

19 June 2018

**County Matter Waste Application**

**Removal of condition 10 of planning permission WSCC/33/17/WK requiring establishment of a local liaison group**

**Unit 29, Firsland Park Industrial Estate, Henfield Road, Albourne, West Sussex BN6 9JJ**

**Application No: WSCC/016/18/WK**

**Report by Head of Planning Services**

**Local Member: Mr David Barling**

**District: Horsham**

**Executive Summary**

This report relates to a waste site on Firsland Park Industrial Estate that has permission for the processing of up to 75,000 tonnes per annum of waste wood and bulky waste. The present application seeks to remove condition 10 of planning permission WSCC/033/17/WK that requires the establishment of a local liaison group.

Planning permission was granted in November 2017 to amend a previous permission (WSCC/019/15/WK) to allow the increase in the permitted height of stockpiles from 2.8m to 5m; and to install a gale break and dust containment enclosure (ref. WSCC/033/17/WK). This permission was granted subject to a number of conditions, including condition 10 which required the establishment of a local liaison group.

The applicant is now seeking to remove this condition because they do not consider that it meets the planning tests for the imposition of conditions.

The main policies of relevance to this application are policies W12, W16 and W19 of the West Sussex Waste Local Plan (2014); policies 1 and 24 of the Horsham District Planning Framework (2015) and paragraphs 14, 17, 122, 186, 196, 197, and 203–206 of the National Planning Policy Framework (NPPF).

No objections have been raised by Horsham District Council or Mid Sussex District Council, but Woodmancote Parish Council, Twineham Parish Council, and Albourne Parish Council all object to the application; they consider that the condition does meet the 'six tests' and the liaison group needs to be in place to address ongoing breaches of planning control.

One third-party representation was received in response to the consultation, noting that a liaison group could make a significant contribution to resolving many current issues including the increasing volume and impact of HGVs using the B2116.

**Consideration of Key Issue**

The principle of the site location and the need for a waste management facility have already been established through previous planning permissions. Therefore, the

sole planning consideration relevant to this planning application is whether the condition meets the 'six tests' for planning conditions.

### ***Need for Local Liaison Group Condition***

The applicant considers that the condition requiring a liaison group does not meet the six tests for planning conditions, namely being necessary; relevant to planning and to the development to be permitted; enforceable; precise; and reasonable in all other respects. However, it is considered that the establishment of a liaison group would make the development acceptable in planning terms by providing local residents and other stakeholders with an opportunity to discuss issues with the operator. One of the key issues raised by residents is that of stockpile height, which has direct implications for impact on the environment and vehicle movements. It is, therefore, considered relevant to planning and to this particular development. The condition wording sets out the information required in the liaison group scheme and sets time limits for submission, making it enforceable. It is considered reasonable in all other respects, thereby meeting all of the relevant tests.

### **Conclusion**

The principle of the operation is established and the site is permitted to process up to 75,000 tonnes per annum of wood and bulky waste material. Planning permission was granted in 2017 (ref. WSCC/033/17/WK) to allow stockpiles to increase from 2.8m to 5m, with the associated installation of gale breaks and a dust enclosure. The applicant is now seeking to remove a condition attached to that permission requiring the establishment of a local liaison group as they do not consider it meets the 'six tests' for planning conditions.

It is not considered that this is the case. The condition meets all of the tests, is necessary to make the development acceptable in terms of its impact on people and the environment, and is otherwise justified.

### **Recommendation**

That planning permission be refused for the reason given in **Appendix 1**.

## **1. Introduction**

- 1.1 Planning permission is sought to amend a condition imposed on a recent planning permission (ref. WSCC/014/17/WK) relating to a waste use at Firsland Park Industrial Estate. The application site has planning permission to process up to 75,000 tonnes per annum (tpa) of waste wood and bulky waste from Household Waste Recycling Centres (HWRC) throughout West Sussex. The processed material, in the form of combustible chips, is bulked and transported to sites throughout the UK and beyond for use as a fuel in power generation.
- 1.2 Planning permission (ref. WSCC/033/17/WK) was granted in November 2017 to amend a previous permission (WSCC/019/15/WK) to allow the increase in the permitted height of stockpiles from 2.8m to 5m and to install a gale break and dust containment enclosure. The 2017 permission was granted subject to a number of conditions, including condition 10 that required the establishment of a local liaison group.

- 1.3 The applicant is now seeking to remove this condition because they do not consider that it meets the planning tests for the imposition of conditions.

## 2. **Site and Description**

- 2.1 The application site is flat and extends to approximately 0.84 hectares. It is located in the north-eastern corner of Firsland Park Industrial Estate (see [Appendix 2 – Site Location Plan](#)). Access to the site and estate is via a dedicated, surfaced road from the eastern side of the B2116 (Henfield Road). The estate is set within a rural area and contains a range of buildings and uses including manufacturers of furniture, stone ornaments and kitchens, a depot for tankers and cleaning vehicles, engineering contractors, vehicle repair workshops and sales of vehicles and machinery.
- 2.2 The whole site is secured around the perimeter by a combination of metal chain-link fencing, palisade fencing and gate, and concrete breeze blocks. Beyond the site boundary to the east and north lies a 3m high bund which helps to screen the estate from views from the surrounding countryside. There is also a line of mature trees adjacent to the north and eastern boundaries.
- 2.3 The application site falls entirely within Horsham District, although the boundary with Mid Sussex District extends around the northern and eastern boundaries of Firsland Park Industrial Estate, just beyond the application site.
- 2.4 The site is not within an area at risk of flooding or a groundwater source protection area. There are no areas designated for ecological, landscape or amenity value within five kilometres of the site. A Public Right of Way (footpath 13T) extends in a north-east/south-west direction, a minimum of 190 metres from the application site.
- 2.5 The nearest residential property is approximately 165m to the north-west of the application site. There are also dwellings on Twineham Lane to the east of the site, approximately 390m away.

## 3. **Relevant Planning History**

- 3.1 Prior to the applications for waste use, planning permission at this site was granted by Horsham District Council for the permanent use for open storage and the retention of a fence (consent reference DC/09/1037), the erection of an industrial unit for B1, B2 and B8 uses (consent reference DC/11/0923), and the extension of the yard in association with the industrial unit (consent reference DC/13/2218).
- 3.2 Since 2011, the site has received planning permission for waste use, as follows:

WSCC/060/11/WK: Additional use of an industrial unit to carry out the shredding of wood and bulky waste and the sorting and bailing of shredded products. Permitted 1 December 2011.

WSCC/016/13/WK: Amendment of Condition 7 of WSCC/060/11/WK to allow storage of materials outside building. Permitted 2 July 2013.

- 13/01373/FUL:  
(MSDC application) Retention and extension of a screening and noise attenuation bund on land at Firsland Park Industrial Estate. Permitted 9 August 2013.
- WSCC/019/15/WK: Extension of yard and storage area along with ancillary works for the processing of wood and bulky waste and increase in site throughput by variation of Condition 8 of WSCC/060/11/WK and Condition 8 of WSCC/016/13/WK. Permitted 29 September 2015.
- WSCC/033/17/WK: Amendment of condition 13 of planning permission WSCC/019/15/WK to allow the increase in height of stockpiles to 5m; installation of gale break on boundary wall; erection of dust containment enclosure. Permitted 8 November 2017.
- WSCC/046/17/WK: Amendment of condition 9 of planning permission WSCC/033/17/WK to remove the requirement for the approval and implementation of a scheme for thermally insulated block walls to separate stockpiles. Permitted 28 February 2018.

3.3 The operator has now expanded into the larger site, as originally allowed under planning permission WSCC/019/15/WK, with operations considered to have 'commenced' in April 2018. Therefore, the permitted stockpile height and site layout is as approved under the 2017 permissions (WSCC/033/17/WK and WSCC/0146/17/WK: see [Appendix 3 – Approved Site Layout](#)).

#### 4. The Proposal

- 4.1 Planning permission is sought to amend condition 10 of planning permission WSCC/033/17/WK to remove the requirement to establish a local liaison group.
- 4.2 As noted above, that planning permission related to the existing waste site and sought only to increase the height of stockpiles and to provide a gale break and dust shelter to ensure dust would not escape the site with the increased height. Condition 10 was imposed at the request of members during the Planning Committee meeting. The condition states:

##### **Liaison Group**

*"10. Prior to commencement of the development hereby approved, the applicant shall submit a scheme for approval in writing by the County Planning Authority detailing the establishment of a local liaison group to include representation from the site operator, WSCC and local residents. The scheme shall include its objectives, membership, frequency and location of meetings and arrangements for the publication of minutes. Liaison group meetings shall be held in accordance with the approved scheme."*

*Reason: In the interests of the local amenities of the area."*

- 4.3 The minutes of the Planning Committee meeting on 7 November 2017 note that officers were asked whether consideration had been given to the setting up of a liaison group with local residents. Officers confirmed that if members wished for a condition to be imposed requiring the establishment of a liaison group they could do so, which they did.
- 4.4 The applicant considers the condition does not accord with paragraph 206 of the National Planning Policy Framework which states that *“Planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects”*. These requirements are known as the ‘six tests’ for planning conditions. The applicant considers the condition fails to meet any of them.
- 4.5 The liaison group condition was carried forward in the most recent planning permission relating to the waste site (WSCC/046/17/WK) that removed requirements relating to thermally insulated walls.
- 4.6 However, the applicant has sought to amend the previous permission (WSCC/033/17/WK) which originally added the requirement for a liaison group, rather than the most recent planning permission (WSCC/046/17/WK). The latter has now been implemented. Therefore, if the current planning application is approved, the amended wording (removing the requirement for thermally insulated walls) used in the later permission would need to be carried forward in the new permission that would supersede both 2017 permissions.

## 5 **Environmental Impact Assessment (EIA)**

- 5.1 The application is for a waste development of more than 0.5 hectares and within 100 metres of controlled waters, so falls within Part 11(b) of Schedule 2 of the EIA Regulations 2017 relating to ‘installations for the disposal of waste’.
- 5.2 Taking into account the scale/nature of physical development, the controls in place through the planning and Environmental Permitting regulations and the criteria in Schedule 3 of the EIA Regulations, it is considered that the proposal does not have the potential for significant environmental impact within the meaning of the EIA Regulations.

## 6. **Policy**

- 6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications are determined in accordance with the statutory ‘development plan’ unless material considerations indicate otherwise (as confirmed in paragraphs 2 and 196 of the National Planning Policy Framework (‘the NPPF’). For the purposes of this application, the statutory development plan is considered to comprise the West Sussex Waste Local Plan (2014), the Horsham District Planning Framework (HDPF) 2015, and Woodmancote Neighbourhood Plan (2016-2031) 2017.
- 6.2 The key policies in the development plan, which are material to the determination of the application, are summarised below. In addition, reference is made to relevant national planning policy guidance and other policies that guide the decision-making process and which are material to the determination of the application.

### ***West Sussex Waste Local Plan 2014***

- 6.3 The following policies have been considered for this planning application:
- Policy W12: High Quality Developments;
  - Policy W16: Air, Soil and Water; and
  - Policy W19: Public Health and Amenity – supports (c) the establishment of site liaison groups to address issues arising from the operation of a major waste management site or facility.

### ***Horsham District Planning Framework (HDPF) 2015***

- 6.4 The following policies have been considered:
- Policy 1: Sustainable Development;
  - Policy 24: Environmental Protection;
  - Policy 25: District Character and the Natural Environment;
  - Policy 26: Countryside Protection;
  - Policy 33: Development Principles; and
  - Policy 40: Sustainable Transport.

### ***Woodmancote Neighbourhood Plan (2016 – 2031) 2017***

- 6.5 Having reviewed the neighbourhood plan, there are no policies relevant to the current proposal.

### ***National Planning Policy Framework (2012)***

- 6.6 The NPPF sets out the Government's planning policies for England and outlines how these are expected to be applied. It does not form part of the development plan but is a material consideration in determining planning applications.
- 6.7 For the present application, the relevant paragraphs in the NPPF are considered to be as follows:
- 14 (presumption in favour of sustainable development, and approving development that accords with the development plan)
  - 17 (core planning principles)
  - 122 (local planning authorities should focus on land use matters, assuming that pollution control regimes will operate effectively)
  - 186 (positive decision making)
  - 196 (determining applications in accordance with the development plan)
  - 197 (presumption in favour of sustainable development); and
  - 203-206 (use of planning conditions)

## ***National Planning Practice Guidance: Use of Conditions***

- 6.8 PPGs set out the Government's planning guidance to be read in conjunction with the NPPF. They do not form part of the development plan but are a material consideration in determining planning applications.
- 6.9 The PPG: Use of Conditions expands on paragraph 206 of the NPPF, clarifying the approach that should be taken to imposing conditions. It notes that all six of the tests must be satisfied each time a condition is imposed, and sets out 'key considerations' in relation to each of the tests.

## ***EU Council Directive 2008/98/EC***

- 6.10 By virtue of the Waste (England and Wales) Regulations 2011 when determining any application for planning permission that relates to waste management (article 18) the planning authority is required to take into account EU Council Directive 2008/98/EC which sets out the objectives of the protection of human health and the environment (article 13) and self-sufficiency and proximity (first paragraph of article 16(1), article 16(2) and (3)). Case law has confirmed that these articles are objectives at which to aim. As objectives they must be kept in mind whilst assessing the application and provided this is done, any decision in which the furtherance of the objectives are not achieved, may stand.

## **7. Consultations**

- 7.1 **Horsham District Council (Planning and Environmental Health Officer):** No objections; already controls over operations to address potential noise and dust emissions, and hours of operation, and site controlled by Environmental Permitting.
- 7.2 **Mid Sussex District Council (Environmental Health):** No comment to make.
- 7.3 **Mid Sussex District Council (Planning):** No objection. Make observation that whilst applicants have referred to the need for liaison group meetings to take place on the site, they do not consider this would be the case as other meetings have taken place in, for example, village halls.
- 7.4 **Woodmancote Parish Council:** Strongly object and feel that WSCC should enforce the conditions applied to previous applications.
- 7.5 **Albourne Parish Council:** Object. Note the condition was imposed for good reasons and meets the tests. The site has a long history of breaching planning conditions, including stockpile height. Consider the condition reasonable given this history, and enforceable as terms of reference can be easily documented.
- 7.6 **Twineham Parish Council:** Support comments submitted by Albourne Parish Council and object to the proposal.
- 7.7 **Councillor David Barling:** No response received.

## 8. Representations

- 8.1 The application was advertised in accordance with Schedule 3, Article 13 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended). This involved the erection of site notices on land located at and around the application site, an advertisement in the local newspaper and the issue of neighbour notification letters.
- 8.2 In response, one representation was received, objecting to the proposal, noting that a liaison group could make a significant contribution to resolving many current issues including the increasing volume and impact of HGVs using the B2116.

## 9. Consideration of Key Issue

- 9.1 The principle of the site location and the need for a waste management facility have already been established through previous planning permissions. Therefore, comments on highways, drainage, landscape and ecology were not sought.
- 9.2 Therefore, the sole planning consideration relevant to this planning application is whether the condition requiring the establishment of a local liaison group meets the six tests for the imposition of planning conditions.

### ***Need for Local Liaison Group Condition***

- 9.3 As already noted, paragraph 206 of the NPPF refers to the 'six tests' for planning conditions, stating that "*Planning conditions should only be imposed where they are: necessary; relevant to planning and; to the development to be permitted; enforceable; precise and; and reasonable in all other respects*".
- 9.4 The applicant argues that none of these tests are met. Therefore, the following paragraphs consider each in turn, with reference to the 'key considerations' identified in the PPG: Use of Planning Conditions<sup>1</sup>.
- 9.5 When considering whether the tests have been met, it should be noted that the planning permission that the condition was imposed on, related solely to the increase in height of stockpiles from 2.8m to 5m, and the installation of associated dust management equipment (gale break and dust enclosure).

### *Necessary*

- 9.6 A condition must only be imposed where it is needed to make the development acceptable in planning terms.
- 9.7 The applicant notes that the stockpile height, gale break and dust containment shelter were approved on the basis they cause no demonstrable harm to the locality, so it is difficult to envisage what difference a liaison group will make to this development.

---

<sup>1</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/579424/Tests-and-key-questions.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/579424/Tests-and-key-questions.pdf)

- 9.8 However, there are links between the stockpile height allowed by this permission, and the impact on local residents, that could be reduced or mitigated against by the establishment of a local liaison group.
- 9.9 The height of stockpiles is one of the most obvious, visible indicators of whether the site is operating in compliance with its planning conditions, and is one of the regular issues raised by local residents. If stockpile heights are too high, material (both shredded waste and dust) is not contained within the site, with resulting impact on the surrounding area, and the potential for fire risk.
- 9.10 The establishment of a local liaison group would give local residents a forum to express concerns about this, and for the operator and regulators to clarify the measures in place to address it.
- 9.11 Stockpile height is also an indicator of the number of vehicles travelling to/from the site each day, which is another key concern raised by local residents and stakeholders. Although there are controls over annual site throughput, controls over stockpile height provide a physical limit on the amount of waste that can be managed on site at a given time. The site throughput has significant 'peaks', which means that associated vehicle movements and impact on local residents also peak. With a limit on stockpile height, the impact on local residents is reduced, with the liaison group providing a forum for dialogue to discuss these ongoing issues.
- 9.12 It is of note that Policy W19 of the Waste Local Plan supports the creation of local liaison groups to *"address issues arising from the operation of major waste sites or facilities"*. The supporting text at paragraph 8.10.7 notes:
- "Actual or potential problems arising from the operation of the larger waste management sites or operations are often addressed through site liaison groups that involve local communities, operators, and organisations such as the Environment Agency. The establishment of such groups will be sought for major development where there will be the need for a regular forum to enable on-going dialogue between the local residents and the waste planning authority, the operator, and the relevant agencies."*
- 9.13 The site has a permitted throughput of 75,000 tonnes/annum and so is considered a 'major' or 'larger' site. It is subject to a high number of complaints and so there is considered to be an identifiable need for a 'regular forum to enable on-going dialogue'.
- 9.14 This being the case, the creation of a local liaison group to manage communications between concerned residents and the operator is considered necessary to make the development acceptable in planning terms.

*Relevant to Planning*

- 9.15 The condition must relate to planning objectives and be within the scope of the permission to which it is attached.
- 9.16 The applicant states that this is not the case, and that such requirements ought to be secured by planning agreement rather than planning condition. This is not expanded upon further.

- 9.17 It is considered appropriate to use a condition to require a liaison group to be established, as it would for any other scheme relating to the development being permitted. Such a liaison group would relate directly to the operations on the waste site within the red line boundary and so a condition is the appropriate mechanism to secure this.
- 9.18 It is notable that Policy W19 of the Waste Local Plan (2014) relating to public health and amenity supports proposals for waste development provided that *“(c) where necessary, a site liaison group is established by the operator to address issues arising from the operation of a major waste management site or facility”*. This is a development plan document that has been examined and found sound by a Planning Inspector. It is, therefore, considered relevant to planning.
- 9.19 An online search indicates that conditions requiring the establishment of liaison groups are commonplace, and used across the country in relation to a range of developments, but particularly in relation to minerals and waste sites where operations can be ongoing for many years.

*Relevant to the Development to be Permitted*

- 9.20 The condition must be fairly and reasonably related to the development to be permitted, to remedy the nature or impact of it. The PPG notes that a condition *“cannot be imposed in order to remedy a pre-existing problem or issue not created by the proposed development”*.
- 9.21 The applicant notes that it is clearly not the case that the condition is relevant as it ‘has been held that the development permitted causes no harm’, going on to state that a liaison group would be little more than a public relations exercise, and has the potential to *“bring with it a reasonable expectation that something may arise from it when the reality is that the primary use of the site ... is controlled by other planning conditions”*.
- 9.22 In imposing the condition, Members considered that it was required to make the development acceptable. It was, of course, imposed without the expectation that the group could require the amendment of conditions or other material changes to site operations.
- 9.23 Notwithstanding the applicant’s comments, it is considered that, on balance, the condition is fairly and reasonably related to the development concerned. The establishment of a liaison group would enable local residents to feed back their concerns to the operator about the operation of the site, and for the operator to clarify their position. As already noted, stockpile height is a key concern raised by locals, and a key indicator of environmental harm; therefore, the establishment of the liaison group is considered to be entirely relevant to this particular application.

*Enforceable*

- 9.24 It must be practically possible for the Local Planning Authority to enforce the condition, that is, to detect a contravention or remedy a breach of it, and any breach and/or remedy must be within the control of the applicant.

- 9.25 The applicant notes that the standard terms of reference for liaison groups issued by the County Council states that *"the group has no enforcement or decision-making role and does not form part of the formal planning or consultation process"*. This does not indicate that the condition is not enforceable, but that the group itself cannot make decisions about whether enforcement action should be taken, or take on other statutory tasks.
- 9.26 Nonetheless, it is considered that the condition is enforceable as it requires that a liaison group scheme is submitted for approval in writing before development commences. A timescale for the submission has been given, and enforcement action can be taken if no such scheme is submitted before commencement (although this is currently the case, it would not be expedient to take enforcement action while this application is being considered). Meetings must be held in accordance with the approved scheme, and if they are not, enforcement action can be taken.
- 9.27 The condition is, therefore, considered to meet this test.

*Precise*

- 9.28 The condition must be written in a way that makes it clear to the applicant what must be done to comply with it.
- 9.29 The applicant states that without the standard terms of reference, *"terms of the group might never be agreed because there is no policy or other adopted guidance about the matter"*.
- 9.30 The wording of the condition notes that details are required of the group's objectives, membership, frequency and location of meetings, and arrangements for the publication of minutes. It is considered this is a sufficiently precise list of the details required to satisfy the County Council. Applicants would, as a result of this wording, be able to provide a liaison group scheme to the County Council for approval.

*Reasonable in all Other Respects*

- 9.31 The condition must not place unjustifiable or disproportionate burdens on the applicant.
- 9.32 The applicant notes that *"on a practical note, the condition can only lawfully bind the site itself and therefore group meetings would have to occur on site"*, continuing that such controls can only be exercised by planning agreement at the time the primary use of the land is being considered.
- 9.33 It is not the case that the condition requires liaison group meetings to take place on site. The condition requires that liaison group meetings are arranged in accordance with an approved scheme. If the site itself is not appropriate for meetings to take place, the operator can convene them elsewhere. This is frequently the case with liaison groups elsewhere in the County.
- 9.34 Nonetheless, to respond to the issues set out in the PPG, it is not considered that the condition would put unjustifiable or disproportionate burdens on the operator. It would require some administration but this would not be burdensome or out of proportion with the scale of their operation or its impacts.

9.35 Overall, therefore, it is considered that the imposition of the condition meets the six tests for the imposition of planning conditions by being necessary; relevant to planning and; to the development to be permitted; enforceable; precise and; and reasonable in all other respects.

9.36 *The applicant considers that the condition requiring a liaison group does not meet the six tests for planning conditions, namely being necessary; relevant to planning and to the development to be permitted; enforceable; precise; and reasonable in all other respects. However, it is considered that the establishment of a liaison group would make the development acceptable in planning terms by providing local residents and other stakeholders with an opportunity to discuss issues with the operator. One of the key issues raised by residents is that of stockpile height, which has direct implications for impact on the environment and vehicle movements. It is, therefore, considered relevant to planning and to this particular development. The condition wording sets out the information required in the liaison group scheme and sets time limits for submission, making it enforceable. It is considered reasonable in all other respects, thereby meeting all of the relevant tests.*

## 10. Overall Conclusion and Recommendation

10.1 The principle of the operation is established and the site is permitted to process up to 75,000 tonnes per annum of wood and bulky waste material. Planning permission was granted in 2017 (ref. WSCC/033/17/WK) to allow stockpiles to increase from 2.8m to 5m, with the associated installation of gale breaks and a dust enclosure. The applicant is now seeking to remove a condition attached to that permission requiring the establishment of a local liaison group as they do not consider it meets the 'six tests' for planning conditions.

10.2 It is not considered that this is the case. The condition meets all of the tests, is necessary to make the development acceptable in terms of its impact on people and the environment, and is otherwise justified.

10.3 It is **recommended**, therefore, that planning permission be refused for the reason set out in **Appendix 1**.

## 11. Equality Duty

11.1 The County Council has a duty to have regard to the impact of any proposal on those people with characteristics protected by the Equality Act. Officers considered the information provided by the applicant, together with the responses from consultees and other parties, and determined that the proposal would have no material impact on individuals or identifiable groups with protected characteristics. Accordingly, no changes to the proposal were required to make it acceptable in this regard.

## 12. Crime and Disorder Act Implications

12.1 There are no implications.

## 13. Risk Management Implications

13.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that the determination of planning applications must be made in accordance with

the policies of the development plan unless material considerations indicate otherwise. If this is not done, any decision could be susceptible to an application for Judicial Review.

#### 14. **Human Rights Act Implications**

- 14.1 The Human Rights Act requires the County Council to take into account the rights of the public under the European Convention on Human Rights and prevents the Council from acting in a manner which is incompatible with those rights. Article 8 of the Convention provides that there shall be respect for an individual's private life and home save for that interference which is in accordance with the law and necessary in a democratic society in the interests of (inter alia) public safety and the economic wellbeing of the country. Article 1 of protocol 1 provides that an individual's peaceful enjoyment of their property shall not be interfered with save as is necessary in the public interest.
- 14.2 For an interference with these rights to be justifiable the interference (and the means employed) needs to be proportionate to the aims sought to be realised. The main body of this report identifies the extent to which there is any identifiable interference with these rights. The Planning Considerations identified are also relevant in deciding whether any interference is proportionate. Case law has been decided which indicates that certain development does interfere with an individual's rights under Human Rights legislation. This application has been considered in the light of statute and case law and the interference is not considered to be disproportionate.
- 14.3 The Committee should also be aware of Article 6, the focus of which (for the purpose of this committee) is the determination of an individual's civil rights and obligations. Article 6 provides that in the determination of these rights, an individual is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal. Article 6 has been subject to a great deal of case law. It has been decided that for planning matters the decision making process as a whole, which includes the right of review by the High Court, complied with Article 6.

**Michael Elkington**

Head of Planning Services

#### **Background Papers:**

##### **List of Appendices**

Appendix 1 – Reason for Refusal

[Appendix 2 – Site Location Plan](#)

[Appendix 3 – Approved Site Layout](#)

Contact: Chris Bartlett, ext. 26946

## **Appendix 1: Reason for Refusal**

1. The establishment of a site liaison group would enable on-going dialogue between residents, the site operator, and regulators about site operations, particularly the management of the height of stockpiles. The proposed removal of the condition would reduce the opportunity for this dialogue to take place, resulting in increased potential for impacts on residential amenity and the environment. Therefore, the proposal is considered contrary to policy W19 of the West Sussex Waste Local Plan, which supports the establishment of liaison groups to address issues arising from the operation of major waste sites.

### **INFORMATIVE**

- A. The County Planning Authority has acted positively and proactively in determining this application by passing on the comments of consultees to the applicant to address. Despite this, the County Planning Authority has not been able to grant planning permission as the proposal does not accord with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.