

SECTION C
MINERALS AND WASTE DISPOSAL

Background Documents - the deposited documents, views and representations received as referred to in the reports and included in the development proposals dossier for each case and also as might be additionally indicated.

Item C1

Six applications for variation of condition 1 of planning permission TM/08/3353 at Blaise Farm Quarry Composting Facility, West Malling, Kent – TM/09/3231 to TM/09/3236

A report by Head of Planning Applications Unit to Planning Applications Committee on 13 April 2010.

Applications by New Earth Solutions Group Ltd for variation of condition 1 of planning permission TM/08/3353 to allow waste to be sourced from the following local authority areas (*currently condition 1 allows waste from just Kent and Medway*):

TM/09/3231: Kent, Medway, Surrey, East Sussex, West Sussex, Brighton & Hove, all London Boroughs, Thurrock, Essex and Southend;

TM/09/3232: Kent, Medway and Surrey;

TM/09/3233: Kent, Medway, Surrey, East Sussex, West Sussex and Brighton & Hove;

TM/09/3234: Kent, Medway, Surrey, East Sussex, West Sussex, LB Bromley, LB Bexley, Thurrock and Essex;

TM/09/3235: Kent, Medway, Surrey, East Sussex, West Sussex, Brighton & Hove, LB Bromley, LB Bexley and Thurrock; and

TM/09/3236: Kent, Medway, Surrey, East Sussex, LB Bromley, LB Bexley and Thurrock

all at the New Earth Composting Plant, Blaise Farm Quarry, Kings Hill, West Malling, Kent.

Recommendation: .

Local Members: Mrs S Hohler, Mrs T Dean and Mr R Long

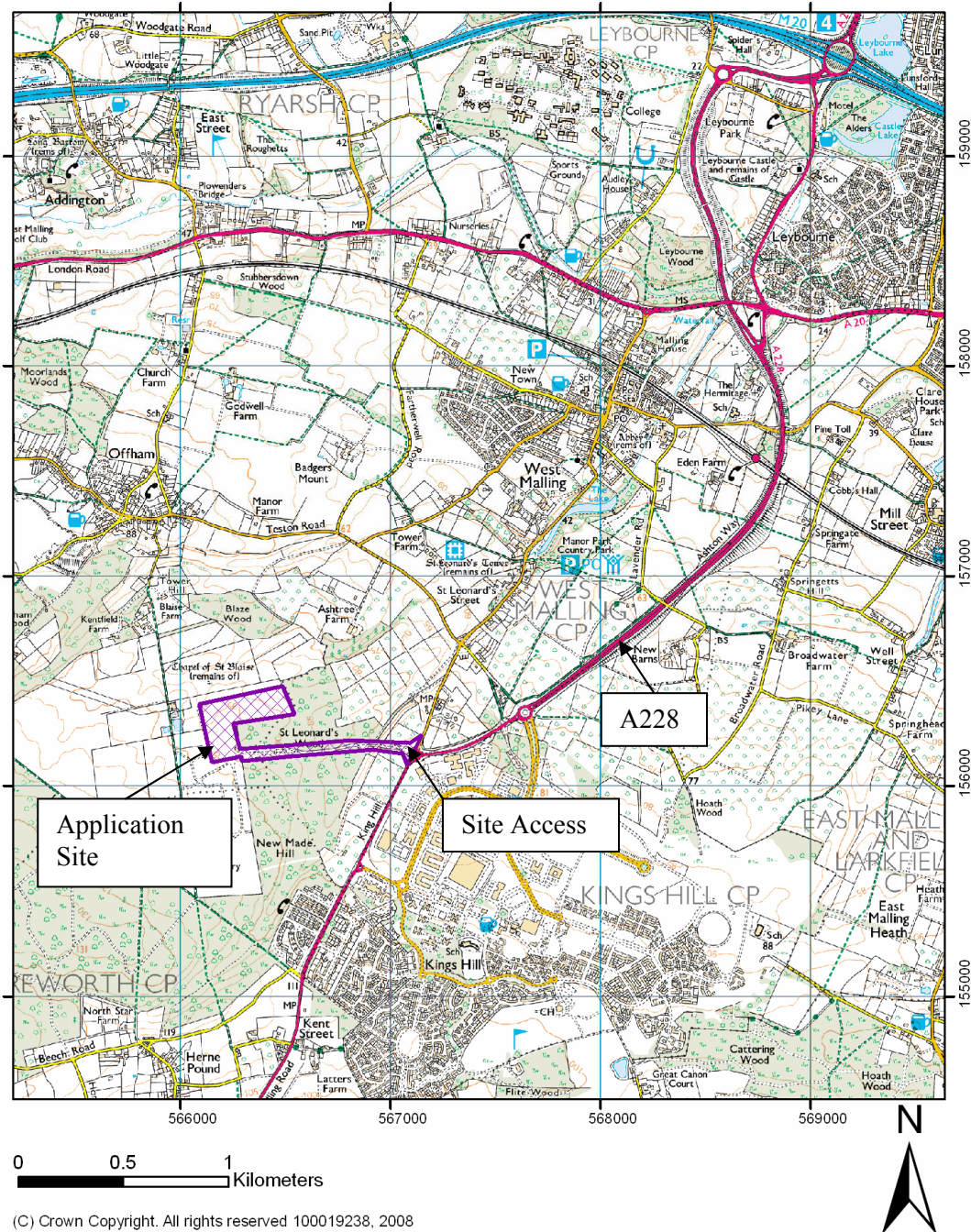
Unrestricted

Site description and background

1. The New Earth Composting Plant is located within the excavated quarry void in the north eastern corner of Blaise Farm Quarry near Kings Hill, West Malling in the Parish of Offham. The composting facility is located about 15 to 20m lower than adjacent ground and is bounded to the east / part south by St Leonard's Wood, to the north by farmland and planting associated with the quarry and to the west / part south by those parts of the quarry that have yet to be started / fully excavated. The nearest residential property (Blaise Farm House) is about 500m to the north west. Access to the composting facility is via a purpose built access road from the existing quarry access road and the A228 West Malling roundabout near Kings Hill. The site lies in the Metropolitan Green Belt and St Leonards Wood is designated as both Ancient Woodland and a Local Wildlife Site (LWS). The remains of the Chapel of St Blaise (Scheduled Ancient Monument) lie about 100m to the north of the application site. The quarry has the benefit of a mineral permission (TM/88/1002) granted in 1994 which provides for the winning and working of ragstone over a 62-year period from the

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start of commercial mineral extraction (i.e. from March 2001).

2. The background and planning history of the composting facility is set out in the committee report dated 3 November 2009 on the outcome of a Public Inquiry into two Appeals by New Earth Solutions Limited against the Refusal of Kent County Council for the Removal of / Variation to Condition 12 of Planning Permission TM/06/762 (Restriction on Waste Sources) which is attached at Appendix 1 of this report. Since that report, a further planning permission was issued for the site on 11 January 2010 (TM/09/2661). This provided for a minor variation to the permitted hours of operation to allow the delivery of waste on certain bank and public holidays and was dealt with under officer delegated authority.

Garden and food waste collection and disposal contracts in Kent and Medway

3. Approximately 95,258 tonnes (t) of garden waste and food waste from Kent is expected to be sent for composting in 2009/10. Of this, about 26,600t will be sent for composting “in vessel” at Blaise Farm (24,600t being from kerbside collections in Tonbridge & Malling and Tunbridge Wells). The rest (all garden waste) will be sent for composting at “open windrow” facilities at Dunbrik (Sevenoaks), Shelford (Canterbury), Hope Farm (Shepway), Hawkhurst (Tunbridge Wells), Ridham (Swale), Uckfield (East Sussex) and Swanley (London). The current KCC waste management contract at Blaise Farm is for a duration of 15 years with an option to extend this for up to 5 years. It provides for between 25,000tpa and 30,000tpa of waste being sent to the site after the initial 3 year period during which amounts of waste are increased incrementally. As commercial operations commenced on 1 September 2008, the contract will run until 1 September 2023 (with a possible extension until 1 September 2028). This 1 September 2028 date is consistent with the permitted operational life of the facility.
4. The four East Kent Districts of Thanet, Dover, Shepway, and Canterbury have recently agreed to introduce a common collection system by 2012/13. They all currently collect green waste (some in a limited way) and now intend to expand and add food waste to green waste collections. Whilst this is an ongoing process, and precise arrangements have yet to be determined, it is understood likely that contracts will be awarded for Dover and Shepway by mid-2010. This could result in composting or some similar recovery process (such as anaerobic digestion) being required for up to 20,000tpa of green and food waste until 2020. It is understood that decisions for Canterbury and Thanet may be made in 2013 and that these contracts could result in the need for a further 30,000tpa of similar capacity. Unless new permissions are granted and provided unused capacity remains available, the ABPR compliant facilities at Blaise Farm and Ridham could be used to process some or all of this waste. It is also understood that Maidstone intends to introduce a trial collection of food waste in 2010 for 7,000 to 10,000 homes and that it envisages sending this waste to Blaise Farm. New contractual arrangements will be required for Ashford, Maidstone and Swale in 2013. The introduction of food waste collections prior to then is considered unlikely. Sevenoaks currently has no plans to introduce food waste collections but does have a green waste collection scheme. Dartford and Gravesham currently have no green waste collections although Dartford intends to undertake a trial from April 2010.

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5. Medway Council had resolved to award a new 15 year contract for the processing of garden / kitchen waste collected at kerbside to Countrystyle Recycling Limited (based at Ridham) in 2009. However, it recently extended its existing contractual arrangements until October 2010 in order to re-evaluate tenders previously considered in 2009. Until any new contract is awarded, the position remain uncertain. However, it is understood that this could lead to between 18,000tpa and 20,000tpa of garden and food waste being available for recovery in the relatively short term with the potential for this to increase further if residual waste collections were reduced from weekly to fortnightly over the entire Council area.

The Proposals

6. Six applications have been submitted seeking to vary condition 1 of planning permission TM/08/3353 (*i.e. the permission granted in appeal in August 2009*) to allow waste to be sourced from a larger catchment area. The applications propose that waste be permitted to be sourced from the following local authority areas:-

TM/09/3231: Kent, Medway, Surrey, East Sussex, West Sussex, Brighton & Hove, all London Boroughs, Thurrock, Essex and Southend;

TM/09/3232: Kent, Medway and Surrey;

TM/09/3233: Kent, Medway, Surrey, East Sussex, West Sussex and Brighton & Hove;

TM/09/3234: Kent, Medway, Surrey, East Sussex, West Sussex, LB Bromley, LB Bexley, Thurrock and Essex;

TM/09/3235: Kent, Medway, Surrey, East Sussex, West Sussex, Brighton & Hove, LB Bromley, LB Bexley and Thurrock; and

TM/09/3236: Kent, Medway, Surrey, East Sussex, LB Bromley, LB Bexley and Thurrock.

7. The applications are supported by a single detailed planning supporting statement and design and access statement. This includes (amongst other things) the applicant's position on the planning applications, catchment areas, the existing facility, the recent planning history (including the planning inquiry in August 2009), South East Plan Policy W4 (and recent interpretation of this elsewhere in the Region) and the wider policy context, as well as an appraisal of the proposals against other material planning considerations and an analysis of the need for composting facilities in the South East region and its proposals for a revised catchment area.
8. The applicant states that each application is for specific areas included within adjoining sub-regions defined in the South East Plan and that these are all different from the two considered previously at the recent Planning Inquiry. In its opinion, a correct interpretation of Policy W4 of the South East Plan would lead to the largest waste catchment area proposed by application TM/09/3231 being permitted. However, it acknowledges that material considerations may lead the County Council to decide that one of the other proposed waste catchment areas is the most appropriate. The applicant also states that the following represent key changes to the material considerations since the Planning Inquiry:-
- Documentary evidence exists of the desire of Waste Disposal Authorities in

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- adjoining sub-regions to use the Blaise facility;¹ and
- Other planning authorities in the South East have followed radically different approaches to the same South East Plan policy framework. Hampshire County Council, for example, has permitted two energy from waste plants without any planning condition on geographical limits.
9. The applicant emphasises the urgent need for additional capacity for treating biowaste and the unsustainable nature of leaving the permitted capacity at Blaise Farm unused. It further states that its principal aim is to maximise the amount of waste it diverts from landfill and that this is prevented by the current wording of the condition. The applicant specifically refers to an existing contract it has with Essex County Council to take up to 10,000tpa of waste until 31 March 2014 that it is unable to honour due to the current restriction. It also states that benefits of allowing a larger waste catchment include increasing the viability of the plant, bringing forward the second phase of the development (thereby increasing the actual capacity from 50,000tpa to 100,000tpa as is already permitted), additional employment opportunities and the production of more compost for local farmers or others. It states that allowing a larger waste catchment would not prejudice the ability of the facility to treat additional waste from within Kent and Medway. The applicant has also offered to provide a further modified Section 106 Unilateral Undertaking (relating to a liaison group, HGV routing and restoration).

Planning Policy Context

10. **National Planning Policies** – the most relevant National Planning Policies are set out in PPG2 (Green Belts), PPS10 (Planning for Sustainable Waste Management), PPS23 (Planning and Pollution Control) and Waste Strategy for England 2007.
11. **South East Plan (May 2009)** – These include Policies SP1 (Sub-regions in the South East), SP5 (Green Belts), CC1 (Sustainable development), CC2 (Climate change), NRM1 (Sustainable water resources and groundwater quality), NRM2 (Water quality), NRM5 (Conservation and improvement of biodiversity), NRM7 (Woodlands), NRM9 (Air quality), NRM10 (Noise), W3 (Regional self-sufficiency), W4 (Sub-regional self-sufficiency), W5 (Targets for diversion from landfill), W6 (Recycling and composting targets), W7 (Waste management capacity requirements), W10 (Regionally significant facilities), W14 (Restoration), W16 (Waste transport infrastructure), W17 (Location of waste management facilities), C4 (Landscape and countryside management) and BE6 (Management of the historic environment).
12. **Kent Waste Local Plan (1998)** – These include Policies W6 (consideration of need / harm), W10 (criteria for composting proposals), W18 (noise, dust and odour), W19 (ground and surface water), W20 (land drainage and flood control), W21 (nature conservation), W22 (road traffic and access), W31 (landscaping) and W32 (aftercare).
13. **Tonbridge and Malling Borough Council Local Development Framework Core Strategy (September 2007)** – Policies CP1 (sustainable development) and CP3 (Metropolitan Green Belt).

¹ Letters from West Sussex, Surrey, Bexley, Bromley and the West London Waste Authority (a joint Authority of the London Boroughs of Brent, Ealing, Harrow, Hillingdon, Hounslow and Richmond upon Thames).

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14. **Kent Joint Municipal Waste Management Strategy (April 2007)** – The most relevant Policies are 8 (which states that the Kent Waste Partnership will achieve a minimum level of 40% recycling and composting of household waste by 2012/13 and will seek to exceed this target) and 12 (which states that the Kent Waste Partnership will work to secure composting capacity including in-vessel in the County to enable the authorities in the east of Kent to provide an efficient and cost-effective service for management compostable wastes).

Consultations

15. **Tonbridge and Malling Borough Council** – Objects to the proposals on the basis that the sourcing of waste material from outside the sub-region of Kent and Medway could prejudice the ability of the Blaise Farm facility to compost green waste sourced from within this sub-regional area, which includes the Borough of Tonbridge and Malling. It adds that KCC will need to be satisfied that the proposed development complies with national, regional and local adopted planning policies regarding waste management and disposal.
16. **Offham Parish Council** – Supports the principle of maximising the amount of waste diverted from landfill but, in the absence of answers to various questions, is opposed to a further extension of the waste catchment area and hence all six applications. A copy of Offham Parish Council's response is attached at Appendix 2 of this report.
17. **West Malling Parish Council** – Objects strongly for the following reasons:-
- Local sources are not being used to their maximum extent as some authorities have existing contracts to send their waste to destinations other than Blaise Farm. It asks that KCC use its influence with other authorities so that green waste is sent to Blaise Farm. If this could be achieved then the site would be used to capacity and there would be no need to seek other sources;
 - Concerns that plastic is being included in what should be “green” waste. The plastic is being shredded instead of being burnt off resulting in poor quality waste which is spread on the ground where the shreds of plastic do not break down;
 - Perceptible odour occasionally emanates from the site;
 - There is pressure from the Government to increase recyclable waste. This is a move which it endorses and which would significantly increase local supplies of recyclable material; and
 - Any long term contracts to take material from a wider area could severely compromise the ability of the Blaise Farm facility to manage any increase in local supplies. It would be a nonsense if local supplies of recyclable materials could not be dealt with within Blaise Farm and would need to be trucked out of the area whilst supplies were being trucked in from elsewhere.

West Malling Parish Council has also requested a meeting with KCC, to include other affected parishes, in order to discuss the issues raised. It has also stated that the above represent its preliminary comments and that members reserve the right to add to these once such a meeting has taken place.

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18. **Kings Hill Parish Council** – Objects to all six applications on the basis of increased traffic impacts and the likely increased size of HGVs using the facility as a result of the alternative sources. However, is supportive of the facility and composting in general.
19. **Mereworth Parish Council** – Is extremely concerned at the large number of London Boroughs that have been included due to the impact of additional HGV movements on the local road infrastructure (particularly the A228). States that traffic impacts are a major issue for local residents. Is also concerned about any increase in vehicles taking compost from the site. It suggests that if the compost was accredited so it could be bagged and palletted rather than being removed by tractor (as currently) this would mean that larger vehicles could be used and this reduce the overall number.
20. **SEERA** – Has advised that if KCC is minded to amend condition 1, it should address the following through appropriately worded conditions and/or legal agreements:-
 - Ensure the proposal is beneficial to the region, including improving the viability of recovery and reprocessing activity in the region and thus assisting in delivery of recovery targets, and that the facility is the nearest appropriate location in line with the objectives of Policy W3 of the South East Plan;
 - Ensure that the proposal does not compromise the objectives of the Green Belt in line with guidance in PPG2 (Green Belts);
 - Secure an appropriate package of measures to prevent and mitigate against air and noise pollution in accordance with Policies NRM9 and NRM10 of the South East Plan; and
 - Secure appropriate measures to reduce the transport and associated impacts of waste movement in accordance with the objectives of Policy W16 of the South East Plan.
21. **Environment Agency** – No objection to the principle of the application but would remind the applicant of the need to ensure that any operating changes will also need to be approved by and reflected in the Environmental Permit for the site.
22. **Local Transport and Development Manager** – No objections. The proposal is to source material from further afield without any increase in the number of permitted HGV movements. Vehicles travelling from the proposed more remote areas will use the motorway and 'A' road links that currently serve the site.
23. **KCC Waste Management Unit** – The Waste Disposal Authority has a Statutory duty to seek provision for domestic waste disposal arisings in Kent, of which green/garden biodegradable waste constitute a key component of the waste stream. Notwithstanding the overall capacity requirements, the "Joint Strategy for the Sustainable Management of Household Waste for Kent" clearly identifies a requirement to reduce the amount of waste being sent to landfill in order to be able to meet strict Government targets and Best Value Performance Indicators. Blaise Farm is a key component of the existing waste infrastructure and contracted by Kent County Council to accept this category of material. Whilst the facility currently processes some 26,000 tonnes per annum mainly originating from the west of our region, this is set to rise significantly over the medium term as new Kent contracts begin to come on stream. Other outlets currently include Ridham Dock, Sittingbourne, Hope Farm near

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Hawkinge and Shelford at Canterbury. Hope Farm and Shelford both operate a "Windrow" type operation and are not able to take in "Food Wastes".

Current estimates suggest a potential doubling of this figure is likely, resulting in part from phase one of the East Kent Project. If extrapolated to take the additional tonnages envisaged from other known or potential contract procurement processes this total raises demand to a figure approaching the maximum 100,000 tonnes per annum through put of the plant. However at this time there remains a degree of uncertainty as to what the total demand is going to be since this will depend on the inclusion of "food waste" within future contracts. Whilst there clearly is a demonstrable medium to longer term Kent demand for this capacity, suitable contracts in some cases remain to be finalised or awarded and there is therefore an opportunity to utilise currently spare capacity from elsewhere.

The applicant has detailed the various merits, and considered different connotations for bringing in waste from different sources outside the currently permitted catchment area. Having fully considered the likely impact on Kent services of these options, by allowing the waste catchment area to be extended to include the London Boroughs of Bexley and Bromley on a temporary basis over this period, up to 2016 is considered appropriate. The longer term Kent position is protected by limiting approval to 2016. By this time London is expected to be self-sufficient and spare capacity can then revert back to safeguard the projected Kent processing requirement.

24. **Other Waste Planning Authorities** – All waste planning authorities (WPAs) in the South East and East of England regions and the Greater London Authority were also consulted on the proposals. Of those consulted, only **Berkshire** and **Surrey** commented on the proposals themselves.

Berkshire Authorities' Joint Strategic Planning Unit supports the applications as it does not support use of waste catchments. It is concerned about a "beggar my neighbour" approach to waste planning whereby waste catchments hamstring WPAs who, possibly for perfectly valid reasons, may have difficulty in achieving net self-sufficiency and also prevents cross-boundary movements of waste where these are the most sustainable solution to its management. It argues that waste catchments are therefore counter to the flexibility sought by South East Plan Policy W4 and supporting text. Instead, it believes that transport costs should determine sustainability. It further states that if waste catchments are to be used this should only be in wholly exceptional circumstances.

Surrey has no objection to the applications as they could potentially provide additional treatment capacity for its bio-waste waste than is currently available until such a time as more local facilities can be developed in Surrey. It adds that the risk of waste from Surrey displacing that from Kent and Medway is limited as Surrey will have developed its own facilities by the time separate collections in Kent and Medway are more widespread.

The other respondents provided information on ABPR compliant composting facilities (permitted or planned), the use of waste catchments in permissions (via conditions or Section 106 Agreements) and bio-waste movements in their areas.

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25. No responses have been received from SEEDA and DEFRA (Animal Health Division).

Representations

26. The application has been publicised both by site notice and newspaper advertisement and 15 local residential / business properties were notified. At the time of writing 2 letters of representation have been received. These object to the proposals on the following grounds:-

- Increased traffic (highway safety issues);
- Would change the facility from one serving the local area to one for London and the South East (and if this had been proposed originally, the facility would never have been permitted in the Green Belt);
- It would be more sustainable for new waste processing facilities to be provided in the proposed catchment areas to avoid waste being transported long distances;
- The “drive-times” referred to in the application documents appear to be rather optimistic.

27. CPRE Tonbridge and Malling District Committee objects strongly to each application as it considers them to be contrary to South East Plan Policies W3 and W4. It also questions whether allowing waste to be transported long distances by HGVs is an efficient use of resources, particularly if this results in the plant being unable to serve local requirements, and states that any further extension to the catchment area should be analysed using BPEO criteria. It is also concerned that the proposal could lead to pressure for increased and unacceptable levels of lorry traffic on local roads and a consequent detriment in environmental conditions with adverse impacts on road safety.

28. Concerns have also been expressed about odour in the area and the respondent has asked that KCC satisfy itself that this is not a result of the composting facility.

Local Members

29. County Council Members Mrs S Hohler, Mrs T Dean and Mr R Long were notified in October 2008.

Discussion

30. 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. In the context of this application, the policies outlined in paragraphs 10 to 14 are of greatest relevance. Until the Kent Waste Development Framework has been adopted as a replacement for the Kent Waste Local Plan (1998), and any identified sites and locational criteria have been subjected to a Sustainability Appraisal and Strategic Environmental Assessment as part of that process, Planning Policy Statement 10: Planning for Sustainable Waste Management (PPS10) requires that planning authorities should ensure proposals are

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consistent with its policies. The Inspector's Decision on the recent appeals is a key material consideration. Other material planning considerations include European and National Waste Policies (e.g. the EU Waste Framework Directive and Waste Strategy for England 2007) and Circular 11/95: The Use of Conditions in Planning Permissions (1995) which sets out the general criteria for the validity of planning conditions and the "six tests" that all conditions should meet.

31. Each of the planning applications has been submitted under Section 73 of the Town and Country Planning Act 1990. Although such applications are normally described as being to remove, amend or vary a planning condition(s), Section 73 actually provides for the development of land without compliance with a condition(s) attached to an earlier permission. Any planning permission granted pursuant to Section 73 represents a wholly new planning permission and the applicant would then have the option as to which planning permission it wished to rely upon. Section 73 enables the planning authority to decide that planning permission should be granted subject to conditions different from those existing, the same as those existing (in which case permission should be refused) or unconditionally. In principle, the scope of the planning authority's jurisdiction when considering a Section 73 application is more limited than when considering a full application and it does not empower the planning authority to rewrite the permission altogether. However, the planning authority is not constrained in its consideration of the full planning merits. Although the applicant has submitted six separate applications, it could have sought any or all of the proposed changes to condition 1 as part of the same application.
32. The key issue for each application is whether it accords with relevant waste planning policy (particularly South East Plan Policies W3 and W4) and, if not, whether there are any overriding reasons to depart from this policy.

Polices W3 and W4

33. Policy W3 aims to achieve net regional self-sufficiency and requires WPAs and waste management companies to provide for capacity equivalent to the waste forecast to require management within its boundaries, plus an allowance for disposal of a declining amount of waste from London. Although Policy W3 is mainly focused on making provision for London's exported waste to landfill, the policy and supporting text (paragraph 10.17) also recognise that there may be situations where the use of facilities within the South East region for recovery or processing of waste materials from London, or other regions, would also be appropriate. However, such provision should only be made where:-
- there is a proven need;
 - there are demonstrable benefits to the region, including improving the viability of recovery and reprocessing activity within the region; and
 - the provision is in the nearest appropriate location (i.e. the facility is the nearest available to the source materials).

Paragraph 10.17 additionally acknowledges that provision for waste from adjoining regions may be appropriate where there are good sustainable transport links.

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34. Policy W4 requires Waste Planning Authorities (WPAs) to plan for sub-regional net self-sufficiency through provision for waste management capacity equivalent to the amount of waste arising and requiring management within their boundaries. It also states that a degree of flexibility should be used in applying the concept and, where appropriate and consistently with Policy W3, capacity should also be provided for waste from London and waste from adjoining sub-regions (waste planning authority area within or adjoining the region). Paragraph 10.18 of the South East Plan accepts that waste movements will occur between sub-regions and states that the level of sub-regional self-sufficiency capable of being achieved will depend on factors such as the nature of the waste stream and the type of facility concerned, with wider catchment areas necessary to justify more specialised reprocessing facilities. On this basis, and in terms of setting out a catchment area for sourcing waste, Policy W4 does not preclude cross border movements as long as the waste is from London or adjoining sub-regions (i.e. WPA areas within or adjoining the region) to the relevant WPA and subject to satisfying certain criteria.
35. It should be noted that there is a degree of uncertainty about some of the terms used in the South East Plan and that this can lead to different interpretations of the above and other policies. In this case, the main opportunities for disagreement relate to definitions of “sub-region”, “demonstrable benefits to the region”, “more specialised reprocessing facilities” and “nearest appropriate location”. “Proven need” and “good sustainable transport links” are not defined but, in this case, are probably somewhat clearer and less controversial. Similarly, the term “net self-sufficiency” clearly implies the import and export of waste as well as waste arising from within the sub-region.
36. “Sub-region” is defined as a waste planning authority (WPA) area in Policy W4 but, in cases, as combinations of WPAs in paragraph 10.19. The applicant prefers the latter definition which would potentially lead to the acceptance of a larger waste catchment area.
37. “Demonstrable benefits to the region” are not specifically defined, although the reference to “including improving the viability of recovery and reprocessing activity within the region” gives a steer as to what these are intended to be.
38. Similarly, the only example given of “more specialised reprocessing facilities” is that of materials recovery facilities (MRFs). In dealing with the recent planning appeals, the Inspector stated that it could be argued that the “specialised nature” of the Blaise Farm composting facility could reasonably allow a waste catchment that extends beyond the sub-region (although he went on to say that it was appropriate to determine the appeals on the basis of sub-regional self-sufficiency as set out in Policy W4 and that he saw no support for removing the waste catchment). I note that paragraph 10.15 states that exports of construction and demolition (C&D) waste contribute to “more specialised” needs, such as for the treatment of contaminated soils and recycling facilities (which are addressed in Policies W15 and M2). However, Policy W10 and associated paragraph 10.35 appear to indicate that “specialist facilities” relate to those dealing with paper and card, plastics, glass, wood, tyres, electrical and electronic equipment and end of life vehicles. This alternative approach would appear to be reinforced by Policy W3 which clearly distinguishes between “recovery” and “reprocessing” and paragraph 10.17 (and associated “Definitions” box)

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that makes it clear that composting is a form of “recovery”.

39. “Nearest appropriate location” is not defined although, in general terms, is probably reasonably well understood as being the facility closest to the source of the waste that is capable of dealing with it at a similar or higher point on the waste hierarchy in its collected form. However, the introduction of the term “available” in paragraph 10.17 provides a further potential point for disagreement in that it does not specify how and when this should be so. For example, there may be permitted capacity that has yet to be implemented or is already being used. These issues also complicate detailed consideration of the proposals. These matters are discussed further, as necessary, below in the context of the various “tests” set by the two policies.

Need

40. The applicant states that permitted and proposed ABPR compliant recovery and processing capacity (excluding EfW) in Kent and Medway is significantly less than the amount of green, kitchen (including food) and card waste that the waste collection authorities (WCAs) are likely to arise in Kent and Medway when separate collections are more widespread. It also states that the position is similar in the rest of the South East and other regions. I accept that there is currently a need for additional composting or other similar recovery capacity capable of dealing with food waste (i.e. ABPR compliant) in the South East, East and London Regions and that even more capacity will be required in future if other WDAs are to divert more bio-waste from landfill or utilise waste management options as high up the waste hierarchy as possible. The proposals therefore meet any of the relevant need tests and need is also an important material planning consideration in favour of the proposals.
41. Enabling the permitted capacity at Blaise Farm to be utilised for waste from elsewhere in the South East region would also assist in securing the diversion of waste from landfill, consistent with South East Plan Policy W5, and contribute to the targets for recycling and composting in the South East region set out in Policy W6. However, if the waste were to be sourced from outside the region, this could prejudice the ability of the South East to meet these targets.

Demonstrable benefits to the region

42. The applicant states that benefits to the South East Region of allowing London waste to be dealt with at the site include the full use of the permitted capacity and economies of scale that would enable the operator to offer lower prices to existing customers in Kent and Medway and thus increase the likelihood of further separate collections of green, kitchen and card waste in these areas. It would also increase the availability of compost produced at the site to local farmers and provide additional employment at the plant with other economic multiplier effects.
43. If extending the waste catchment area in some way provided the applicant with sufficient confidence to construct the second phase of the development this would increase the available unused capacity from about 20,000tpa to 70,000tpa and could, in turn, lead to the above benefits. However, it is difficult to see how permitting any of the applications would lead to any reduction in costs associated with the existing

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contractual arrangements as these have already been agreed. Whilst it is possible that the operator might be able to offer better prices for new contracts, there is no guarantee that this would be the case. New contracts could be for food or similar wastes or for green waste that is usually sent to cheaper open windrow facilities.

44. If extending the waste catchment area to London and / or the Eastern region (as proposed by four of the six applications) resulted in all or most of the unused capacity being filled with waste from those areas (as would be entirely possible under the terms of a number of the proposed waste catchments), the only possible benefits to the South East region would be those associated with the production of additional compost and employment. I consider these to be very limited benefits. In this eventuality, there would be clear disbenefits to the South East region as the unused capacity would be lost (either for the permitted life of the Blaise Farm facility or for some more limited period). This could prejudice the ability of other Waste Collection Authorities in the South East region (particularly other Kent Districts and Medway) to introduce food waste collections with resultant disbenefits. It could also result in a loss of capacity for C&I waste arising in the South East (including Kent and Medway). It would also require additional permitted capacity to be provided in the South East region.
45. I consider that the potential disbenefits to the South East region clearly outweigh the potential benefits and that the proposals to allow London waste are therefore contrary to Policies W3 and W4. As Policy W3 does not specifically refer to the Eastern region (since regions are meant to be self-sufficient), it could be argued that the requirement for “demonstrable benefits to the region” does not apply when considering proposals for waste from that area. However, as Policy W4 requires proposals to accord with Policy W3, it could equally be argued that the same constituent elements of that policy should apply also.

Nearest appropriate location

46. The applicant has provided details of some of the other ABPR compliant composting facilities in the wider South East of England (including London). Full details of sites with DEFRA approved ABPR composting plants are also available on the DEFRA website. As of 20 January 2010, there were 5 such sites in the South East, 8 in London and 13 in the Eastern region. However, a number of these were small scale facilities that cannot be considered to be comparable with Blaise Farm and should therefore be discounted when considering the current proposals. There were only 2 other ABPR approved sites of a comparable scale to Blaise Farm in the South East (Countrystyle Recycling at Ridham near Sittingbourne and Cambridge Recycling Services in High Wycombe), 2 in London (London Waste Ltd at Edmonton and West London Composting Ltd at Harefield) and 9 in the Eastern region (Cumberlow Composting Services at Buntingford in Hertfordshire, Envar Ltd at Huntingdon in Cambridgeshire, Donarbon Ltd at Waterbeach in Cambridgeshire, Huntingdon Recycling at Huntingdon in Cambridgeshire, Countrystyle Compost (East Anglia) Ltd at Woodbridge in Suffolk, Anglian Water Services at Ipswich in Suffolk, County Mulch Ltd at Sandy in Bedfordshire and County Mulch Ltd at East Stanton and Ipswich in Suffolk). Whilst these sites could, in theory, be used to treat food / kitchen waste (with or without garden waste) arising from within any of the proposed new waste

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catchment areas, the availability of unused capacity at any given time will determine whether this is possible. Another factor is whether arrangements have already been made for any of these sites to take waste from specific locations or organisations (including local waste disposal or collection authorities).

47. Other locations that could be the “nearest appropriate” are those that are expected to become available in the future / during the life of the Blaise Farm composting facility. This category is difficult to assess as it is dependent on many factors (including whether or not planning applications are submitted on sites allocated in waste local plans or WDFs, planning applications are permitted, planning permissions are implemented, environmental permits issued and ABPR certification obtained). However, it is probably reasonable to assess proposals against operational ABPR compliant sites or those where planning permission has been granted and is expected to become operational relatively quickly. On this basis and from both information submitted by the applicant and responses from other waste planning authorities there are several other facilities that could be regarded as “nearest appropriate”. These include the following permitted facilities:-

South East region:

- Ashgrove Farm, Oxfordshire (35,000tpa IVC); and
- The Vinery, Poling, West Sussex (20,000tpa of 45,000tpa IVC); and
- Wisley Airfield, Surrey (30,000tpa IVC).

East of England region:

- Cumberlow Green Farm, Hertfordshire (30,000tpa IVC extension to existing site);
- Redwell Farm, Hertfordshire (48,500tpa IVC under construction);
- Tempsford Airfield, Bedfordshire (48,000tpa); and
- Wymington, Bedfordshire (10,000tpa).

48. The requirement for waste to be treated at the nearest available location only applies to that from London and the East of England region. Based on a general desk-based assessment of the locations referred to in paragraphs 46 and 47 above, it would appear that there are nearer appropriate locations for waste from large parts of London, Essex and Thurrock to be treated than Blaise Farm (i.e. at facilities in London, Hertfordshire, Suffolk, Cambridgeshire and Bedfordshire). Whilst I have not carried out a definitive / detailed assessment, the outcome of this general assessment can be considered alongside the conclusions on the other “tests”.

49. Although not directly comparable, operational sites or sites with permission for anaerobic digestion (AD) are also relevant as these could also treat some of the same or similar waste streams. Permitted sites include those at:-

- Twinwoods, Bedford (42,000tpa);
- Worton Rectory Farm, Oxfordshire (45,000tpa); and
- Adnams Distribution Centre, Reydon, Suffolk (20,000tpa).

Although not directly relevant to the consideration of the current planning applications, it is understood that other proposals for AD plants are likely to come forward and be tested through the planning system. These could lead to additional biowaste

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management capacity in due course.

Good sustainable transport links

50. As Blaise Farm is only accessible by road and has no sustainable transport links, any proposals to extend the waste catchment area to the East of England Region fail the test set out in paragraph 10.17. The test does not apply to waste from London or the rest of the South East region.

Are there any overriding reasons to depart from Policies W3 and W4?

51. The applicant states that the letters from several WDAs in adjoining sub-regions (in the South East, London and East of England) demonstrates their desire to use the Blaise Farm facility. Whilst this may be true, the majority of these letters actually say that it would be beneficial for these waste management services if the Blaise Farm facility were capable of receiving their waste as it would increase the competitiveness of the waste market. Whilst most also note that they are aware of or use facilities that are more distant than Blaise Farm, they do not comment on whether there are more proximate facilities. It is hardly surprising that WDAs outside Kent and Medway would support the enlargement of the waste catchment to include their areas as this would, in itself, be likely to provide greater choice and reduce disposal costs by increasing the number of potential facilities they could use.
52. The fact that the applicant is unable to honour an existing contract with Essex County Council to take up to 10,000tpa until 31 March 2014 is also material although the alternative arrangements for this waste are not known and it may be composted elsewhere. The applicant has advised that if the planning permission were amended to allow Essex waste it could accept the waste on an annual basis for the remaining period of the contract. It argues that this would not prejudice its ability to take further Kent and Medway waste if such contracts become available due to the short term nature of the Essex contract. Notwithstanding the previous refusal of an application to enable Essex waste to be treated at Blaise Farm for a temporary 18-month period in October 2008 (TM/07/4435) I have some sympathy with this argument, particularly as the policy position has changed with the adoption of the South East Plan, as further supporting information has been submitted both in support of the recent appeals and in the current applications and as the amount of waste is relatively small.
53. The applicant also states that other planning authorities in the South East have followed radically different approaches to the same South East Plan policy framework than Kent. It states that Hampshire County Council has permitted two energy from waste plants without any planning condition on geographical limits. Whilst technically correct, this fails to acknowledge the fact that Hampshire CC had previously imposed such restrictions and only “lifted” these once its WDA contracts had secured sufficient capacity to meet the County’s needs. If this logic is followed for Blaise Farm, consideration might be given to amending the existing waste catchment only when all the WCAs in Kent and Medway have had the opportunity to send their waste to the facility. This would not be until at least 2013. Although Berkshire and Surrey support the applications and suggest that waste catchment areas are not appropriate, and some other WPAs have adopted this approach, this is by no means universal. Indeed,

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waste catchments have been imposed by condition in East Sussex. Examples include those at a composting facility at Chiddingly and an EfW facility at Newhaven which restrict waste to that arising in the administrative areas of East Sussex and Brighton and Hove. Waste catchments have also been imposed (or recommended by officers) on a number of waste facilities by several WPAs (e.g. Oxfordshire, Cambridgeshire, Peterborough and Suffolk), albeit using clauses in Section 106 Agreements rather than planning conditions and in cases providing for a percentage of waste capacity being used from within a specified WPA or distance. A very recent example of this approach was when Oxfordshire CC's officers recommended that waste catchment area restrictions be required on two applications for EfW facilities. It should be noted that both applications were subsequently refused although the reasons for refusal were not related to waste catchments.

54. The applicant has effectively discounted the likelihood of the facility taking C&I waste due to the difficulties in attracting suitable waste streams and I am sympathetic to its reasons for this. These issues were discussed at the public inquiry in 2009 and are referred to in the Inspector's report. Given this, and the current position in terms of MSW contracts referred to in paragraphs 4 and 5 above, I also accept that there is insufficient readily available suitable waste from within the permitted catchment area to enable the facility to operate at full capacity (100,000tpa). Indeed, unless waste from the Maidstone trial and Dover and Shepway contracts is treated at the facility, there is likely to remain insufficient waste to enable the first phase (50,000tpa capacity) to be utilised. Given the real and pressing need for additional ABPR compliant composting capacity and the possibility that the applicant may be unsuccessful in securing any or all of the MSW contracts within Kent and Medway referred to elsewhere in this report, I consider that it is unreasonable to refuse to allow any amendment to the existing waste catchment area. However, any amendment requires careful consideration so as not to entirely prejudice the ability of the facility to take further Kent and Medway waste.

Other matters

55. As the site lies in the green belt the proposed development represents "inappropriate development". However, in determining the appeals in 2009 the Inspector concluded that increasing the waste catchment would cause no direct harm to the green belt over and above that already allowed (i.e. the "fall-back" position). The Inspector also considered any indirect harm to be small (effectively rejecting KCC's concerns on this issue). Having considered the Inspector's conclusions on these issues and noting the benefits of utilising unused capacity at the site (in terms of diversion from landfill and resultant climate change benefits) I am satisfied that there are very special circumstances in this case sufficient to overcome the usual presumption against inappropriate development in the green belt.
56. Although all six applications would be likely to result in an increase in the number of HGVs currently using or contracted to use the site, which could lead to additional associated impacts on the road network near the site (e.g. the A228), they would not result in any increase in the number already permitted to use the site. Indeed, the applicant has suggested that overall HGV movements might actually be less if waste were to be sourced from further from the site as there would be a tendency for it to be

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“bulked up” rather than be transported in dustcarts or other smaller vehicles. The impacts associated with permitted HGV movements have already been fully considered when the previous applications were determined and the existing permissions already contain conditions designed to keep related impacts to an acceptable level (e.g. maximum daily HGV movements). The Section 106 Agreement also restricts the use of local roads through Offham, West Malling and Mereworth to vehicles collecting waste from these areas and the permissions contain other conditions designed to ensure that potential impacts on the local environment from operations at the site are minimised. No changes are proposed to these restrictions and the site would continue to be controlled by an Environmental Permit. Any new permission(s) would need to replicate the conditions imposed on planning permission TM/08/3353 as amended by TM/09/2661 and be conditional on the prior completion of a modified Section 106 Agreement (Unilateral Undertaking) to secure the continuing obligations attached to the existing legal agreement.

57. Concerns have been expressed about odour in the Blaise Farm area and it has been suggested that this could be related to the composting facility. Initial investigations suggest that the odour may relate to the use of compost produced at the facility on farmland in the local area but the matter is being explored further. It should be noted that the applications should have no direct impact in terms of odour as they relate to where waste is sourced from rather than how the facility operates. None of the applications would lead to any increase in the permitted capacity of the facility.

Conclusion

58. Taking all the above factors into account, I consider that allowing waste from adjoining sub-regions within the South East region (i.e. Surrey, East Sussex, Brighton and Hove and West Sussex) would be consistent with Policy W4 and would assist in enabling the South East region to meet the targets set out in South East Plan Policies W5 and W6. Despite the doubt about the precise definition of sub-region, and whether it should be based on WPA areas of some combinations thereof, I am prepared to accept the broader definition in this case. My position on this is further influenced by the fact that the boundaries of Kent and West Sussex are very close if not actually adjoining. Whilst allowing this waste to be treated at Blaise Farm could reduce the ability of the site to treat waste from within the Kent and Medway sub-region, I am satisfied that the benefits to the South East region associated with this outweigh any potential disbenefits for the sub-region and that there are no material planning considerations sufficient to outweigh these policy considerations.
59. I consider that allowing waste from London and adjoining sub-regions within the East of England region would fail one or more of the tests in South East Plan Policies W3 and W4 (and associated text). I also consider that allowing waste from outside the South East region in any of the ways proposed would be likely to prejudice the ability of the South East region to meet the targets set out in South East Plan Policies W5 and W6 and discourage the provision of new facilities in London and the East of England. Although I consider that there are no overriding material considerations to depart from these policy requirements for the life of the facility (given the relevant tests and policy requirements), I consider that there is a case for allowing two exceptions in this case. The first is to allow waste from the adjoining WPA areas of

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LB Bromley and LB Bexley on a temporary basis given the need for IVC capacity, the degree of policy support for capacity being provided for London waste until 2016 and the proximity of these boroughs to Blaise Farm. This temporary period should most appropriately be until 31 December 2015 (i.e. linked to the date by when Policy W3 expects that London waste exported to the South East region will be restricted to residues of waste that have been subject to recycling or other recovery process and by when a net balance in movements of materials for recovery between the Region and London is in place). The second is to allow up to 10,000tpa of waste from Essex until 31 March 2014 when the existing contractual arrangements between the applicant and Essex County Council expires. Whilst both of these exceptions could give rise to some or all of the disbenefits referred to above, I consider these to be acceptable in this instance as they could assist in encouraging the implementation of the second phase of development at the site and would be unlikely to prejudice the ability of the Blaise Farm composting facility to take additional waste from within Kent and Medway.

60. The effect of the above is that waste should additionally be allowed from Surrey, East Sussex, Brighton and Hove and West Sussex for the life of the facility (on the basis that these are adjoining sub-regions to Kent and Medway within the South East region) but that waste should not be allowed from London (apart from LB Bromley and LB Bexley for a temporary period until the end of 2015) or from the East of England (apart from Essex for a temporary period until 31 March 2014 and limited to no more than 10,000tpa). The following recommendation reflects this. It should be noted that if the recommendation is accepted it would give rise to three new planning permissions. However, the applicant would only be likely to implement TM/09/3231 (i.e. that proposed in paragraph 61(ii)) on the basis that this would allow the largest waste catchment. It should also be noted that the applicant could appeal against the partial approval of application TM/09/3231 or the refusal of either or both of applications TM/09/3234 and TM/09/3235 (i.e. those proposed in recommendation 61(iii)).

Recommendation

61. I RECOMMEND that:-

- (i) PERMISSION BE GRANTED in respect of planning application TM/09/3232 (i.e. to allow waste to be sourced from Kent, Medway and Surrey) and TM/09/3233 (i.e. to allow waste to be sourced from Kent, Medway, Surrey, East Sussex, West Sussex and Brighton and Hove) SUBJECT TO the prior completion of a modified Section 106 Agreement (Unilateral Undertaking) to repeat the existing obligations contained in the latest legal agreement relating to a liaison group, HGV routing and restoration and the conditions imposed on planning permission TM/08/3353 dated 25 August 2009, as amended by planning permission TM/09/2661 dated 11 January 2010, being repeated;
- (ii) PERMISSION BE PARTIALLY GRANTED in respect of planning application TM/09/3231 (i.e. to allow waste to be sourced from Kent, Medway, Surrey, East Sussex, West Sussex, Brighton & Hove, all London Boroughs, Thurrock, Essex and Southend) SUBJECT TO the prior completion of a modified Section 106

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Agreement (Unilateral Undertaking) to repeat the existing obligations contained in the latest legal agreement relating to a liaison group, HGV routing and restoration and:-

- the waste catchment area being limited to:-
 - Kent, Medway, Surrey, East Sussex, West Sussex, Brighton & Hove for the life of the facility; and
 - LB Bromley and LB Bexley for a temporary period until 31 December 2015; and
 - Essex for a temporary period until 31 March 2014 and additionally limited to no more than 10,000tpa; and
- the other conditions imposed on planning permission TM/08/3353 dated 25 August 2009, as amended by planning permission TM/09/2661 dated 11 January 2010, being repeated;

(iii) PERMISSION BE REFUSED in respect of planning applications TM/09/3234 (i.e. to allow waste to be sourced from Kent, Medway, Surrey, East Sussex, West Sussex, LB Bromley, LB Bexley, Thurrock and Essex), TM/09/3235 (i.e. to allow waste to be sourced from Kent, Medway, Surrey, East Sussex, West Sussex, Brighton and Hove, LB Bromley, LB Bexley and Thurrock) and TM/09/3236 (i.e. to allow waste to be sourced from Kent, Medway, Surrey, East Sussex, LB Bromley, LB Bexley and Thurrock) for the following reason:-

1. The importation of waste from outside the South East region would be contrary to South East Plan Policies W3 and W4 as it would fail one or more of the “tests” set out in these policies and the Plan’s supporting text and could prejudice the ability of the South East region to meet the targets for diversion from landfill and recycling and composting set out in Policies W5 and W6 or discourage the provision of new facilities in London or the East of England and as there are no material planning considerations sufficient to overcome this.

Case Officer: Jim Wooldridge

Tel. no. 01622 221060

Background Documents: see section heading.
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Item B1

Outcome of Public Inquiry into two Appeals by New Earth Solutions Limited against the Refusal of Kent County Council for the Removal of / Variation to Condition 12 of Planning Permission TM/06/762 (Restriction on Waste Sources) at New Earth Composting Facility, Blaise Farm Quarry, Kings Hill, West Malling (Ref.'s: TM/08/3350 & TM/08/3353; APP/W2275/A/09/2101443 & 2101444)

A report by Head of Planning Applications Group to the Planning Applications Committee on 3 November 2009.

Outcome of Public Inquiry into two Appeals by New Earth Solutions Limited against the Refusal of Kent County Council for the Removal of / Variation to Condition 12 of Planning Permission TM/06/762 (Restriction on Waste Sources) at New Earth Composting Facility, Blaise Farm Quarry, Kings Hill, West Malling (Ref.'s: TM/08/3350 & TM/08/3353; APP/W2275/A/09/2101443 & 2101444).

Recommendation: For information.

Local Members: Mrs S Hohler, Mrs T Dean and Mr R Long

Unrestricted

Introduction

1. This report is on the outcome of a Public Inquiry held between 11 and 13 August 2009 into two Appeals by New Earth Solutions Limited (*the appellant*) against the Refusal of Kent County Council for the Removal of / Variation to Condition 12 of Planning Permission TM/06/762 (Restriction on Waste Sources) at New Earth Composting Facility, Blaise Farm Quarry, Kings Hill, West Malling.
2. I shall outline the background, the main issues identified by the Planning Inspector and then comment on the outcome of the Inquiry. A copy of the Inspector's decision is attached at Appendix 1.

Background

3. Planning permission (TM/06/762) for the development of a fully enclosed composting facility within the confines of the previously excavated area at Blaise Farm Quarry was granted on 19 September 2006 following the prior completion of a Section 106 Agreement. As the site was in the green belt, the proposal represented "inappropriate development" by virtue of National Planning Policy (PPG2: Green Belts). For this reason, permission was only granted as the County Council was satisfied that "very special circumstances" existed to overcome the usual presumption against inappropriate development in the green belt. The County Council was only able to accept that very special circumstances existed because:-

- there was a clearly defined need for the facility to provide additional composting capacity in Kent (specifically in the four main Districts referred to in condition 12 – i.e. Tonbridge and Malling, Tunbridge Wells, Maidstone and Sevenoaks) to meet various waste targets and reduce the amount of waste going to landfill;
 - there were no alternative sites in urban areas and non-Green Belt locations within the four Districts, as demonstrated by the applicant's alternative site assessment exercise for these areas;
 - none of the 5 purposes of the Green Belt would be compromised by the proposal due to the location of the facility within quarry void, the lack of public access to land and the proposed temporary 20-year permission followed by removal of facility and restoration of site as part of quarry restoration; and
 - the site location accorded with the proximity principle for waste from the four Districts as demonstrated by the applicant's time / distance survey.
4. The permission was conditional on restrictions being imposed to ensure that any limitations required as part of demonstrating "very special circumstances" were secured. These included any permission being temporary (20 years) and providing for satisfactory restoration and waste primarily coming from within the four Districts and from the areas demonstrated to be proximate for the life of the site. Other conditions were imposed for various planning and environmental reasons. Condition 12 stated that:-
- "12. Waste imported to the composting facility shall only be sourced from within the Districts of Tonbridge and Malling, Tunbridge Wells, Maidstone and Sevenoaks except in the following circumstances:
- (i) those occasions where there is sufficient capacity to handle the additional wastes at the Blaise Farm composting facility without diverting wastes from sources within Tonbridge and Malling, Tunbridge Wells, Maidstone and Sevenoaks Districts; and
 - (ii) where the additional wastes would otherwise be exported from the County or landfilled; and
 - (iii) where the additional sources of permitted waste are from within Swale, Ashford, Dartford and Gravesham Districts and the Medway Authority area.

Reason: As the principles of Best Practicable Environmental Option (BPEO), including the proximity principle, and very special circumstances necessary to justify the Green Belt location have been accepted on the basis that waste will primarily be derived from Tonbridge and Malling, Tunbridge Wells, Maidstone and Sevenoaks and to accord with the principles of (amongst others) Waste Strategy 2000, PPG2, RPG9 Regional Waste Strategy (revised June 2006), Kent Structure Plan (1996) Policies S1 and MGB3, Kent & Medway Structure Plan (2006) Policy WM2 and Kent Waste Local Plan Policy W1, whilst acknowledging that a number of other waste sources are similarly proximate and could be used without undermining the reason for permitting a waste management facility in the Green Belt under certain circumstances."

The same restriction was also included in clause 5.3 of the Section 106 Agreement. A further condition (15) required that records be maintained for three years detailing quantities and sources of waste imported to the site and for these to be made available to the County Council on request.

APPENDIX 1 to Item C1

5. The County Council approved the “pre-development” requirements (of condition 7) on 7 March 2007 and commercial composting operations commenced on 1 September 2008 (such that operations must cease by 1 September 2028, the facility be removed by 1 September 2029 and the site restored by 1 September 2030).
6. The County Council granted planning permission (TM/07/4435) for the variation of condition 14 of planning permission TM/06/762 on 26 March 2008. This increased the maximum amount of waste imported to the site each year from 50,000 tonnes to 100,000 tonnes. This permission was only granted as the County Council was satisfied that more than 100,000 tonnes per year of biodegradable waste could arise from within the main catchment area initially proposed and permitted (i.e. the four District areas referred to in condition 12 (i)) such that this need not undermine the Green Belt case for the facility being located at Blaise Farm Quarry.
7. The County Council refused planning permission (TM/08/2893) for a temporary variation of condition 12 of planning permission TM/06/762 to allow up to 15,000 tonnes of waste to be imported from Essex for composting over the 18 month period from October 2008 to March 2010 on 7 October 2008.
8. Three “Section 73” applications seeking the removal of, or variation to, condition 12 of planning permission TM/06/762 were submitted on 23 October 2008. The applications sought the following:-
 - Application TM/08/3350: Removal of condition 12 of planning permission TM/06/762 (*i.e. removal of all current restrictions on waste sources*);
 - Application TM/08/3353: Variation of condition 12 of planning permission TM/06/762 to allow waste to be sourced from all 12 Kent Districts (i.e. Canterbury, Thanet, Dover and Shepway added) and the Medway Unitary Authority area without the constraints imposed by circumstances (i), (ii) and (iii) of the current condition; and
 - Application TM/08/3351: Variation of condition 12 of planning permission TM/06/762 to allow waste to be sourced from the permitted 8 Kent Districts and the Medway Unitary Authority area without the constraints imposed by circumstances (i), (ii) and (iii) of the current condition.
9. All three applications were due to be reported to the Planning Applications Committee on 22 January 2009. However, having read the published report the applicant decided to withdraw application TM/08/3351 and the recommendation was amended accordingly. The Planning Applications Committee resolved to accept an amended recommendation on 22 January 2009 and applications TM/08/3350 and TM/08/3353 were refused. The decision notices were issued on 23 January 2009. Application TM/08/3350 was refused for the following reasons:-
 - “1. The importation of waste from other sources would be contrary to the principles of Best Practicable Environmental Option (BPEO) and contrary to paragraph 3.2 of PPG2 and Policies SS2 and WM2 of the Kent and Medway Structure Plan (2006). It would also undermine the County Council’s previous decision and lead to reduced capacity for waste arisings from within Kent or Medway (i.e. more proximate waste sources) resulting in such wastes either being transported greater distances with resultant disbenefits or pressure for additional new facilities in the Green Belt which could further undermine National Green Belt policy.

2. The applicant has not demonstrated the very special circumstances necessary to overcome the presumption against inappropriate development in the Green Belt contrary to PPG2 and Policy SS2 of the Kent and Medway Structure Plan (2006).”

Application TM/08/3353 was refused for almost identical reasons except that reason 1 was amended to reflect the difference between the proposals.

10. The appellant appealed against the decisions on 26 March 2009.

The main issues identified by the Planning Inspector

11. Having regard to prevailing planning policies, the Planning Inspector considered the main issues for both appeals to be:-
 - (i) Whether the requirements of the disputed condition, other than in terms of the areas specified, satisfy government guidance on the use of conditions in planning permissions; and
 - (ii) Whether the proposals are consistent with the principles of sustainable waste management and with the protection of the green belt, whilst encouraging the provision of facilities that would meet the needs of relevant communities and reduce the rate of greenhouse gas emissions.
12. Evidence was heard on these and related points from the appellant, KCC and Offham Parish Council. The Inspector’s report considers the main issues under the following headings:-
 - The mechanics of the disputed condition;
 - The potential for harm;
 - BPEO and the proximity principle;
 - Composting capacity, location and catchment;
 - Greenhouse gas emissions;
 - Conclusions; and
 - Other conditions and other matters.
13. It is worth noting that the Kent and Medway Structure Plan (2006) was part of the development plan when the County Council determined the applications in January 2009 but ceased to be so on 6 July 2009 when the three-year saved period expired (i.e. prior to the Public Inquiry). The South East Plan was also published in May 2009 and now forms part of the development plan.

The outcome of the Inquiry

14. The Inspector dismissed the appeal against application TM/08/3350 (i.e. the removal of condition 12) but allowed the appeal against application TM/08/3353 (i.e. the variation of condition 12 to allow waste to be sourced from within Kent and Medway without any pre-conditions). He therefore issued a new planning permission (TM/08/3353) for the New Earth Composting Facility which is subject to all previous conditions apart from conditions 12, 14 and 15 which are replaced by the following conditions:-
 1. Waste imported to the composting facility shall only be sourced from within the Kent County Council area and the Medway Unitary Authority area.

2. No more than 100,000 tonnes of waste shall be imported to the site for composting in any calendar year.
 3. Records detailing the quantities and sources of waste imported to the site, during the previous three years, shall be maintained for the life of the facility hereby permitted and shall be made available to the waste planning authority on request.
15. In respect of issue (i), the Inspector concluded that condition 12 was unreasonable and contrary to the advice in Circular 11/95 as only allowing waste from the “secondary” area (i.e. Dartford, Gravesham, Ashford, Swale and Medway) if sufficient capacity remained at the facility to take waste from the “primary” area (Tonbridge and Malling, Tunbridge Wells, Sevenoaks and Maidstone) effectively nullified much of the benefit of the permission and made it unduly difficult for the appellant to make good use of the facility’s capacity to handle waste.
16. In respect of issue (ii), the Inspector concluded that relaxing the disputed condition to allow material to be sourced from the entire sub-region would create a new permission for inappropriate development in the green belt which, in itself, would be harmful. However, he concluded that this would cause no direct harm to the green belt over and above that which has already been allowed and that the likelihood of any indirect harm (i.e. by encouraging the provision of further composting facilities in the green belt) was small. The Inspector stated that matters in favour of such a relaxation included the contribution it could be expected to make to sustainable waste management and to addressing the acute shortfall identified in the region’s composting capacity by driving more waste up the hierarchy and the very substantial reductions in greenhouse gas emissions that could reasonably be anticipated to flow from the new arrangements. He was satisfied that these benefits clearly outweighed the potential harm and that given the fall-back position presented by the existing planning permission and the urgent need for action on climate change there were very special circumstances to warrant a relaxation of the disputed condition. He also concluded that the development plan’s requirements would be met best by revising the disputed condition to allow sourcing of waste from across the sub-region (i.e. Kent and Medway), but no wider, and that doing so would be consistent with the principles of sustainable waste management and with protection of the green belt whilst encouraging the provision of facilities that meet the needs of relevant communities and reduce the rate of greenhouse gas emissions.
17. The Inspector also concluded that it was necessary to amend condition 14 of planning permission TM/06/762 to reflect the amended wording provided for by TM/07/4435 and to amend condition 15 to provide greater clarity.

Comments on the outcome of the Inquiry

18. The dismissal of the appeal against application TM/08/3350 supports the County Council’s position in imposing some form of restriction on waste sources.
19. Allowing the appeal against application TM/08/3353 highlights:-
 - the need to more carefully consider the practical implications of imposing planning conditions that restrict development (including any potential difficulties in demonstrating compliance) and whether these are entirely reasonable in terms of government advice (i.e. the tests in Circular 11/95);
 - the need for even greater weight to be given to securing sustainable waste

management solutions that avoid landfill by moving waste up the hierarchy (including recovery);

- the need to give appropriate weight to the relevant regional and sub-regional waste policies in the South East Plan in decision making;
- the need to more fully acknowledge the importance of climate change considerations in determining waste planning applications; and
- the need for the County Council to prepare and adopt a Waste Development Framework to provide up to date development control policies to sit alongside the South East Plan that fully takes account of European, national and regional planning policies and provides greater clarity on how waste planning applications will be considered and determined.

20. The Appellant had 6 weeks in which to challenge the validity of Inspector's decision through the High Court (i.e. by 6 October 2009). Any high court challenge would have had to be on legal grounds rather than any disagreement with the planning views reached by the Inspector. No high court challenge was lodged within this period.

Recommendation

21. I RECOMMEND that Members receive this report for information purposes.

Case Officer: Jim Wooldridge

Tel. no. 01622 221060

Background Documents: Relevant planning application and appeals files

OFFHAM PARISH COUNCIL – 22nd February 2010

Applications: TM/09/TEMP/0044; TM/09/TEMP/0045; TM/09/TEMP/0046;
TM/09/TEMP/0047; TM/09/TEMP/0048; TM/09/TEMP/0049

Section 73 applications to vary condition 12 of planning permission TM/08/3353 to allow waste to be sourced from areas beyond the immediate sub-region of Kent and Medway.

Many apologies for the delay in replying to this application, the reason being that we are finding it hard to reason with it. Offham Parish Council is in total support with NESG's statement that "our principle aim is to maximise the amount of waste we divert from landfill" however, bearing in mind that we were represented at the Planning Inquiry last summer and listened to the lengthy debates on the justification, both for and against, extending the area from which waste could be imported, we are mindful of the issues raised when reading through this latest batch of applications.

Offham Parish Council (OPC) objected to the original proposal to erect a composting plant in 2004/05 on the basis that the original planning permission for the quarry in 1988 contained a condition stating that the land had to be restored, phase by phase, to agricultural and at similar levels and contours to those that existed before any work took place. We were not opposed to the principle of a composting plant but were opposed to the principle that one of the original planning conditions, and a very significant one in our eyes, was not being fulfilled. Furthermore at the time of granting the original planning permission for the quarry many reassurances were given that the site would not be used for waste management activities.

In the summer we objected to the expansion of the catchment area on the basis that the plant was originally justified on the basis as being the "BPEO" at the time for the area it was proposed to serve and, whose subsequent doubling in capacity (without and increase in floor area or HGV movements) was justified by NESG (New Earth Solutions Group) as being necessary to accommodate a more even flow of waste deliveries over the year, the original plant having been designed to accommodate seasonal peaks. There was never any suggestion that the increase in size of the plant would result in the need to source waste from outside the original permitted local area in order to keep the plant operating effectively.

However in August 2009 the Inspector ruled that the original condition 12 should be varied to "allow sourcing of waste from across the sub-region, but no wider", seemingly balancing need against demonstrable harm to the green belt in which the plant is located.

We seem to be caught in a Catch 22 situation here. On the one hand the planning justification for BPEO seems no longer to be applicable and Government policy on waste management seems to have changed significantly since planning permission for the facility was first granted. However, there must presumably be some measure by which an application, if starting afresh would be considered, and by seeking to extend the catchment area by variation of a condition rather than submitting a new planning application it seems that this "test" is being avoided. We would like the question answered as to whether or not, if the plant did not exist and an application was made to build it with no limits on catchment area, would this be likely to be granted consent when judged by current planning policies?

However, maybe as this is theoretical as the plant exists nobody actually wants to answer this question, hence the catch 22. The plant obviously does exist and therefore it is being judged on a different set of parameters. Not the ones that justified it being built in the first

place but ones that currently justify new applications for similar facilities elsewhere in the country. If catchment limits are not being currently set for such comparable plants then we can understand the argument for saying that no such limits should apply in this instance. However, we would refer back to our original question in that, if one is using these comparables to support the argument for removing and/or reducing the constraints of condition 12, on what basis were these plants granted permission in the first place, and if they too are located in the Green Belt, then even if BPEO is not being the test applied there must be some alternative measure in order to justify their release from the Green Belt if applicable? If the test is now “sub-regional self sufficiency” then it seems from the evidence submitted that this itself needs to be fully considered as there would appear to be potentially conflicting views as to what constitutes a region, a sub-region and indeed self sufficiency itself.

We believe that these questions need to be addressed as part of the consideration for relaxing or removing condition 12.

We have no doubt that the “need” for the facility from outside the approved area exists based on information in the planning submission and the information provided at the Public Inquiry in the summer which highlighted the UK’s woeful provision of this type of waste facility and, it seems somewhat unfair on NESG and wasteful to underuse the facility on the basis that the relevant authorities within the Kent and Medway are not yet maximising the separation of biowaste. However, without appearing too NIMBYish, if a relaxation on a further expansion of the catchment restriction, either in part or a whole, is justified in planning terms, could a situation arise in the future as to when Kent and Medway do increase the amount of segregated biowaste collected that they are unable to deliver it to the facility at Blaise Farm as contracts have been secured outside of the local region and they would have therefore to export it to other plants further away, as implied in paragraph 1.6 of NESG’s Planning Supporting Statement? This paragraph (1.6) is very confusing and seems to contradict itself. On one hand it seems to say that the capacity at Blaise and one other facility in Kent is “significantly less than the quantity of waste that may be expected to arise in Kent and Medway when separate collections are more widespread” but then goes on to say “the consented and planned capacity within the South East and within Kent and Medway is therefore significantly below the amount of this type of waste which is expected to arise and thus the proposals would not set back the intentions of W3 in respect of numerical self sufficiency”?. Furthermore, could such a situation give rise to future justification for further expanding the facility on the basis of need being greater than availability?

Again we believe that this issue needs to be considered and our questions answered rather than simply looking at the catchment area on the basis of county boundaries. We agree that there is no logic to excluding some areas purely on an administrative basis when geographically, if one works on travel distance from the plant to the sources of waste, they are within the same isocromes. As suggested above the definition of a region, a sub-region and indeed the wording “sub-regional self sufficiency” is open to some degree of interpretation and in this respect presumably guidance is needed from the South East Region?

In conclusion therefore, whilst we have tried to be constructive in our approach, at this moment in time we are opposed to a further expansion of the catchment area and therefore all of the planning applications until our questions raised in this response are answered and we can give the matter further consideration with the benefit of additional information and advice from both NESG and KCC.