

**Variation of conditions 2 & 21 of permission CA/09/1903,  
Studd Hill Household Waste Recycling Centre, Westbrook  
Lane & Thanet Way, Herne Bay, Kent – KCC/CA/0492/2011  
- CA/12/222**

A report by Head of Planning Applications Group to Planning Applications Committee on 12 June 2012

KCC/CA/0492/2011 - CA/12/222 – Section 73 Application by KCC Waste Management Group for the variation of conditions 2 (approved plans) and 21 (landscaping) of planning permission CA/09/1903 for the alteration and extension of the existing Studd Hill HWRC, Westbrook Lane, Herne Bay

Recommendation: Permission be granted subject to condition

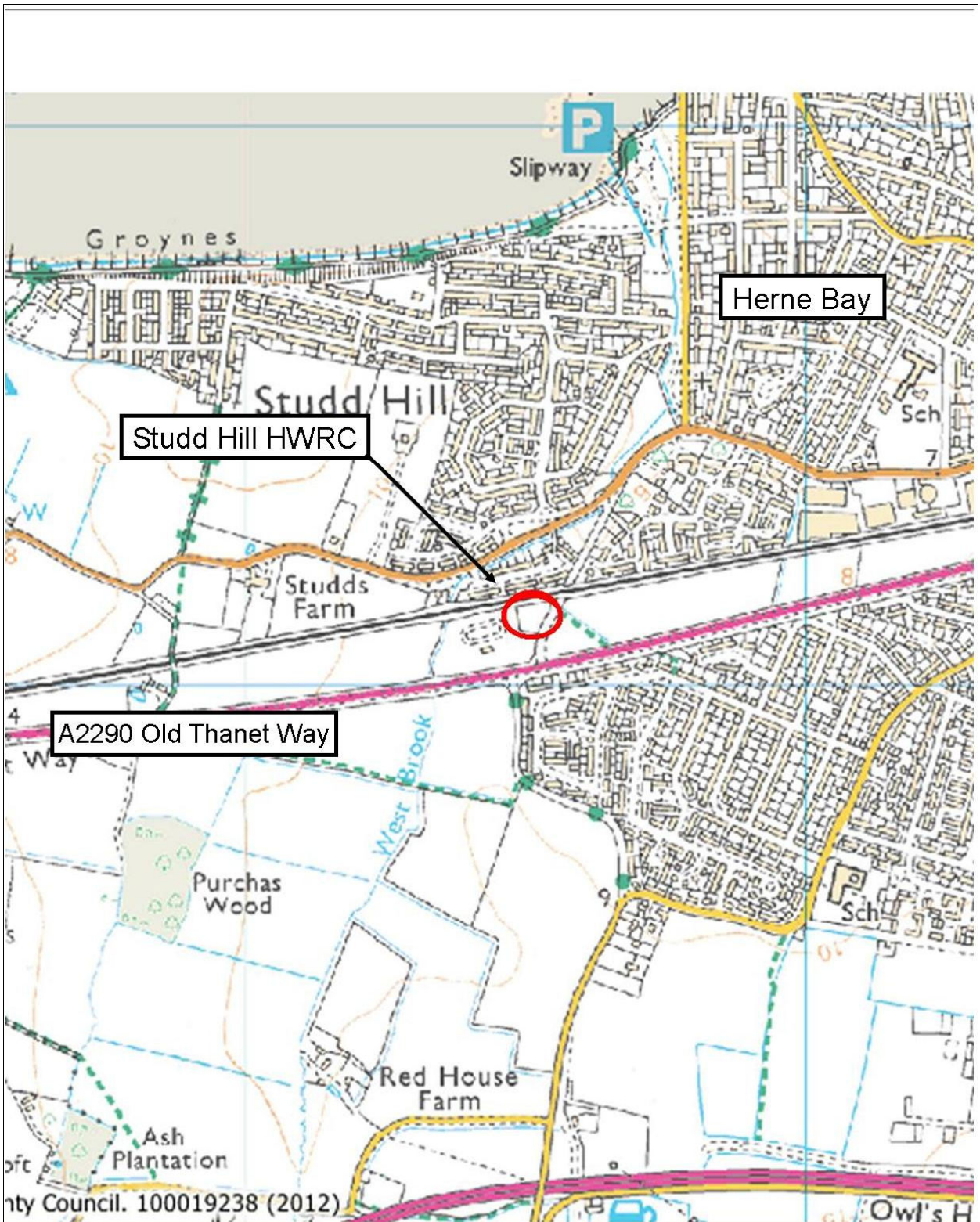
**Local Member(s): Jean Law & David Hirst**

**Classification: Unrestricted**

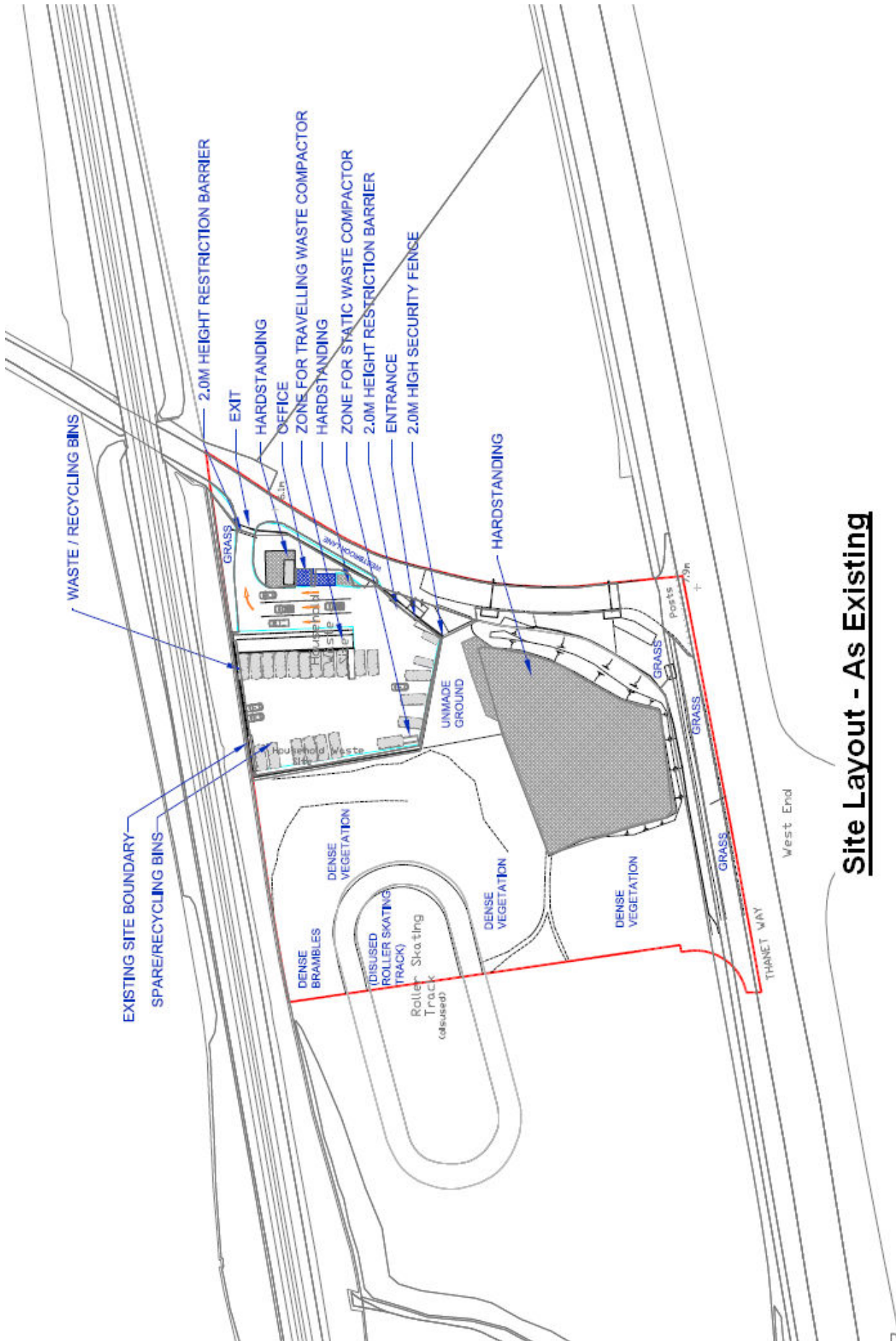
**Site Description**

1. The application site is located on Westbrook Lane, Studd Hill, approximately 2km south west of Herne Bay, and 4.5km east of Whitstable. The site has two entrances: a HGV access directly south of the HWRC, leading off the A2290 Old Thanet Way; and a public entrance off Westbrook Lane, accessed via Whitstable Road to the north of the HWRC. The site occupies 1.4ha of overgrown disturbed land, 0.23ha of which currently contains the existing Householder's Waste Recycling Centre (HWRC). The rest of the site contains an area of hardstanding, a disused roller skating rink, and sporadic scrub and dense shrubs.
2. The site is enclosed by the A2290 Old Thanet Way to the south, the Chatham to Ramsgate rail line on a raised embankment to the north, and disused overgrown land to the east and west.
3. The nearest residential properties are at Hampton Close, approximately 35m north of the existing HWRC, and on the other side of the railway embankment. The nearest properties to the south are approximately 90m away, across the A2290 Old Thanet Way, along Blackburn Road.
4. The site is not located directly within or adjacent to an area of nature conservation such as an SSSI, and is not located within any other statutory or local nature conservation designation. The site is located within 2km of the Thanet Coast Special Site of Scientific Interest (SSSI) and the Thanet Coast Special Protection Area and Ramsar site. The application site also lies within the Herne Bay and Whitstable Green Gap (Canterbury Local Plan Policy TC26) which seeks to prevent the coalescence of the towns of Whitstable and Herne Bay through persistent encroaching development.

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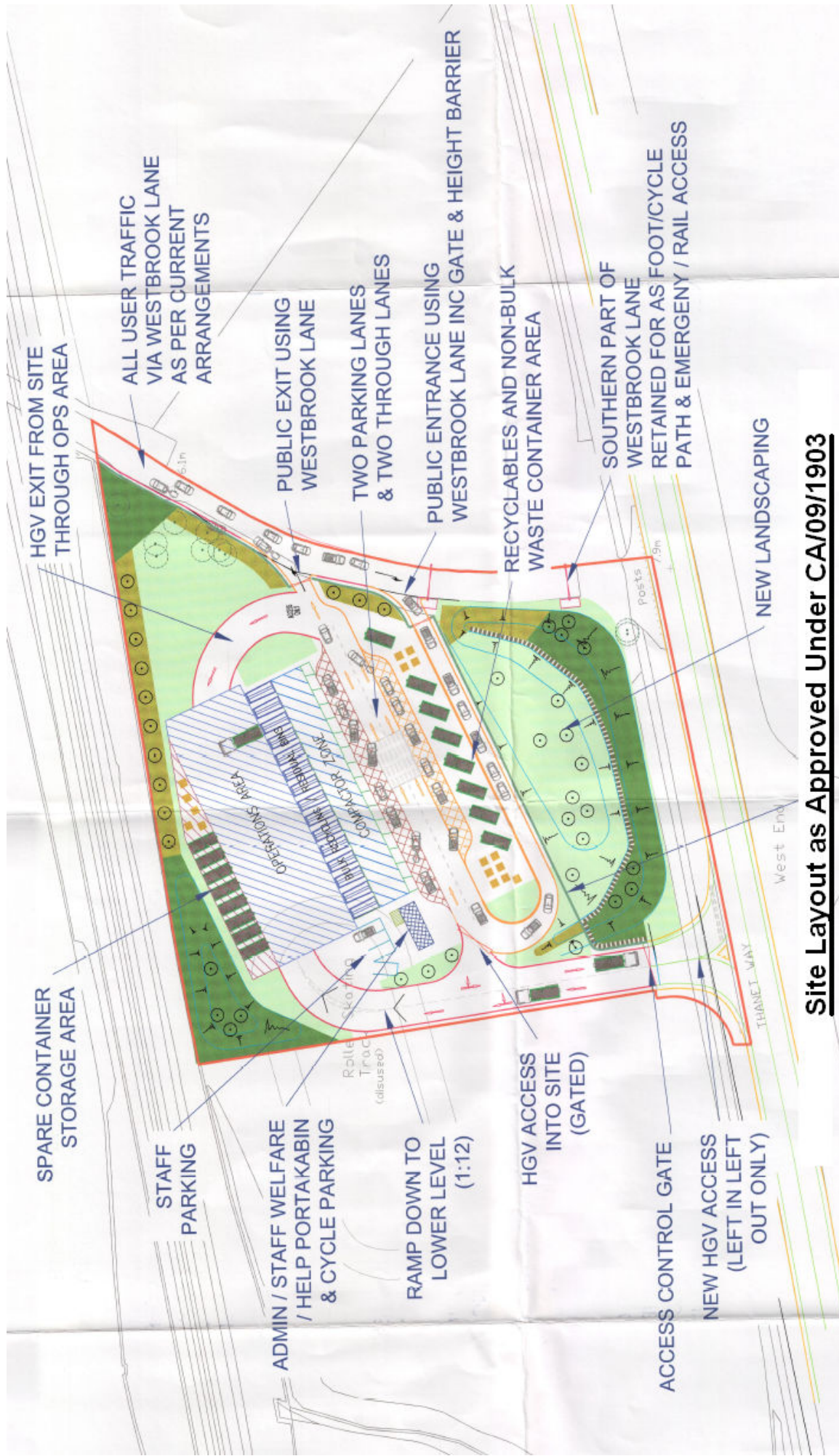


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Site Layout - As Existing

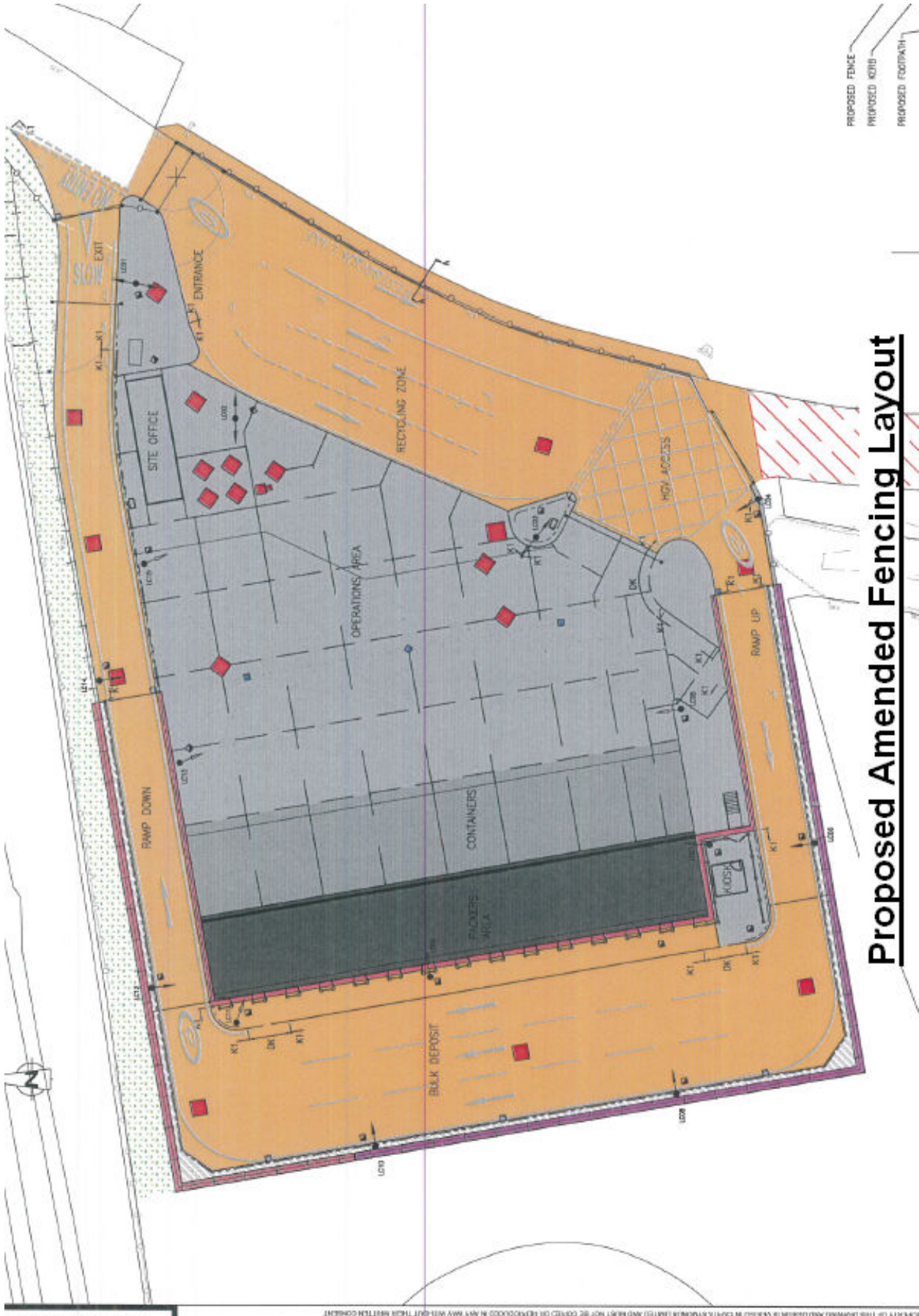
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**Site Layout as Approved Under CA/09/1903**



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**Proposed Amended Fencing Layout**

CS052555-SK-00

FOR THE DRAWING AND DESIGN IS VERIFIED IN CAPITAL SPACES (LIMITS) AND MUST NOT BE COPIED OR REPRODUCED IN ANY WAY WITHOUT THEIR WRITTEN CONSENT.

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**Background**

5. In June 2010 planning permission was granted (CA/09/1903) for the '*Alteration and extension of the existing Studd Hill Household Waste Recycling Centre, Westbrook Lane, Herne Bay, Kent.*' This permission sought to expand the site area of the HWRC, and create a new operational layout, to allow more efficient internal movement and use, and to increase the maximum capacity to 16,000 tonnes per annum.
6. The applicant has stated that since the planning permission was granted, circumstances have changed which require amendments to the scheme. The landowners have reduced the amount of land available to the applicant to lease and develop for the HWRC; therefore the scheme would need to be amended to reflect the reduced site area.
7. The changes proposed would be within the permitted site area (red line area) of the original permission, therefore the alterations can be addressed by variation of relevant conditions.

**Proposal**

8. Due to the reasons stated above, the applicant proposes to vary conditions (2) and (21) of permission CA/09/1903 through a Section 73 application. The remainder of the conditions contained within the permission would be retained in their current form, and the overall description of the development would be unchanged. The general aim of the development is to upgrade the Studd Hill HWRC to create a 'modern, split-level facility'. The proposal aims to increase the existing site area – albeit to a lesser extent than that currently permitted - and improve physical separation between the users and operations for health and safety reasons. Thereby the capacity and efficiency of the site would be improved by upgrading internal circulation and allow flexibility within the site to accommodate a greater range of materials. The built development within the HWRC would consist of concrete retaining walls, walkways, and hard asphalt surfacing with areas for mobile compactors.
9. Condition (2) states: '*The development hereby permitted shall be carried out and completed in all respects strictly in accordance with the submitted documents, plans and drawings contained in the application as amended and clarified and with those further details required to be submitted for approval, which shall in turn be approved.*'
10. Condition (21) states: '*Landscaping should be carried out strictly in accordance with plan CS037081\_B\_LS\_001. In the event of any trees, shrubs and hedges being removed, destroyed, or which may die or become diseased within 5 years of planting, they shall be replaced within 12 months in the same places by large nursery stock of the same species.*'
11. The proposal therefore seeks to amend the approved plans and documents, and the approved landscaping scheme. The overall Site Management Operations and throughput are proposed to remain the same as that permitted within the approved Planning Statement. The specific layout and design changes proposed are:

Facility Layout

12. The overall HWRC footprint is proposed to be reduced from that permitted under CA/09/1903, from 9,500m<sup>2</sup> to approximately 3,360m<sup>2</sup>. A large proportion of the permitted layout was dedicated to landscaping. The amended plan proposes to reduce the site area and restrict the development predominantly to the hardstanding

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operational area of the HWRC. Due to a reduction in the amount of land made available by the land owners, the upgrade works have been amended to reduce the scale of the works, and the scale of the landscaping, but in turn to concentrate the permitted intensified activity within a reduced site area.

Access (Public)

13. Access for public users for the HWRC remains, and is proposed to remain, solely via Westbrook Lane. The position of the access points is proposed to be altered in response to the amended site layout. Users would access the site via an ingress point on the eastern boundary, then circulate clockwise through the site and exit at the north eastern point of the site, adjacent to the railway bridge.

Access (HGV)

14. The approved plans under CA/09/1903 relocated the HGV access further to the west of the existing access off the A2290 Old Thanet Way. The change to the site layout would mean that this option is no longer possible, and therefore it is proposed to utilise and upgrade the existing HGV access point. Internally, HGV traffic would be kept separate from public vehicles by the use of gates and site management. No public vehicles are able to use the HGV access, and HGVs would not be directed via Westbrook Lane and the Whitstable Road.

Landscaping

15. The permitted scheme under CA/09/1903 had a large site area, in which 40% was allocated towards soft landscaping. The applicants have stated that due to the reduction in land available for the HWRC, there will be limited scope for landscaping. Therefore the application seeks to amend and reduce the overall landscaping requirements. The applicant proposes a strip of wild grass seeding and heavy standard trees to the South and West as well as native species hedgerow. The existing vegetation and trees on land surrounding the HWRC would be left undisturbed.

Lighting

16. The location of the lighting columns is proposed to be amended following alterations to the site layout. The technical specifications of the lighting would remain the same, albeit on smaller site area, with lights being mounted on 14 eight metre poles and mounted horizontally with flat glass covers to reduce the risk of light spill and glare.

Amended Fence Line

17. The application proposes to amend the positioning of boundary fencing, from that shown on the approved plans. The amended fencing line originally proposed attracted objections from an energy company on the grounds that it would infringe upon access to cables that connect an offshore wind farm to a nearby sub-station. Subsequently, the applicant amended the plans (in discussion with the company and KCC Highways & Transportation) to show the fencing enclosing the portion of Westbrook Lane immediately to the East of the HWRC. Access to the site would be gained via gates to the north (for public) and to the south (for HGVs), with provision to prevent public use of the southern gates and to prevent HGVs and public vehicles accessing the site at the same time. The area of land to the south of the HWRC would be able to be accessed from the Thanet Way or through the HWRC gates on Westbrook lane, should access be required. Kent Highways & Transportation have confirmed that the fencing

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arrangement will not amount to Westbrook Lane being ‘stopped up’ and therefore it will remain an adopted Highway.

Summary

18. In summary, the proposal seeks to amend the approved plans and landscaping conditions by proposing:

- A reduced site area and layout
- A reduced landscaping scheme
- An amended fencing layout, increasing the portion of Westbrook Lane which is ‘gated’ off
- Amended lighting and drainage scheme
- Retention and upgrading of HGV junction on the A2290 Old Thanet Way

All other conditions are proposed to remain in force within the planning permission, with no changes to the site operations with regards to opening hours, waste throughput and volume, noise restrictions and vehicle movements.

**Planning Policy**

19. The Development Plan Policies summarised below are relevant to consideration of the application:

**(i) National Planning Policy Framework**

In terms of delivering sustainable development in relation to this development proposal, the following NPPF guidance is particularly relevant:

- Chapter 1 (Building a strong, competitive economy);
- Chapter 4 (Promoting sustainable transport);
- Chapter 7 (Requiring good design);
- Chapter 10 (Meeting the challenge of climate change, flooding and coastal change);
- Chapter 11 (Conserving and enhancing the natural environment);
- Chapter 12 (Conserving and enhancing the historic environment); and
- Accompanying Technical Guidance.

The Framework also requires that local planning authorities should look for solutions rather than problems. It states that those determining applications should seek to approve applications for sustainable development where possible.

**(ii) Planning Policy Statement 10: Planning for Sustainable Waste Management**

The key planning objectives set out in PPS10 can be summarised as:

- providing a framework for delivering sustainable waste management through the movement of waste management up the waste hierarchy;
- helping implement the national waste strategy and supporting targets that are consistent with obligations required under European legislation;
- helping secure the recovery or disposal of waste without endangering human health and without harming the environment;
- ensuring that communities take more responsibility for their own waste (self sufficiency) and enabling sufficient and timely provision of waste management facilities to meet the local needs;
- enabling waste to be managed in one of the nearest appropriate installations (proximity);
- and considering wider environmental and economic benefits of sustainable waste management, as material considerations that should be given

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significant weight in determining whether proposals should be given planning permission.

(iii) The adopted (2009) **South East Plan**

**Policy CC1** Seeks to achieve and maintain sustainable development within the region.

**Policy NRM1** Sustainable water resources and groundwater quality

**Policy NRM2** Water quality

**Policy W17** Location of waste management facilities

(iv) The adopted **Kent Waste Local Plan** (1998)

**Policy W3** Locational criteria for waste processing and transfer facilities

**Policy W9** Development proposals for waste separation and transfer (proposals map inset J)

**Policy W18** Control of noise, dust and odours from waste operations

**Policy W19** Protection of ground and surface water

**Policy W21** Ecological protection and mitigation

**Policy W22** Road traffic and access

**Policy W25** Control and design of operations

**Policy W26** Operating hours of waste management facilities

**Policy W31** Landscaping

(v) **Canterbury City Local Plan 2006 Saved Policies**

**Policy BE1** Design and Sustainability

**Policy C39** Air Quality

**Policy C40** Controls to mitigate pollution

**Policy C41** Waste development criteria

**Policy TC26** Herne Bay and Whitstable Green Gap

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**Consultations**

20. **Canterbury City Council: Objects** to the omission of previously proposed landscaping in the amended plan 'Proposed Construction Areas'.

Furthermore, the revised proposal appears to show access to Westbrook Lane being closed off, the City Council requests that access be maintained for the landowner to land to the south of the site.

**KCC Highways & Transport:** No objections; the proposed changes to the Thanet Way HGV junction have not been amended by this application. As the amendment to the fencing line would restrict turning movement within Westbrook Lane more so than at present, it would be appropriate to reinforce the signage at its junction with Whitstable Road, to ensure that drivers are aware that it is a cul-de-sac and unsuitable for HGVs. Signage improvements should be secured by condition.

**Environment Agency:** Raise no objection to the amendment of the conditions.

**Kent Wildlife Trust:** No comments received.

**Natural England:** No objections and refers officers to standing advice.

**KCC Biodiversity Projects Officer:** No comments received.

**Jacobs (Noise):** A condition should be attached to the permission stipulating that noise monitoring be undertaken to demonstrate that background noise levels are not being exceeded at nearby residential receptors (Members should note that such a condition is already imposed upon the existing planning permission).

**Jacobs (Landscaping):** No objections: but regrets that a smaller site area is proposed as this reduces the amount of landscaping possible. Recommendations are made for planting.

**Jacobs (Air Quality):** The proposed amendment does not materially change the function or capacity of the site, therefore there would be not additional air quality impacts and the existing controls, conditions and mitigation methods would be able to reduce impacts to a negligible level such that the development is unlikely to result in detriment to the local air quality.

**Jacobs (Streetlighting):** No objection, the lighting proposed is designed to minimise the impact on the surrounding area.

**Local Member**

21. The local County Members for Herne Bay, Jean Law and David Hirst, were notified of the application on 9 December 2011.

**Publicity**

22. The application was advertised by the posting of a site notice and the notification of 134 neighbours and businesses.
23. The application was also advertised in the Kent on Sunday 18 December 2011.

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**Representations**

24. There have been 3 letters of objection from nearby residents and businesses, and the main points of objection can be summarised as follows:
- A near neighbour to the scheme raises concerns that their amenity may be impacted by additional noise, and that hours of use need to be limited.
  - The local residents association request that the temporary structures currently in place on the Old Thanet Way (to prevent vehicles turning right into and out of the HGV access) should be removed or replaced with a permanent alternative. *(NB – The proposal involves the upgrading of the HGV access and was designed in conjunction with KCC Highways & Transportation – they are of the opinion that the design allows the removal of the temporary structures and temporary speed restrictions, whilst continuing to prevent right turns into and out of the HGV entrance)*
  - Burges Salmon Solicitors, acting on behalf of the owners of the Kentish Flats Wind Farm, are concerned about the impact that the scheme would have on the underground cabling connecting the offshore turbines with a nearby substation. They raise objection on the grounds that the works may damage the cabling, and also may affect their ability to access the cables and that the works would block a public highway. Following submission of amended plans from the applicant (moving the fencing so that it does not physically obstruct the underground services), Burges Salmon reiterate their objections and want confirmation as to how emergency works access would operate, and the potential conflict of a closed of area of public highway being used for the HWRC.

**Discussion**

25. In considering this proposal regard must be had to Development Plan Policies outlined in paragraph (19) above. Section 38(6) of the Planning and Compulsory Purchase Act (2004) states that applications must be determined in accordance with the Development Plan unless material considerations indicate otherwise. Therefore, this proposal needs to be considered in the context of Development Plan Policies, Government Guidance and other material planning considerations including those arising from consultation and publicity.
26. This application has been brought for determination by the Planning Applications Committee following the objections and comments of the company that operates the Kentish Flats Wind Farm, Canterbury City Council and nearby residents. These specifically relate to the proposed positioning of fencing and gates across Westbrook Lane, and the access/legal implications that may arise from this. Whilst it is important to differentiate between planning considerations, and other legal rights, the effort of the applicant to accommodate the objections has resulted in an amendment to the plans which would require discussion on planning merits.
27. The application put forward for determination is for the variation of conditions 2 (approved plans) and 21 (landscaping), and the application must be determined in consideration of this limited scope. The principle of the development has been established and agreed in accordance with development plan policies and material considerations. All other conditions imposed upon the original permission would remain in force and control matters such as noise, air quality, vehicle movements and site capacity. Nevertheless, the alteration of the site layout may have implications for amenity impacts such as noise and visual impact, as well as access; therefore these matters are addressed within this report, and informed the scope of the consultation exercise.

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Visual Impact & Landscaping

28. The applicant states that the section.73 application has been submitted in order to reduce the total site area - whilst accommodating an improved layout and increased capacity – in recognition of a reduced area being made available by the land owners to be used for the HWRC redevelopment. The consequence of this is that a reduced area is now available to the applicant to incorporate improvements to landscaping, where originally a large proportion of the red line proposal area had been allocated for planting and landscaping.
29. Our landscape advisors expressed concern at the reduction in landscaping, and made recommendations to improve upon the scheme submitted with the section.73 application. These recommendations were adopted within a revised plan received 14 March 2012, showing a strip of wild grass seeding surrounding the site to the south and west. The strip would also include a number of heavy standard trees (trees of a heavy standard girth of between 12-14cm), and a native species hedgerow along the HWRC boundary wall.
30. Whilst the reduction in landscaping would to an extent dilute the positive impact the redevelopment of the HWRC, as currently provided for under the latest permission, on the amenity of the local area, in my opinion the amended plan does not create a negative impact on local visual and landscape amenity to make the redevelopment unacceptable. The redevelopment of the HWRC would upgrade an existing facility with an improved layout, whilst providing for additional boundary landscaping. At present the existing HWRC has a dated appearance, and is not screened by a formal landscaping arrangement. The surrounding land outside of the control of the applicant is largely overgrown and abandoned – with a disused tarmac area and scrub. I am also of the opinion that a positive aspect of the reduction in area of redevelopment would be that a number of mature trees originally identified for removal will now remain undisturbed.

Noise

31. The original planning permission imposes noise conditions requiring background noise levels to not be exceeded at nearby residential properties, and also monitoring to take place to demonstrate compliance with the previous condition. Although the application does not seek to vary these conditions, it is important to assess the impact of the redesigned layout in order to demonstrate that these conditions are still appropriate and the proposal is able to operate within the specified limits.
32. The applicant submitted noise information in the form of assessments demonstrating predicted noise levels from the activities and plant within the site, including vehicle movements. KCC noise advisors requested clarification on certain points and upon receipt of this agreed that a condition is included within the permission which requires monitoring to take place to demonstrate that the HWRC does not exceed the existing noise condition. I agree with this approach and in my opinion the noise assessments submitted adequately reflect the operations of the site and the possible amenity impacts that could arise. The additional condition recommended by our noise consultants is already imposed upon the original permission and would apply to this proposal should members accept the recommendation. I am therefore of the opinion that residential properties can be adequately protected against potential noise impacts.

Amended Fence Positioning – Kentish Flats Objection

33. Following consultation on the plans submitted with the section.73 application, objections were received from representatives of the company that owns and operates the Kentish

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Flats Wind Farm. They objected to the application on the grounds that the fencing line shown within the proposed site plan ran along the route of the cabling connecting the wind farm to a nearby substation, and were concerned that the fence would prohibit access or damage services during construction. Following meetings and negotiation, the applicants amended the design of the fencing so that the boundary would be extended to the eastern side of Westbrook lane, enclosing this part of the road with access gained by gates to the north and south. The intention of the redesign, as explained by the applicant, is to prevent access by contractors being blocked by physical developments above the services and within the HWRC. The objection also raised concerns about the legal status of Westbrook Lane, and as to whether it would remain public adopted Highway after access is restricted by the construction of gates.

34. KCC Highways & Transportation have commented that the amended fencing line was drawn up by the applicant in consultation with their engineers. The fencing layout has been designed to allow pedestrian's access from Westbrook Lane to the Old Thanet Way via a footpath around the perimeter. I am informed that the necessary Traffic Regulation Order is being progressed and therefore the legality and highways rights associated with fencing are not required to be discussed within this report. The TRO would ensure that Westbrook Lane would remain an adopted highway, with all rights of access to services retained. The consultation response from KCC Highways did however recommend that an additional condition be attached to the existing permission which secures the improvement of signage at the junction of Westbrook Lane and Whitstable Road. The signage improvement is necessary as although Westbrook Lane is not currently a through road, the repositioning of the fencing would reduce the amount of space available for misdirected vehicle users to turn around within the road. Therefore it is recommended that the signage is improved to make drivers aware that the road is a cul-de-sac and unsuitable for HGVs. The applicants have indicated that they are willing to accommodate this requirement as it is within the interests of the smooth running of the HWRC, and have also indicated that they will improve the signage for the height restriction at the railway bridge. I recommend that this is secured by a condition stating that upon completion of the development, the site cannot be operated until the necessary signage is put in place.
35. I am of the opinion that the ability of the Kentish Flats owners to access cables on land not owned by the company is not a material planning consideration. Planning permission is concerned with land use and does not override other legal obligations and rights. Should the implementation of the planning permission infringe upon covenants/licences/land charges, then any dispute in relation to the protection and enforcement of those rights falls under the jurisdiction of the relevant legal regime.
36. Notwithstanding the above. There are concerns that should access be required to the gated portion of Westbrook lane outside of the operating hours of the HWRC, and the arrangements put in place by the applicant and the TRO guarantee such access, that this may impact on health and safety considerations in such circumstances those who gain access would be within the HWRC and not be prevented from accessing the rest of the site. Therefore, I recommend that an additional condition be attached which requires the submission of details outlining how in the event that emergency access is sought, and the gates opened, the rest of the HWRC is secured
- Amended Fence Position – Canterbury CC Objection
37. Canterbury City Council initially raised no objection to the section.73, however raised objection after consultation on the amended fence line. The objection was based upon the removal of the landscaping around the HWRC. They also commented that they request access be maintained for the landowner to the land to the south of the HWRC site.

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38. The landscaping plan has not been superseded or removed by the submission of a revised fencing plan, but needs to be read in conjunction with it. In this case it would not be practical to include all elements of the proposal on one site plan, and as the fencing plan, and landscaping plan are clearly labelled and will each form part of the approved plans, then I see no reason for this objection to warrant either refusal, or a resubmission of the scheme.
39. The revised fencing line would enclose part of Westbrook Lane. Canterbury City Council request that access be maintained for the landowner to the land to the south and west of the HWRC. In my opinion the revised fencing line affords the landowner the same level of access as is currently enjoyed under the existing highway arrangements. The area of land referred to is currently restricted to vehicular access by an earth bund and two controlled barriers. There is no direct access to this portion via Westbrook Lane. The applicant has drawn up the amended fencing plans in consultation with KCC Highways & Transportation, and the necessary Traffic Regulation Order (TRO) is being progressed for this arrangement. The main means of access is via the Old Thanet Way, through the HGV entrance, which is also restricted by a controlled barrier. It would be possible for the landowner to gain access via Westbrook Lane by using the HWRC gates by arrangement – which is similar to the current situation.
40. I am of the opinion that the landscaping scheme is capable of being secured to the planning permission by listing as an approved plan within the relevant condition. With regards to the access, I am of the opinion that the proposal as submitted would not alter the access situation as currently exists. The revised fencing arrangement could only be implemented through the correct application of a Traffic Regulation Order, which is the subject of a separate regulatory regime. The TRO would normally contain details and controls for access along the section of Westbrook Lane.

**Conclusion**

41. The principle of an enhanced HWRC at this site has already been established and conditions put in place to mitigate the impacts of the development. The proposal seeks to vary planning permission CA/09/1903. In my opinion the proposed variation of conditions 2 and 21 is acceptable in planning terms and capable of being implemented and operating within amenity and planning controls contained within the conditions of the existing planning permission, and is acceptable with the imposition of the additional suggested conditions. Concerns relating to noise can be adequately controlled and addressed by existing conditions. Whilst the applicant has sought to address the objections directed at the access to underground cabling, they are not in themselves a material consideration in planning terms, as they are related to legal rights and not land use considerations. The fencing would not provide a permanent restriction to access beyond the level currently experienced by the road surfacing, and the status of the road would be maintained as public highway, therefore works to it by any party would require the appropriate licences. Access to the disused land to the south and west of the HWRC would not be adversely impacted by the proposal beyond the level of restriction currently experienced. Overall, I consider that the development is sustainable and recommend accordingly.

**Recommendation**

- I RECOMMEND that the VARIATION TO CONDITIONS 2 AND 21 BE GRANTED with the imposition of all other conditions from CA/09/1903 relating to:

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- Limiting noise emissions
- Noise monitoring to ensure compliance
- A Grampian condition regarding the redesign of the service access to discourage right turns out of the HGV access onto the Old Thanet Way
- Limits to hours of use and operation
- Limited times of use of HGV service access
- Details of parking arrangements
- Details of parking and loading arrangements
- Dust mitigations measures
- Controls to prevent dirt and debris on the highway
- Site drainage controls
- Conditioning of landscaping
- Conditioning of nature conservation measures
- Standard time limit for implementation
- Standard condition limiting development to the approved plans

And two additional conditions

- The HWRC cannot be opened to public use until additional signage at the junction of Westbrook Lane and Whitstable Road is secured by agreement with KCC Highways & Transportation.
- Details are submitted and approved outlining arrangements to secure the HWRC operational area should emergency access be required to the portion of Westbrook Lane enclosed within the site and subject to the TRO.

Case officer – Jeff Dummett
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Background documents - See section heading
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