

SECTION B
GENERAL INFORMATION

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:-

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- 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.”

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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.

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:-

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- “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

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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

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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
