



Appeal Decisions

Inquiry opened on 11 August 2009

Site visit made on 11 August 2009

**by R W N Grantham BSc(Hons) C.Chem
MRSC MCIWEM**

**an Inspector appointed by the Secretary of State
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**Decision date:
25 August 2009**

Appeal A Ref: APP/W2275/A/09/2101443

Blaise Farm Quarry, Kings Hill, West Malling ME19 4PN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by New Earth Solutions Ltd against the decision of Kent County Council.
- The application Ref TM/08/3350, dated 23 October 2008, was refused by notice dated 23 January 2009.
- The application sought planning permission for the development of a fully enclosed composting facility within the confines of the previously excavated area at Blaise Farm Quarry referred to in an application for permission for development dated 1 March 2006 as amended and clarified by letters from New Earth Solutions Ltd dated 28 April 2006 (with Restoration Proposals Options A and B and drawing numbers 1119/rest/01, 1119/rest/02, 1119/rest/03, 1119/rest/04, 1119/rest/05 and 1119/rest/06 all dated April 2006), 9 May 2006 (with the Organic Research Agency Ltd Report for Canford Environmental Dorset titled "Development of a dynamic housed windrow composting system: Performance testing and review of potential use of end products" dated 21 September 2005 and letter from New Earth Solutions Ltd to the Environment Agency dated 9 May 2006) and 18 May 2006 (with Restoration Proposals Options A and B Rev A and drawing numbers 1119/rest/01/RevA and 1119/rest/04/RevA both dated April 2006) without complying with a condition attached to planning permission Ref TM/06/762, dated 19 September 2006.
- The condition in dispute is No 12 which states that: "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."
- The reason given for the condition is: "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 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 inquiry sat for 3 days on 11-13 August 2009.

Appeal B Ref: APP/W2275/A/09/2101444

Blaise Farm Quarry, Kings Hill, West Malling ME19 4PN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by New Earth Solutions Ltd against the decision of Kent County Council.
 - The application Ref TM/08/3353, dated 23 October 2008, was refused by notice dated 23 January 2009.
 - The application sought planning permission for the development of a fully enclosed composting facility within the confines of the previously excavated area at Blaise Farm Quarry referred to in an application for permission for development dated 1 March 2006 as amended and clarified by letters from New Earth Solutions Ltd dated 28 April 2006 (with Restoration Proposals Options A and B and drawing numbers 1119/rest/01, 1119/rest/02, 1119/rest/03, 1119/rest/04, 1119/rest/05 and 1119/rest/06 all dated April 2006), 9 May 2006 (with the Organic Research Agency Ltd Report for Canford Environmental Dorset titled "Development of a dynamic housed windrow composting system: Performance testing and review of potential use of end products" dated 21 September 2005 and letter from New Earth Solutions Ltd to the Environment Agency dated 9 May 2006) and 18 May 2006 (with Restoration Proposals Options A and B Rev A and drawing numbers 1119/rest/01/RevA and 1119/rest/04/RevA both dated April 2006) without complying with a condition attached to planning permission Ref TM/06/762, dated 19 September 2006.
 - The condition in dispute is No 12 which states that: "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."
 - The reason given for the condition is: "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 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 inquiry sat for 3 days on 11-13 August 2009.
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Decisions

1. I dismiss appeal A, but allow appeal B and grant planning permission for the development of a fully enclosed composting facility within the confines of the previously excavated area at Blaise Farm Quarry referred to in an application for permission for development dated 1 March 2006 as amended and clarified by letters from New Earth Solutions Ltd dated 28 April 2006 (with Restoration
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Proposals Options A and B and drawing numbers 1119/rest/01, 1119/rest/02, 1119/rest/03, 1119/rest/04, 1119/rest/05 and 1119/rest/06 all dated April 2006), 9 May 2006 (with the Organic Research Agency Ltd Report for Canford Environmental Dorset titled "Development of a dynamic housed windrow composting system: Performance testing and review of potential use of end products" dated 21 September 2005 and letter from New Earth Solutions Ltd to the Environment Agency dated 9 May 2006) and 18 May 2006 (with Restoration Proposals Options A and B Rev A and drawing numbers 1119/rest/01/RevA and 1119/rest/04/RevA both dated April 2006) at Blaise Farm Quarry, Kings Hill, West Malling ME19 4PN in accordance with the application Ref TM/08/3353, dated 23 October 2008, without compliance with conditions numbered 12, 14 and 15 previously imposed on planning permission Ref TM/06/762, dated 19 September 2006, but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect and subject to the following new 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.

Procedural Matters

2. The application that is the subject of appeal A seeks removal of the disputed condition. The appeal B proposals seek to vary the terms of that condition by removing the provisos and extending the area from which waste can be sourced.
3. The condition's requirements are broadly reflected in the terms of a planning obligation. However, the terms of that (2006) obligation are not a constraint on any subsequent permission.
4. In March 2008, the Council granted permission (TM/07/4435) which allowed for up to 100,000 tonnes of waste to be imported to the site each year, thereby increasing the limit imposed by condition 14 of the 2006 permission (TM/06/762) by 50,000 tonnes.
5. The appellant has now provided a completed unilateral undertaking¹, in support of the current proposals, the precise terms of which were agreed at the inquiry.

Main issues

6. The main issues raised by each appeal are:

Whether the requirements of the disputed condition, other than in terms of the areas specified, satisfy government guidance² on the use of conditions in planning permissions; and

¹ Document 7

Whether the proposals are consistent with the principles of sustainable waste management and with 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.

Reasons

Mechanics of the disputed condition

7. The appellant's enclosed composting facility, at Blaise Farm Quarry, is designed to process mixtures of green garden waste, cardboard and catering/kitchen waste, including meat. As things stand, it is permitted to handle municipal, commercial and industrial waste from eight districts in Kent and from the Medway unitary area, but priority is given to serving Tonbridge and Malling, Tunbridge Wells, Maidstone and Sevenoaks. Only if there is sufficient capacity to meet the needs of these four "primary" districts can waste be accepted from the other five named areas. However, despite the identified potential for these primary districts to provide 150,000 tonnes or more a year, only a small proportion of this is currently collected and even less is supplied to the Blaise Farm facility. Indeed, it seems that there is considerable spare capacity here.
8. The existing planning permission is intended to allow for waste to be imported from the five "secondary" areas, if spare capacity exists at the facility. However, as a result of the disputed condition, the appellant cannot import waste from those areas without advance knowledge of how much separated bio-waste will be forthcoming from the four primary districts. Clearly it would be desirable, in terms of the waste hierarchy, for the authorities involved in those districts to make more kerbside collections of separated bio-waste, but the matter of whether or when this will happen is outside the appellant's control. Bearing in mind this uncertainty, and the potential arisings from within those districts, it would be very difficult for the appellant to tender for long term contracts to handle waste from the other five areas.
9. Short term contracts might be accommodated, given the long lead time for changing kerbside collection arrangements. However, it is the commercial sector that is most likely to seek short term measures and, whilst it produces more bio-waste than the municipal sector, not all of this is collected in a compostable form. Also, its "milk round" collection arrangements are currently such that waste from various districts tends to be mixed together. In the circumstances, the appellant could not be confident that the waste would be sourced from only those areas that are specified in the condition.
10. Arguably, the appellant could more easily compete for municipal waste from the five secondary areas if the condition were to set out a clear mechanism for demonstrating capacity at the facility. For example, before tendering, the appellant could commission a report to forecast waste arisings from within the four primary districts. However, the Council would then need to consider the report's findings before coming to a view on whether the condition's requirements would be met and evidence given to the inquiry suggests that this could add weeks, or even months, to the process. The overall length of time involved in complying with the condition's requirements would therefore

² DoE Circular 11/95

be considerable and this would clearly reduce the appellant's chances of winning contracts.

11. These considerations lead me to conclude that, quite apart from the areas specified therein, the disputed condition effectively nullifies much of the benefit of the permission, in that it makes it unduly difficult for the appellant to make good use of the facility's capacity to handle waste. This is unreasonable and contrary to the government's advice in DoE Circular 11/95.

Potential for harm

12. Turning to the second issue, and to the matter of whether the waste catchment limits for the facility should be relaxed, there is no dispute that this composting plant is inappropriate development in the Metropolitan Green Belt. Permission for it was granted after an assessment had shown that there were no better sites within the four primary districts that it was intended to serve.
13. To allow either of the appeals would create a new permission for inappropriate development, which in itself is harmful, but would cause no direct harm to the Green Belt over and above that which has already been allowed. The only other direct harm that is alleged, albeit not in green belt terms, would be through any increase in greenhouse gas emissions as a result of transporting waste over longer distances than now, if the catchment were to be broadened. This is a matter that I shall return to.
14. In terms of indirect harm, the Council are concerned that there is likely to be pressure for a new facility to be built within the Green Belt if spare capacity at Blaise Farm Quarry were to be taken up with waste from outside the four primary districts. Certainly, the appellant's (2006) land availability assessment, which supported use of this quarry location, concluded that there were no suitable alternative sites within those districts, but outside the Green Belt. No evidence has been provided of potential sites in other districts nearby, but nor has it been demonstrated that there are no suitable locations in such areas. Indeed, it seems that the Council limited the suggested area of search to the four primary districts, when the 2006 assessment was commissioned. It also appears that the need for a composting facility to serve those districts contributed to the Council's view that very special circumstances existed to justify the Green Belt location.

BPEO and the proximity principle

15. There have been significant changes in waste planning policy during recent years. These include the (2005) government statement concerning planning for sustainable waste management (PPS10) which aims to encourage the "disposal" of waste at one of the nearest appropriate installations. It makes no such recommendation in terms of waste "recovery", but shifts the role of Best Practicable Environmental Option (BPEO) towards the plan making process. The companion guide to this statement acknowledges that, in the absence of an environmental statement to support proposals for EIA³ development, something akin to a BPEO exercise may help to provide the necessary information; however, BPEO itself is not required.

³ Environmental Impact Assessment

16. The Council decided that the appeal proposals did not constitute EIA development. Even so, when the applications were refused permission, it was a requirement of Policy WM2 of the (2006) Kent and Medway Structure Plan that proposals for a composting installation should reflect the principles of Best Practicable Environmental Option (BPEO) and thereby accord with the proximity principle. At the time, the Council had also endorsed a position statement in support of such an approach. However, that Policy no longer forms part of the development plan. Furthermore, the position statement was not formally subject to external consultation and has no status as supplementary planning guidance or as a supplementary planning document; it therefore carries little weight.
17. In considering the relevance of the proximity principle, to the appeal proposals, it is necessary to distinguish between composting and disposal of bio-waste. Composting is higher up the waste hierarchy than disposal and, for the purposes of recent EC legislation⁴, is regarded as a recovery operation, along with recycling, reclamation and demonstrably efficient energy recovery schemes. Article 16 of this (2008) revised waste framework directive requires mixed municipal waste, collected from private households, to be recovered in one of the nearest appropriate installations. No such requirement is placed on bio-waste which, as defined in Article 3, would describe the waste stream that feeds the Blaise Farm Quarry facility. Indeed, Article 22 encourages the separate collection of bio-waste so as to facilitate a specific treatment, which would include composting. Whilst these provisions raise matters of law, that are therefore for others to decide, they suggest to me that the desirability of managing waste as close to its source as possible is tempered by the benefits of segregating certain elements and driving them up the hierarchy. The directive has yet to be transposed into UK law, but it is an important consideration in my determination of these appeals.

Composting capacity, location and catchment

18. More significantly still, the Regional Spatial Strategy South East Plan (SEP) was published in May of this year, after the Council had refused permission for the appeal proposals. This Plan requires provision to be made for rapidly increasing amounts of composting and highlights the immediate and acute shortfall in the region's capacity to achieve the targets that have been set in this respect. Whilst I understand that some doubt has recently been cast over the accuracy of data which underpin some of the SEP's precise forecasts, there is no dispute that the need for additional composting capacity applies both to Kent and to the region as a whole.
19. The Plan seeks regional and sub-regional self-sufficiency, with the Kent and Medway waste planning authority areas combining to form one sub-region. It does nevertheless recognise the benefits of reducing long distance travel by allowing for some movement of waste between sub-regions where, for example, the boundary is near to a major settlement. Furthermore, it acknowledges that, whilst composting installations should generally be located close to the main sources of waste, a wider catchment than the sub-region may be necessary to justify the provision of specialised facilities.

⁴ Directive 2008/98/EC on waste and repealing certain Directives

20. As I saw when I visited the site, the Blaise Farm Quarry installation is specialised. It is an ABPR⁵ approved facility, designed to manage biodegradable waste (bio-waste) containing animal by-products. There are only five such plants able to handle more than 1000 tonnes per annum (tpa) in the south east region and London. Together these provide a total capacity of 290,000tpa, of which half is in the capital. The Blaise facility is one of two that, once completed, offer a throughput of 100,000tpa. It is contracted to accept up to 30,000tpa of municipal bio-waste from the combined area covered by the Tonbridge and Malling and Tunbridge Wells districts, but during the first 10 months of operation it received less than 18,000 tonnes.
21. When permission for this facility was granted, the proposals were supported by an assessment of suitable catchment areas, based on the proximity principle. However, as I have already indicated, waste planning policy and legislation is continuing to evolve. It is still desirable to limit the distance that waste is transported, but increased emphasis is now being placed on moving waste up the hierarchy.
22. With this in mind, a key objective of PPS10 is to reflect the needs of business, whilst encouraging competitiveness. Given the SEP's requirements, I certainly see no compelling reason to limit the waste catchment, of the appellant's facility, to anything less than the sub-region. It is in the appellant's interests to source material from as close to the site as possible, so as to reduce transport costs. In any event, if bio-waste from the four primary districts were to be effectively displaced by material bought in to Blaise Farm Quarry from further afield, it would not necessarily result in the indirect harm to the Green Belt that the Council fears. This is because of the flexibility that the SEP allows over the catchment areas of specialised facilities, and therefore the location of such facilities. When taken together, these considerations lead me to believe that the likelihood of the appeal proposals causing indirect harm to the Green Belt, by encouraging the provision of another ABPR composting facility here, is small.
23. Nor do I believe that the proposals would result in crowding out the prospect of other such facilities being provided at suitable locations within the sub-region. I accept that the appellant could be in a strong position to tender for new municipal contracts, given the existence of the Blaise Farm installation, but the procuring authority would be able to stipulate that a local facility is required. Alternatively, that authority could award a short term contract in anticipation of a nearer facility becoming available.
24. Evidence to the inquiry suggests that there is a shortfall of ABPR capacity in the sub-region, even after account has been taken of planning applications that have yet to be determined. Indeed, that shortfall is likely to become very much greater after planned housing growth is factored in and once the escalating landfill tax has the desired effect of driving more commercial waste up the hierarchy. I recognise that development plan documents prepared in conformity with the SEP will seek to secure more composting but, as the Plan itself points out, the urgency of addressing the current shortfall is compounded by the long lead time for some facilities and by the difficulties encountered in seeking to obtain planning permission.

⁵ Animal By-Products Regulations 2005

25. Given that shortfall, and the urgency of addressing it, I attach little weight to the argument that capacity at the Blaise Farm facility should be reserved for bio-waste from Sevenoaks and Maidstone, so as to avoid it being sent for landfill or incineration. It is better to address that shortfall now, than wait to find out if and when bio-waste collections from those districts are to be made.
26. Arguably, given the specialised nature of the appellant's facility, it would be reasonable to allow a waste catchment that extends beyond the sub-region's boundaries. Drive-time analysis, presented at the inquiry, shows that significant areas of other sub-regions are closer to Blaise Farm, than the furthest parts of Kent. However, when considered in terms outlined by the SEP, there is no suggestion that sustainable transport could be used to convey compostable waste from those areas and I note the appellant's stated intention to rely primarily on material from municipal collections, the source of which is easier to control than waste from the commercial sector. Also, whilst the appellant has indicated that Surrey may be keen to pursue short term arrangements for reducing the transport of compostable material, Kent County Council has not consulted neighbouring waste planning authorities on the appellant's proposals. In the absence of any collaboration between the authorities involved, particularly in relation to meeting the needs of the region's strategic growth areas, I do not consider it appropriate to determine the appeals other than on the basis of sub-regional self sufficiency as set out in SEP Policy W4.
27. It follows from this that I also find no support for the notion of removing all constraints on the catchment. SEP Policy W3 seeks regional self-sufficiency with some additional allowance made for declining amounts of waste from London. However, that allowance is generally aimed at landfill.

Greenhouse gas emissions

28. Transporting bio-waste to the Blaise Farm Quarry site generates carbon dioxide emissions that contribute to climate change; as does the application of the final product to land. The in-vessel composting (IVC) operation here also generates a mixture of greenhouse gases (GHG) but, because of the aerobic conditions used in the process, the quantities of methane are small.
29. Given the acute shortfall in composting capacity that currently exists in the sub-region, it is reasonable to assume that bio-waste which is not delivered to this facility would go to landfill, where the resulting methane emissions would be very much greater in terms of their impact on climate change. Life cycle data, that were not challenged at the inquiry, indicate that it would be necessary to transport material more than 3,700km to an IVC facility before local landfilling would prove to be less harmful. Those data also suggest GHG savings equivalent to some 923 -1850 kg of carbon dioxide for every tonne of biowaste that is diverted to IVC from landfill.
30. On that basis, it is clear that broadening the facility's catchment to include all of the waste sub-region would cause no direct harm in terms of increased greenhouse gas emissions. Instead, by increasing the amount of bio-waste that is available to be composted, rather than landfilled, it would allow very substantial reductions to be achieved. This would be wholly consistent with the

government's objectives for tackling climate change through planning, as set out in the supplement to PPS1.

31. I accept that if waste sourced from the primary districts had to be composted elsewhere, because it had been effectively displaced by waste brought in to the appellant's facility from the wider area, the greenhouse gas emissions might be greater than necessary, because of the additional distances travelled. However, I consider it likely that market forces would eventually resolve that situation and, to my mind, any additional emissions in the interim would be more than warranted by the emissions saved through moving waste, from the wider area, up the hierarchy at an early stage.

Conclusions

32. I am led to the following view. Relaxing the disputed condition to allow material to be sourced from the entire waste sub-region would create a new permission for inappropriate development in the Green Belt which, in itself, would be harmful. It would however cause no direct harm beyond that which has already been permitted and the likelihood of any indirect harm, through encouraging the provision of further composting facilities within the Green Belt, is small. On the other hand, matters which weigh in favour of such a relaxation would include the contributions that it could be expected to make to sustainable waste management and to addressing the acute shortfall which has been 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. To my mind, these other considerations clearly outweigh the potential harm. Given the fall-back position presented by the existing permission and the urgent need for action on climate change, which is the greatest long-term challenge facing the world today, I am satisfied that there are very special circumstances here which warrant a relaxation of the disputed condition.
33. The development plan's requirements would be met best by revising the disputed condition to allow sourcing of waste from across the sub-region, but no wider. Subject to that limitation, I conclude that the appeal B proposals are 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.

Other conditions and other matters

34. Allowing this appeal would create a new planning permission. Therefore it would be necessary to amend the wording of condition 14 so as to reflect the 100,000 tonne limit that was imposed in 2008. I also accept that the wording of condition 15 could helpfully be improved to provide greater clarity on what is required with respect to the records kept of imported waste; in this respect, I am satisfied that the Council's suggested re-wording could be simplified, bearing in mind the nil entry that is likely for imports received prior to the facility becoming operational.
35. I have taken account of all other matters raised, including concerns over the likelihood that the site will be restored; however, the future restoration is

secured by the appellant's unilateral undertaking. Nothing I have found outweighs the main considerations that have led me to my decision on each appeal.

36. For the reasons given above I conclude that appeal A should be dismissed, but appeal B should succeed. I will grant a new planning permission without the original conditions 12, 14 and 15, but substituting others and retaining relevant non-disputed conditions from the previous permission.

Rupert Grantham

INSPECTOR

DOCUMENTS

- 1 28.7.09 email regarding s106 obligation
- 2 Ministerial statement regarding sustainable waste management
- 3 Inspectors' report into objections to the Cheshire Replacement Waste Local Plan
- 4 Draft s106 obligation
- 5 Draft s106 obligation
- 6 Draft s106 obligation
- 7 Completed s106 obligation