable Zone*

27. The Environment Agency (EA) raised an objection to the previous planning application in the absence of any evidence to ensure that the spreading activity would not exceed the Nitrate Vulnerable Zone (NVZ) and Soil Association limits. The applicant has submitted the required risk assessment and NVZ Compliance Assessment in support of the proposal to address these concerns. The EA have been formally consulted and they have raised no objection. I am therefore satisfied that ground (iii) has been satisfactorily addressed.

*Other Matters*

28. Policy W10 b) of the Kent Waste Local Plan requires that consideration be given to whether proposals seek to minimise impacts on residential amenity in terms of noise, dust, smell or visual impact. This site is located approximately 160 metres from the nearest residential properties. The EA as regulators of any Waste Management License have been consulted on the potential health impact. The applicant has included in his submission a site specific risk assessment as required by the EA I can confirm that the Agency are satisfied with the contents and raise no objection to the proposal.
29. In terms of noise, dust and odour, no objections have been raised by consultees provided the necessary mitigation measures can be put in place. I agree that on the basis of the

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information submitted, noise, dust and odour be controlled by way of appropriate planning conditions should Members be minded to grant planning permission.

**Conclusion**

30. Despite the efforts of the applicant to address the reasons for refusing the previous application, I consider that whilst he forms his own conclusions that this proposal represents the best location for such a facility, he does not provide with the application any evidence to support this view by way of an alternative sites assessment. In addition, the applicant has not been able to provide evidence that he has control over the access and passing places necessary for them to be maintained for the duration of operations and as such I am not satisfied that there would be no vehicular/pedestrian conflict. I am therefore of the opinion that the proposal does not meet the objectives of policy QL17c) of the Structure Plan and Policies W22 and W27 of the KWLP. Finally, notwithstanding that the current proposal does not require the erection of any built development, which would clearly compromise development plan policy for a site located in the Green Belt, in my view the applicant has failed to demonstrate the special circumstances necessary to override the strong policy presumption against permitting the proposal in the Green Belt and AONB.
31. With the exception of ground (3) and in part, ground (2), I am not satisfied that the Applicant has addressed all other grounds for refusing the previous application.
32. I therefore recommend accordingly.

**Recommendation**

33. I RECOMMEND that PERMISSION BE REFUSED, on the following grounds:
- (1) The proposal represents inappropriate development in the Green Belt and Area of Outstanding Natural Beauty and the applicant has failed to demonstrate the special circumstances necessary to override presumption against permitting the proposal. I therefore consider the proposal to be contrary to Policies WM2, E1 and E4 of the Adopted Kent and Medway Structure Plan 2006, and Policies W2 and W4 of the Kent Waste Local Plan.
  - (2) The applicant has failed to demonstrate he has control over the passing places required to be maintained for the duration of operations applied for to ensure vehicular and pedestrian safety along High Woods Lane. The proposal is therefore contrary to of policy QL17c) of the Kent and Medway Structure Plan and Policies W22, W27 and W33of the Kent Waste Local Plan.

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Case Officer: Angela Watts

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Background Documents: See Section Heading