

Local Members' Interest	
Mr. A. Dudson	Cannock Chase - Brereton and Ravenhill

PLANNING COMMITTEE – 5 JUNE 2014

WASTE COUNTY MATTER

CANNOCK CHASE: CH.13/10/725 W

Date Received: 2 JANUARY 2014

C. Elwell Transport (Repairs) Ltd., application for permanent planning permission for the storage and crushing of construction waste materials and associated products on land off the Rugeley Eastern Bypass; and, River Channel Widening Mitigation Scheme on adjacent land.

Background/Introduction

1. Temporary planning permission was first issued in 2005 to enable existing recycling operations to be re-located from land that was required to construct the Rugeley Eastern Bypass. The bypass opened in 2007.
2. Planning Committee approved a second temporary planning permission in April 2012 to allow more time for the applicant to conclude discussions with the Environment Agency on ways to overcome their objections to the site on flood risk grounds. Those discussions have now been concluded and a River Channel Widening Mitigation Scheme has been prepared and submitted as part of this application. The Planning Committee Report dated 5 April 2012 and Minutes provide the background to this application and are attached as Appendix 1. Members are advised to read the 2012 report (particularly the 'Observations' section starting at paragraph 37) and minutes before proceeding to read this report.

Summary of Proposals

3. This is an application to make permanent the temporary permission for an inert waste facility. The amount of waste stored, treated, recycled and disposed of each year is estimated to be about 18,000 tonnes, although the applicant admits that this has been significantly reduced in recent years due the economic downturn.
4. The site would continue to be used to stockpile inert construction and demolition waste until there are sufficient quantities on site to use the crusher-screener to produce recycled aggregates for sale. Soils have been stripped from the site and used to construct storage/screen bunds on the southern and eastern boundaries.
5. Access to the site is gained from a length of road from the bypass which runs alongside Rising Brook and which passes through an existing railway underpass (Bridge No.2) to enter the site.

6. It is proposed that the material would continue to be stored in mounds not exceeding the height of the adjacent railway embankment (approx. 8 metres high).
7. It is proposed that the site would continue to operate 24 hours a day / 7days a week except for the operation of the screener and crusher which would operate between 5.00am to 10.00pm each day.
8. It is relevant to note that the applicant requires Environmental Permits from the Environment Agency and from Cannock Chase Council.
9. When asked, the applicant agreed to re-position part of the large stockpile and low bund that currently exists on the site in direct line with the underpass in order to conform with the proposed site layout plan.
10. The applicant has expressed a willingness to make a financial contribution of £11,500, secured by a S106 Legal Agreement, to compensate for the loss of the Green Space Network (the sum recommended by Cannock Chase Council). The applicant provided a copy of comments from an officer at Cannock Chase Council which explained what the Council 'have in mind is improving access to land between the canal and the Towers Business Park which the Council has recently obtained from the Homes and Communities Agency and which has the potential to be laid out as public open space and added to the Green Space Network.' [According to Cannock Chase Council, the sum reflects a proportion of the increase in value of the recycling site if made permanent compared to its previous use as agricultural land.]
11. A River Channel Widening Mitigation Scheme is also proposed to compensate for the 7,186 square metres of flood plain capacity currently occupied by the recycling site. A piece of land between the site and the River Trent, owned by the applicant, measuring about 100 metres in length by between 15 and 30 metres wide, would be lowered by about 1.5 to 2 metres, so that it was approximately 1.3 to 1.5 metres above the river bed level. The excavated material would need to be tested for contaminants before a suitable method of disposal was determined. The lowered land would be suitable to create a wetland habitat.
12. The applicant has also expressed a willingness for the matters raised by consultees and the Case Officer regarding landscaping and the position of the storage mound to be addressed by planning conditions.
13. The following documents and plans accompany the application form:
 - Supporting Statement and Additional Supporting Information
 - Planning Statement
 - Design and Access Statement
 - Flood Risk Assessment
 - Hydromorphic Audit Report
 - Ecological Survey Report
 - Recycling Yard - layout plan
 - Proposed Channel Widening drawing

Environmental Impact Assessment

14. In accordance with the Town and Country Planning (Environmental Impact Assessment) Regulations 2011, the County Council gave a "Screening Opinion" that the proposed development was not EIA development and therefore need not be supported by an Environmental Statement (ref. SCE.176/CH.13/10/725 W).

Site and Surroundings

15. The recycling site was originally pasture land and lies in the flood plain (Flood Zone 3b) about 30 metres to the south of the River Trent, adjacent to the railway embankment of the Cannock-Rugeley branch railway line. Access is obtained from the Rugeley Eastern Bypass and an underpass through the railway embankment. The river channel widening land lies between the site and the river.
16. On the opposite side of the River Trent the agricultural land rises up to the West Coast Mainline railway. To the south of the site there is marshy land together with a tree lined spur off the branch railway line leading to the Rugeley Power Station and beyond is the power station coal-stocking area and power station itself. To the east there is an open water course and the Lakeside Golf Club. The Power Station Road Industrial Estate is situated to the west of the bypass. The nearest residential properties are on Leathermill Lane and Love Lane, some 360 metres to the west of the site and separated from it by the railway embankment, bypass and Power Station Road Industrial Estate. Nearby businesses include the Rugeley Power Station, JCB Cab Systems and the Lakeside Golf Club.

Relevant Planning History

17. The Rugeley Eastern Bypass – Phase 2 was granted planning permission in November 1997 (ref. CH.97/209, L97/396 and S.34762) and varied in October 2004 (ref. CH.02/09 – landscaping and potential archaeological interest). The line of the road passed through the centre of the applicant's original site off Power Station Road. In response to objections to the Compulsory Purchase Order and Side Order 2001 the County Council agreed in 2001 to continue to support the applicant in trying to find a suitable alternative site for the relocation of the mineral storage and production facility. In 2005/2006 the applicant's business was relocated onto the temporary site to allow the bypass to be constructed. The phase 2 part of the bypass was opened to the public on 29 September 2007.
18. The applicant's original site off Power Station Road was granted a Certificate of Lawfulness (CLU) on 2 September 2005 (ref. CH.05/13/700 W). The CLU confirmed that the use of the land for the importation, storage, processing and sale of ash, light and heavy aggregates, construction waste and associated products had taken place for more than 10 years. There are no conditions on the CLU controlling the use of the land therefore the site can be operated without any limitations or restrictions. The remaining parts of the original site to the east and west of the bypass retain their CLU status and continue to be used to store construction and demolition waste.
19. A temporary planning permission for the storage and crushing of construction waste materials and associated products for resale was first granted for this site in October 2005 (ref CH.02/02/725 W). The temporary permission required the cessation of the

importation of waste and recycleable materials by 1 December 2007 and the site to be restored back to agriculture by 1 September 2008.

20. A further temporary planning permission was granted on 27 April 2012 (ref. CH.07/04/725 W) which required the importation of waste or recyclable materials to cease by 30 April 2013 and the site to be restored by 1 September 2013.

The relevant Development Plan policies and proposals

21. The Staffordshire and Stoke-on-Trent Waste Local Plan (2010 to 2026) policies:

- National Policy – Presumption in favour of sustainable development
- 1.1 – General principles (refers to use of waste as a resource and mitigating any adverse effects);
- 1.3 – Construction, Demolition and Excavation waste (CD&E waste) (supports proposals to recycle such waste);
- 2.1 – Landfill diversion targets (refers to minimum targets including 70% diversion from landfill of CD&E waste by 2020/21);
- 2.3 – Broad locations (supports the development of waste management facilities, including facilities for the storage and treatment of CD&E waste close to Large Settlements – including Rugeley);
- 3.1 – General requirements for new and enhanced facilities (refers to the location of facilities within buildings where practicable, an improvement programme for existing facilities and compatibility with nearby uses);
- 3.4 – Temporary planning permission for open air facilities (refers to situations when doubts remain);
- 4.1 – Sustainable design (refers to the importance of high environmental standards, compatibility with adjoining uses, measures to adapt to climate change and contribute to green infrastructure);
- 4.2 – Protection of environmental quality (refers to the balance between the material planning benefits and material planning objections, mitigation or compensation for impacts and consideration given to the effects on people, the highway network and the environment (including the risk of flooding))

22. The Cannock Chase District Local Plan (adopted 1997) 'saved policies':

- B6: Green space network
- PEP1: Water pollution prevention
- PEP3: Flood defence
- E3: Design and landscaping
- E7: Improvements to existing industrial areas
- E8: Development outside existing industrial areas
- E9: Non-conforming uses

Other material considerations

23. The other material considerations are listed below:
- The National Planning Policy Framework (published on 27 March 2012) including the following sections:
 - 4 (Promoting sustainable transport)
 - 7 (Requiring good design)
 - 10 (meeting the challenge of climate change, flooding
 - 11 (conserving and enhancing the natural environment)
 - The National Planning Policy Framework Technical Guidance (refers to flood risk including the sequential and exception tests and site specific flood risk assessments)
 - Planning Policy Statement 10 (PPS10) – Planning for Sustainable Waste Management
 - Updated National Waste Planning Policy: Planning for Sustainable Waste Management – Consultation by DCLG July 2013. Note that the consultation ended on 23 September 2013. The intention of the consultation was to update and replace existing national waste planning policy contained in Planning Policy Statement 10: Planning for sustainable waste management published in July 2005 and revised in March 2011; and for the updated policy to sit alongside the proposed new Waste Management Plan for England, published for consultation by the Department for Environment, Food and Rural Affairs on 15 July 2013.
 - Cannock Chase Local Plan – Part 1 (with Main Modifications and Additional (minor) Modifications) is due for adoption in June 2014. The relevant policies are:
 - CP1 – Strategy (refers to the presumption in favour of sustainable development)
 - CP2 – Developer Contributions for Infrastructure
 - CP3 - Chase Shaping – Design (refers to the protection of amenity and landscape enhancement)
 - CP5 – Social Inclusion and Health Living (refers to the presumption against the loss of existing green space network sites / compensation for the loss)
 - CP12 – Biodiversity and Geodiversity (refers to the protection and enhancement of biodiversity)
 - CP14 – Landscape Character....(refers to the protection and enhancement of landscape character)
 - CP16 – Climate Change and Sustainable Resource Use (refers to adaptation to climate change, measures to reduce pollution, support for recycling and consideration of flood risk)
 - Strategic Approach - Green Infrastructure – ‘The current (partially revised) Green Space Network will generally be protected and opportunities to

improve its coverage and multi-functional character maximised; the Site Allocations DPD will provide a full revision to the network.'

- Green Space Network shown on the Policies Map will be updated as part of Local Plan – Part 2
- Rugeley and Brereton – Vision for 2028 – refers to 'the environment (being) carefully managed to minimise flood risk' and other key implications refer to 'developments to account for the sensitive River Trent environment'

Findings of Consultations

Internal

24. The Environment Advice Team (EAT) raised no objection and recommended conditions to limit the height of stockpiles and to require details of planting and seeding of the bunds and flood compensation area to be provided to minimise the visual and ecological impact.
25. Transport Development Control (on behalf of the Highways Authority) raised no objections and recommended a condition to require details of wheel washing facilities to be submitted (e.g. details of a pressure washer to be used during inclement weather).

External

26. The Environment Agency (EA) object in principle to the proposed development due to its position in the functional floodplain. However the EA is satisfied that:

'the proposed channel widening scheme will ensure that there is no increase in the Flood Hazard rating both upstream and downstream of the site.'

27. The EA also confirmed that:

'Should Staffordshire County Council be minded to approve this planning applications and provided that the development is completed in accordance with the specific details in the design outlined within the supporting Flood Risk Assessment, Hydromorphic Report and drawing, we would not wish to report this to the Secretary of State.'

28. The following consultees raised no objections and / or had no comments to make:

- English Heritage
- Network Rail
- The Canal and River Trust
- South Staffordshire Water

Views of District/Parish Council

29. Cannock Chase Council raised no objection subject to:

- the objections by the Environment Agency being addressed to the satisfaction

of the County Council;

- the applicant making a financial; contribution of £11,500 payable to Cannock Chase Council, secured by a Section 106 Legal Agreement, to compensate for the permanent loss of Green Space Network; and,
- appropriate conditions to adequately control the height of stockpiles and to provide landscaping to further screen the site from the wider area.

30. Lichfield District Council (adjoining authority) raised no objection subject to appropriate landscaping to aid the screening of the site. The District Council also passed on comments from one of their Councillors who mentioned the need for landscaping, the risk of expansion if HS2 were to go ahead, the growth taking place in the area and the lack of complaints about the operations.
31. Brereton and Ravenhill Parish Council and Rugeley Town Council submitted similar letters of objection.
32. The two Councils asked for the application to be considered by the Planning Committee for the following reasons:
- a) 'the long history of non-compliance with planning law, which the County Council has not enforced against' can be seen;
 - b) 'the public can see how an authority that so seriously failed to protect the public interest conducts itself';
 - c) 'the County Council's inaction (which) gives rise to legitimate public concern' can be seen;
 - d) the legitimate concerns of businesses in Power Station Road and housing in the vicinity of Station Road about large development in the flood plain of a main river, downstream, can be expressed;
 - e) 'comments made to former County Councillor Mr Eastern (which) indicate that immaterial factors in the form of a fear (misplaced) of compensation liability have been borne in mind by the County Council in its favourable treatment of the developer, that has for a long time acted unlawfully contrary to the County Council's own policy in respect of waste development in flood plains. Considering the matter behind closed doors would reinforce public concerns about this.'
33. The two Councils consider that the application should be rejected for the following reasons:
- a) The site is unsuitable being in the Green Space Network;
 - b) It is visible from the Rugeley / Brereton railway and such a 'dirty use' would create an unfavourable impression of the area;
 - c) The site is in the functional floodplain of the River Trent (flood zone 3b) and upstream houses and businesses would be at risk of flooding, contrary to the

NPPF;

- d) The Environment Agency's position is subject to a proviso about compliance with the FRA; the applicant has longstanding breaches of planning law and the County Council has been unwilling to enforce against serious breaches both here and at the former Brereton Colliery site - so 'assuming that this would occur would be a triumph of hope over experience';
- e) The applicant's claim that there is no alternative site is self-serving, not supported by evidence and inherently implausible;
- f) Granting planning permission would place homes and businesses at risk of flooding. 'Combined with past failings of the County Council in respect of this matter and evidence that it was motivated by a misplaced financial fear irrelevant to planning, the County Council would be at risk of large liability under negligence and perhaps also misfeasance for the flooding concerned.'

34. Colton Parish Council made no comments.

Publicity and Representations Received

35. Site notice: YES Press notice: YES
36. Neighbour notification letters were sent to the nearby businesses mentioned earlier and no representations have been received.

Applicant's submission

37. A supporting statement accompanies the application. The statement explains that the construction of the bypass necessitated the relocation of the business on to land nearby owned by the applicant. In the statement the applicant explained that:
- a) Delays in progressing the applications for the site were caused initially by the need to complete a Flood Risk Assessment and satisfactory flood compensation scheme with the Environment Agency and more recently by the need to agree compensation for the loss of Green Space Network with Cannock Chase Council;
 - b) The County Council have expended considerable sums of money in establishing the new site'. 'It is therefore eminently sensible that the site be considered as a permanent one'
 - c) The site is 'well concealed from public view' and 'the County Council and the applicant have searched extensively but unsuccessfully for suitable alternative sites, which for operational reasons, must be close to the Company headquarters in Power Station Road.'
 - d) 'Both the County Council and the applicant have searched extensively for 11 years, but unsuccessfully for alternative sites which, for operational reasons, must be close to the Company Headquarters and garaging and fuelling facility in Power Station Road. Sites for such 'dirty uses' are not easy to find locally'.

38. The applicant was also asked by the Case Officer to explain the role of the remaining parts of the CLU land to see whether it was reasonable and practicable to consolidate the waste operations on to the site or to impose restrictions to control the impact of the operations on the remaining parts of the CLU land. The applicant's agent responded as follows:
- a) The CLU was granted in 2005 and followed an Enforcement Appeal which the County Council lost (see 'Relevant Planning History' above).
 - b) The CLU site was divided in to two by the bypass. The CLU site measured 8,700 square metres (2.15 acres); whereas the application site only has an 'effective area' of 5,040 square metres. The two remaining parts of the CLU site are therefore needed for storage space. The two parts have an 'effective area' of 2,017 square metres and 3,023 square metres. [Using the applicant's own figures, that amounts to 10,080 square metres of 'effective' waste storage and processing space.]
 - c) 'valuable construction waste material' remains below the surface level of the CLU land;
 - d) both parts of the CLU site are used to store surplus waste prior to processing on the site.
 - e) The underpass to the main site presents practical difficulties in bringing large plant on to the site. For example, to bring a static screener on to the main site, first it has to be partially stripped down on eastern-most part of the remaining CLU site.
 - f) The western-most part of the CLU site is above the level of the bypass and the highway landscaping scheme screens the site. The eastern-most part of the CLU also benefits from the highway landscaping scheme which is now maturing.
 - g) A permission for offices to be built on one part of the CLU site was not implemented or renewed due to an objection by the Environment Agency.
39. The applicant is willing to accept a limitation of 4 metres on the height of stockpiles 'as per original submission'. The applicant also confirmed that steps are already taken to prevent materials being deposited on the public highway and to suppress dust and no complaints have ever been made during their use of the site. [These 'off-site' undertaking would need to be secured as part of a Section 106 Legal Agreement – see below.]

Observations

40. This is an application for permanent planning permission for the storage and crushing of construction waste materials and associated products on land off the Rugeley Eastern Bypass and River Channel Widening Mitigation Scheme on adjacent land.
41. Having given careful consideration to the application, the supporting information, the additional information subsequently provided, the relevant development plan policies,

the other material considerations, the consultation responses, and, the representations, referred to above, the key issues are considered to be:

- The prescribed requirements of an application to make the site permanent
- The need for a Section 106 Legal Agreement
- The matters raised by the Parish and Town Councils

The prescribed requirements of an application to make the site permanent

42. Earlier Members were advised to read the preceding committee report and minutes from April 2012 which considered the waste and general planning policy; the flood risk and green space network; and, the overall suitability of the location (see Appendix A). In summary the committee report concluded that:
- a) the proposals were the 'right type' as they generally accord with waste planning policy in so far as they would help to :
 - i. reduce the amount of waste being landfilled;
 - ii. increase the use of secondary aggregates; and,
 - iii. reduce our reliance on primary minerals
 - b) It was not the 'right time' to make the permission permanent as there were unresolved matters related to flood compensation and the impact on the Green Space Network. [Members accepted the recommendation in the report to grant a further temporary permission to enable those matters to be addressed. This report will consider those matters later.]
 - c) The proposals were broadly in the 'right place' being within or close to the 'Large Settlement' of Rugeley, however although adjacent, the application site was outside the boundary of the established Power Station Road industrial estate and was within the floodplain and Green Space Network around Rugeley. It was also acknowledged that the nature of the operations meant that they needed to be carried out in the open air; there was good access to the Rugeley Eastern Bypass; and, the site was generally well screened by railway embankments and was seen in the context of the Rugeley Power Station. The fact that the site had been operating since 2005 also meant that the character and effects were known and it was noted that no complaints had arisen in that time from members of the public about the operations.
 - d) The flood risk policy considerations were considered. [The report referred to government guidance in PPS25 but it should be noted that following completion of the report the government published new National Planning Policy Framework (NPPF) and accompanying Technical Guidance. The key guidance from PPS25 was transferred to the NPPF and Technical Guidance and this was explained to the Members in a preceding report at the committee meeting and in a verbal up date to the report itself. For the avoidance of doubt, the guidance in the NPPF is repeated below:

100. 'Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk, but where

development is necessary, making it safe without increasing flood risk elsewhere.'

101. The aim of the Sequential Test is to steer new development to areas with the lowest probability of flooding. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. The Strategic Flood Risk Assessment will provide the basis for applying this test. A sequential approach should be used in areas known to be at risk from any form of flooding.

102. If, following application of the Sequential Test, it is not possible, consistent with wider sustainability objectives, for the development to be located in zones with a lower probability of flooding, the Exception Test can be applied if appropriate. For the Exception Test to be passed:

- it must be demonstrated that the development provides wider sustainability benefits to the community that outweigh flood risk, informed by a Strategic Flood Risk Assessment where one has been prepared; and*
- a site-specific flood risk assessment must demonstrate that the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.*

Both elements of the test will have to be passed for development to be allocated or permitted.

103. When determining planning applications, local planning authorities should ensure flood risk is not increased elsewhere and only consider development appropriate in areas at risk of flooding where, informed by a site-specific flood risk assessment following the Sequential Test, and if required the Exception Test, it can be demonstrated that:

- within the site, the most vulnerable development is located in areas of lowest flood risk unless there are overriding reasons to prefer a different location; and*
- development is appropriately flood resilient and resistant, including safe access and escape routes where required, and that any residual risk can be safely managed, including by emergency planning; and it gives priority to the use of sustainable drainage systems.*

Table 3 in the NPPF indicates that the 'Exception Test' is not required in this case as the development is in 'Zone 3b – functional floodplain' and categorised as 'less vulnerable.']

- e) The site is categorised as 'less vulnerable'; the 'sequential concluded that no suitable alternative sites were available; and, the 'exception test' (even if applicable) concluded that there were sustainability benefits but more information was required. [The site specific Flood Risk Assessment and River

Channel Widening Mitigation Scheme which accompanies this application is considered later.]

- f) The site formed a part of the Green Space Network identified in the Cannock Chase Local Plan (the report explained that if this was an overriding factor against the proposals then the Committee needed to balance it with a lack of reasonable alternatives, the loss of site recycling capacity although this is capable of being addressed but not in Rugeley, a local business and some local jobs). [The proposed financial compensation for the loss of the GSN is considered later.]
- g) In terms of the overall suitability of the location, having regard to the relevant policy considerations, it was concluded that the site failed to meet the policy tests.
- h) The 'Conclusions' in the report helpfully summarise what was acknowledged to be a complex case, so they are worth repeating:

Conclusions

59. This is a complex case where there are factors in favour of the proposals and against it and they are:

Factors in Favour

- It would help to reduce the amount of waste being landfilled
- It would also increase the use of secondary aggregates
- It would help to reduce our reliance on primary minerals
- It would also help towards maintaining CD&E recycling capacity in the plan area [CD&E – Construction, Demolition and Excavation waste]
- It would provide an opportunity to manage wastes locally
- There have been no flooding complaints from the Environment Agency
- It has not been expedient to take enforcement action against the operations even though the operations have been without planning controls for over 3 years
- The development is of the right type in waste planning policy terms
- The site meets the broad locational strategy in the JWCS (Large Settlement -Rugeley) [JWCL - Joint Waste Core Strategy – referred to in this report as the Waste Local Plan]
- The nature of the business is that it is normally operated in the open and to require it to be fully enclosed would involve placing the operations in a large building in the floodplain which is totally unacceptable.

- The site has operated under a temporary permission without complaints from members of the general public.
- There are no noise, dust or traffic objections
- A consultants flood report concluded that a selected floodplain compensation area located on adjacent high ground could overcome the loss in floodplain capacity generated by the waste recycling site. The hydraulic model results show that no additional flood risk to residential properties would be generated by the waste recycling site if combined with the proposed floodplain compensation scheme.
- Following searches by both the applicant and the County Council no suitable or reasonable alternative sites have been identified.
- It appears to meet the sequential test defined in PPS 25 [now in the NPPF and Technical Guidance]
- It partly meets the Exception Test in PPS25 [now in the NPPF and Technical Guidance] but needs firm proposals on adjacent land to come forward as a planning application

Factors Against

- It lies adjacent to but outside the boundary of the established Power Station Road industrial estate
- It lies within the functional floodplain
- It lies within the green space network around Rugeley defined in the Local Plan
- the site is visible from the West Coast mainline railway line, the Cannock Branch railway line and in places from the Rugeley Eastern bypass.
- It does not totally meet the Exception Test in PPS25 [now in the NPPF and Technical Guidance] and relies upon land coming forward not in the applicant's ownership and the need for a specific planning permission [the proposed River Channel Widening Mitigation Scheme land is in the applicant's ownership]
- the development is unlikely to minimise the impact on people, transportation systems and the environment by ensuring that the development is suitably located in terms of waste planning policy
- Any loss of waste capacity can be replaced by other sites subject to planning approval

60. On balance in the absence of any suitable alternative sites and that

refusal of planning permission would lead to the closure of a local business and local jobs in Rugeley and the possible flood risk could be addressed by adjacent land coming forward for development and taking into account the factors in favour and against it is recommended that a further temporary period of 12 months be granted. This will allow time for the applicant to submit a suitable scheme and planning application to deliver the flood compensation measures the consultant's report says is viable and feasible on adjacent higher ground.

61. Accordingly it would not be appropriate to recommend that a permanent planning permission be granted in the absence of that planning application for a scheme of flood compensation measures linked to the recycling operations.

43. The Decision Notice that followed included an informative which prescribed the requirements for the consideration of this application. The informative explained that:

'in the event that an application is made to make the site permanent then the following matters would need to be addressed by the applicant and taken into account by the Waste Planning Authority: [The 'matters' are repeated in italics below followed by a commentary]

a) *The satisfactory track record of the operation of the Site;*

The Environment Agency, Cannock Chase Council's Environmental Health Officer and the Planning Regulation Team made no mention of any complaints about the site operations. Lichfield District Councillor Barnett also commented that she was not aware of any complaints about the site.

b) *The design, layout and operation of the site;*

The design, site layout and operations are unchanged. The County Council's Environmental Advice Team and Cannock Chase Council have asked for improvements to be made to the landscaping of the site and the applicant is agreeable to making such improvements if the site is permitted on a permanent basis. The details, secured by conditions or as part of the S106 Legal Agreement, would need to include:

- i. improvements to the bunds around the southern and eastern sides of the site and the planting thereon;
- ii. the removal of the surplus material from the River Channel Widening Mitigation Scheme land and the planting and aftercare of the land to create a wetland habitat (including the possible use of the material to improve the screening of the site if suitable (for example the presence of Hogweed may prevent its use on the main site)); and,
- iii. the re-positioning of part of a large storage mound and smaller bund to conform with the site layout plan, which for flood mitigation reasons requires a clear path to be maintained in a line with the underpass (the applicant has agreed to move the mound).

The applicant has also agreed to the conditions of the earlier permissions being imposed on the permanent site, including the operating hours and the storage mound height restriction.

- c) *The provision of a full Flood Risk Assessment which should satisfy the requirements of the Environment Agency;*

As stated earlier, a full Flood Risk Assessment (FRA), Hydromorphic Report and Proposed Channel Widening drawing, (prepared by JBA Consultants who prepare the FRA for the bypass), has been submitted and considered by the Environment Agency (the EA). Whilst the EA maintain their objection in principle, due to the location of the site in the functional floodplain, they are satisfied that:

'the proposed channel widening scheme will ensure that there is no increase in the Flood Hazard rating both upstream and downstream of the site.'

The EA have also confirmed that:

'Should Staffordshire County Council be minded to approve this planning application and provided that the development is completed in accordance with the specific details in the design outlined within the supporting Flood Risk Assessment, Hydromorphic Report and drawing, we would not wish to report this to the Secretary of State.'

- d) *The location, and detailed (landscape, technical and engineering) design of an appropriate flood compensation area on adjacent higher ground taking into account the need to protect the Site of Biological Interest, the bank of the River Trent and the structural integrity of the adjacent West Coast mainline railway;*

The applicant's initial plan was to devise a flood compensation scheme involving land on the opposite side of the River Trent but no agreement could be reached with the land owners to enable this to happen and the proposed River Channel Widening Mitigation Scheme on the applicant's own land was developed instead. The EA, the County Council's Environmental Advice Team, English Heritage, Network Rail and the Canal and River Trust have raised no objections to the scheme.

- e) *The detailed design, method(s) and arrangements for the removal and appropriate disposal of any materials excavated to construct the flood compensation area including the means of access, duration of the operations and the measures to be taken to minimise the risk of environmental, amenity and flooding harm to the Site and surrounding land including land up or down stream which lies in the functional floodplain;*

The EA have confirmed that they would be satisfied if the scheme was carried out in accordance with the details outlined in the Flood Risk Assessment, Hydromorphic Report and Proposed Channel Widening drawing. The implementation of the scheme would be more straight forward compared to the initial scheme as it involves land immediately adjacent to the main site rather than on the opposite side of the river and in separate ownership (it is nevertheless considered necessary to secure the undertaking by S106 legal agreement – see below).

- f) *Consult Staffordshire County Council's environmental specialists and Staffordshire Wildlife Trust if the flood compensation area falls all or partially within the Site of Biological Importance to determine appropriate ecological protection and enhancement measures prior to making an application;*

The River Channel Widening Mitigation Scheme land does not fall within the Site of Biological Importance. An Ecological Survey Report accompanied the application.

The County Council's Environmental Advice Team was consulted on the application and raised no objections. The Staffordshire Wildlife Trust are no longer routinely consulted on planning applications and only comment when they consider it to be in their interest to do so. They have passed no comments on this application.

- g) *Flood compensation area design and management plan incorporating appropriate ecological protection and enhancement measures;*

The Ecological Survey Report recommended a number of '*ecological protection and enhancement measures*' concerning the River Channel Widening Mitigation Scheme. These can be secured as part of the S106 legal agreement - see below.

- h) *A programme of implementation for the flood compensation project;*

The EA have confirmed that they are satisfied with the River Channel Widening Mitigation Scheme, which can be secured as part of the S106 legal agreement..

- i) *Written confirmation that agreements are in place with the relevant landowners and those with an interest in the land forming the flood compensation area to ensure that the flood compensation measures can be constructed and maintained for the life of the operations of the waste management facility; and,*
- j) *An appropriately worded legal agreement providing for the construction and maintenance of the flood compensation area linked to the operation of the waste management facility;*

As mentioned above, it was initially anticipated that the flood compensation measures would include third party land on the opposite side of the River Trent. This is no longer the case. It would nevertheless be necessary to require that the flood compensation scheme to be carried out and maintained. These requirements can be secured by S106 legal agreement – see below.

- k) *A satisfactory landscaping scheme which should seek to minimise the visual impact of the Site and compensate for the loss of green space network, be sympathetic to landscape character and quality and make an appropriate contribution to landscape enhancement; the landscape policy objective that applies to this area.*

The Cannock Chase Local Plan saved policy B6, the Cannock Chase Local Plan – Part 1 (due to be adopted this month) - Policy CP5 and the "Strategic approach" all seek to protect the Green Space Network, look for compensation for any loss and look for opportunities to improve its coverage and maximise its multi-functional character. The new Plan also seeks to ensure that development takes account of

'the sensitive River Trent environment'. As mentioned above, the County Council's Environmental Advice Team and Cannock Chase Council have asked for improvements to be made to the landscaping of the site and the applicant is agreeable to making such improvements if the site is permitted on a permanent basis. Cannock Chase Council also recommended that a financial payment be made to them to compensate for the loss of the Green Space Network. According to comments provided by an officer at Cannock Chase Council to the applicant the Council have in mind to improve access to land between the canal and the Towers Business Park which the Council has recently obtained from the Homes and Communities Agency and which has the potential to be laid out as public open space and added to the Green Space Network. The applicant is agreeable to making a financial payment to compensate for the loss a payment which would have to be secured by a Section 106 Legal Agreement – see below. The Flood Risk Assessment, Hydromorphic Report and Proposed Channel Widening drawing that accompanied the application demonstrated that the proposed River Channel Widening Mitigation Scheme would not harm the River Trent and presented an opportunity to provide some enhancement.

The need for a Section 106 Legal Agreement

44. The applicant has offered to provide a financial contribution to compensate for the loss off the Green Space Network; proposed the River Channel Widening Mitigation Scheme on adjacent land and off-site controls on the remaining CLU land have been identified. Such undertakings are normally secured by a Section 106 Legal Agreement (Section 106) but before recommending that a Section 106 be signed it is first necessary to determine whether or not the undertakings meet the tests set out in the NPPF (paragraph 204). The 3 tests are that the undertakings should be:
- a) necessary to make the development acceptable in planning terms;
 - b) directly related to the development; and,
 - c) fairly and reasonably related in scale and kind to the development.
45. In this case it is considered that the proposed undertakings would meet the tests referred to above for the reasons discussed below.
- a) The site is currently designated as Green Space Network (ref. Cannock Chase Local Plan saved policy B6 and Cannock Chase Local Plan – Part 1 – Policy CP5 and the 'Strategic approach') seek to secure compensation for the loss of Green Space Network. Cannock Chase Council have determined that a financial contribution of £11,500 would compensate for the permanent loss (the sum reflects a proportion of the increase in value of the recycling site if made permanent compared to its previous use as agricultural land). According to the comments made by an officer acting for Cannock Chase Council, the Council intend to use the money to improve access to land between the canal and the Towers Business Park which the Council has recently obtained from the Homes and Communities Agency and which has the potential to be laid out as public open space and added to the Green Space Network.'
 - b) The proposed River Channel Widening Mitigation Scheme affects land adjacent to the main site. It is considered that this is necessary, directly related to the

development and fair and reasonable in scale and kind to compensate for the loss of functional flood plain. Notwithstanding the fact that the land falls within the land edged red (i.e. forming part of the application area) and could be controlled by planning conditions, it is considered to be essential that this important undertaking is secured as part of the Section 106 to ensure that it is fully implemented within a reasonable timeframe.

- c) The original intention was to re-locate the waste business however the applicant contends that the 'effective area' is not equivalent to his original site, confirmed by the CLU. In fact, using the applicant's own figures, the combined 'effective area' of the main site and the two remaining parts exceeds the original CLU area by 1,380 square metres. PPS10 and the Waste Local Plan policies 2.1, 2.3 and 3.1, 4.1 and 4.2 all seek to locate waste management facilities in the right place and raise the environmental standards of existing waste management facilities. This site is not ideally in the right place (being in a functional flood plain and in the Green Space Network) but mitigation measures would help to overcome this consideration (the River Channel Widening Mitigation Scheme and the financial contribution). In this case some discussion has taken place with the applicant about the opportunity to consolidate the waste operations on to the main site. As described earlier, the combination of the main site and the remaining parts of the CLU land would result in an overall increase in the 'effective area' to carry out waste operations. The applicant contends that the remaining CLU land is primarily required to provide additional storage capacity but also helps to overcome restrictions to the access to the main site caused by the underpass. In these circumstances it is considered that the following undertakings would go some way to raising environmental standards and meet the 3 tests described above:
- i. limiting the height of stockpiles of the permitted waste, recyclable or recycled materials to 4 metres when compared to the ground level on land adjoining the CLU land;
 - ii. requiring steps to be taken to prevent the deposit of deleterious material from on the public highway; and,
 - iii. limiting the use of the land to the storage of the permitted waste, recyclable or recycled materials (such that no processing takes place on the CLU land)

The matters raised by the Parish and Town Councils

46. Brereton and Ravenhill Parish Council and Rugeley Town Council ('the two Councils') submitted the same comments which were critical of the County Council. The comments of the two Councils' are repeated below in italics followed by a commentary.
47. First, why the two Councils considered that it was important that this application was determined by the Planning Committee.
- a) *'the long history of non-compliance with planning law, which the County Council has not enforced against' can be seen;*

It has not been expedient to take enforcement action against the applicant at various

times following the first temporary planning permission. This approach has been consistent with the County Council's '[Local Monitoring and Enforcement Plan](#)' and the National Planning Policy Framework which states that:

'Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control'

As stated earlier, no complaints have been received about the operations taking place on the site which may have prompted action prior to determination of the applications, or prior to the submission of applications at various times.

b) *'the public can see how an authority that so seriously failed to protect the public interest conducts itself';*

All of the decisions to grant the temporary permissions and to allow more time to see if a satisfactory solution could be found were made by the Planning Committee. As stated above, having regard to the policies in the Local Monitoring and Enforcement Plan, no complaints have been received about the operations taking place on the site and there is no evidence to suggest that the County Council has '*seriously failed to protect the public interest*'

c) *'the County Council's inaction (which) gives rise to legitimate public concern' can be seen;*

The Planning Committee meetings have been webcast since March 2012, the date when the Committee decided to grant a further temporary permission to allow time to see if a permanent solution could be found.

d) *the legitimate concerns of businesses in Power Station Road and housing in the vicinity of Station Road about large development in the flood plain of a main river, downstream, can be expressed;*

No representations have been received from businesses in Power Station Road or residents in the vicinity of Station Road.

e) *'comments made to former County Councillor Mr Eastern (which) indicate that immaterial factors in the form of a fear (misplaced) of compensation liability have been borne in mind by the County Council in its favourable treatment of the developer, that has for a long time acted unlawfully contrary to the County Council's own policy in respect of waste development in flood plains. Considering the matter behind closed doors would reinforce public concerns about this.'*

This application has been brought before the Planning Committee, as have the earlier applications. This report and the preceding report in April 2012, referred to in some detail above, serves to demonstrate that careful consideration has been only been given to the material planning benefits and material planning objections in this case.

48 Overall, it is considered that the alleged criticisms of the County Council made by the two Councils are unfounded. Throughout, the County Council's Planning Committee has acted in accordance with the relevant development plan policies, in a

transparent way and tried to find a positive solution. Members will be aware that this positive approach is consistent with the presumption in favour of sustainable development described in the Waste Local Plan and in the National Planning Policy Framework. The Waste Local Plan policy states that:

'When considering development proposals the Councils will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework. We will always work proactively with applicants jointly to find solutions which mean that proposals can be approved wherever possible, and to secure development that improves the economic, social and environmental conditions in the plan area.'

49. The two Councils consider that the application should be rejected for the following reasons:

a) *The site is unsuitable being in the Green Space Network;*

Cannock Chase Council have not objected to the loss of the Green Space Network subject to appropriate financial compensation which would be used to enhance land which could then be added to the Green Space Network in due course by the Council during its review of the Green Space Network.

b) *It is visible from the Rugeley / Brereton railway and such a 'dirty use' would create an unfavourable impression of the area;*

The site is visible from the Rugeley / Brereton railway line, as it is from the West Coast Main Line. However this is a fleeting glimpse and set in the context of the massive Rugeley Power Station and urban area of Rugeley.

c) *The site is in the functional floodplain of the River Trent (flood zone 3b) and upstream houses and businesses would be at risk of flooding, contrary to the NPPF;*

The EA have carefully considered the Flood Risk Assessment, Hydromorphic Report and Proposed Channel Widening drawing and confirmed that although they have an objection in principle to development in the functional floodplain, they are satisfied that:

'the proposed channel widening scheme will ensure that there is no increase in the Flood Hazard rating both upstream and downstream of the site.'

d) *The Environment Agency's position is subject to a proviso about compliance with the FRA; the applicant has longstanding breaches of planning law and the County Council has been unwilling to enforce against serious breaches both here and at the former Brereton Colliery site - so 'assuming that this would occur would be a triumph of hope over experience';*

The alleged personal conduct or history of applicant is not usually a material planning consideration and the non expediency of enforcement action in this case has been explained above.

e) *The applicant's claim that there is no alternative site is self-serving, not*

supported by evidence and inherently implausible;

The applicant and the County Council have attempted to identify a suitable site since the CLU land was acquired to construct the bypass but without success. The applicant was moved on to land in his ownership, near to his existing operation, to allow the bypass to be constructed. It has taken a considerable amount of time to identify a suitable scheme to mitigate the impact of the site being in the flood plain and agree it with the Environment Agency. It is now a matter for the Planning Committee to consider whether the proposals before them are acceptable.

- f) *Granting planning permission would place homes and businesses at risk of flooding. 'Combined with past failings of the County Council in respect of this matter and evidence that it was motivated by a misplaced financial fear irrelevant to planning, the County Council would be at risk of large liability under negligence and perhaps also misfeasance for the flooding concerned.'*

['misfeasance' is a legal term which means the improper performance of some lawful act].

For the reasons explained above, namely that the Environment Agency have confirmed that the approval would not increase the risk of flooding; no '*past failings*' have been substantiated or supported by evidence of harm to the public interest as a result of earlier decisions to grant temporary permissions or decisions not to take enforcement action whilst a permanent solution was being sought; moreover, as mentioned by the two Councils, any '*financial fear*' is irrelevant to planning and has had no bearing on the recommendations in the committee reports or the decisions made by the Planning Committee. It should also have no bearing on the decision in this case.

Overall Conclusion

50. Overall, as an exercise of judgement, taking the relevant development plan policies as a whole and having given consideration to application, the supporting information, including the additional information subsequently provided, the consultation responses, the representations and the other material considerations referred to above, it is reasonable to conclude that the application should be permitted, subject to the updated and additional planning conditions and applicant and any other interested parties entering into a Section 106 Legal Agreement, the heads of terms of which are recommended below.

Note: If Members accept the recommendation below to permit, then, as the proposals involve 'major development in a flood risk area to which the Environment Agency has made an objection that it has not been able to withdraw even after discussions with the local planning authority', the [Town and Country Planning \(Consultation\)\(England\) Direction 2009](#) directs that the County Council must 'consult' the Secretary of State for Communities and Local Government (c/o the National Planning Casework Unit) before a decision can be issued. Members are reminded that the EA have confirmed that they '*would not wish to report this [decision] to the Secretary of State.*'

DIRECTOR OF PLACE AND DEPUTY CHIEF EXECUTIVE'S RECOMMENDATION

As the proposals involve major development in a flood risk area to which the Environment Agency has made an objection that it has not been able to withdraw.....

.....to consult the Secretary of State for Communities and Local Government (c/o the National Planning Casework Unit) to advise that having regard to the matters referred to in the report, the County Council is **MINDED TO PERMIT** the proposed development, subject to the applicant and any other interested parties first entering into a Section 106 legal agreement to secure the terms listed below and subject to updated and additional planning conditions also listed below.

In the event that the Secretary of State does not issue a direction, and if the Section 106 Legal Agreement is not signed and planning permission is not issued within 12 months of the date of the resolution to permit, then your officers be authorised to bring a report back to the Planning Committee to allow Members to re-consider the application.

S106 Legal Agreement – heads of terms to include the following:

1. To make a financial contribution of £11,500 to Cannock Chase Council (who will be a party to the agreement in this regard) to compensate for the permanent loss of Green Space Network. The money to be used by Cannock Chase Council in the Rugeley-Brereton area to enhance the Green Space Network within 3 years of receipt of the payment.
2. To require the River Channel Widening Mitigation Scheme (RCWMS) to be carried out as follows:
 - a) The RCWMS to be implemented in accordance with the details outlined in the Flood Risk Assessment, Hydromorphic Audit Report, Ecological Survey Report and shown on the Proposed Channel Widening drawing, and in accordance with further details approved by the Waste Planning Authority. The further details to include but not be limited to:
 - i. the final profiles of the land to create variable depths in accordance with the recommendations in the Ecological Survey Report;
 - ii. the planting scheme to create a wetland habitat in accordance with the recommendations in the Ecological Survey Report (to define the areas to be left to naturally regenerate and the areas to be planted or seeded; the plants and wildflower seed mix; and, the method of application); and, the aftercare of the land;
 - iii. the testing arrangements for contaminants and invasive plant species (the testing also to determine the suitability of the material for use in the screen bunds on the main site. If suitable the material shall be directly used to improve the screen bunds on the main site in accordance an approved landscaping scheme;
 - iv. having regard to (iii) above, the arrangements for the disposal of the material excavated from the land either to the main site as part of the

approved landscaping scheme or removal to a suitably licensed landfill site; and,

- v. the programme for the implementation of the RCWMS.
 - b) To require the RCWMS be carried out within 12 months of the date of the permission, unless otherwise agreed.
 - c) To require that no excavation works be carried out on the land during the bird breeding season (March and September).
 - d) To require a survey of the land, prior to the commencement of any excavations to check for invasive plant species e.g. Giant Hogweed and to carry out appropriate treatment before removal to a licensed landfill site.
 - e) To require that no waste, recycled or recyclable materials, plant, equipment or vehicles encroach from the main site on to the land.
 - f) To require that the land is maintained fit for purpose for the duration of the development taking place on the main site.
3. To agree to the following conditions on the use of the remaining parts of the CLU land:
- a) the height of stockpiles of the permitted waste, recyclable or recycled materials shall not exceed 4 metres in height when compared to the ground level on land adjoining the CLU land.
 - b) steps shall such that deleterious material is not deposited on to the public highway and is removed if it does occur;
 - c) the land shall only be used for the storage of the permitted waste, recyclable or recycled materials (no processing shall take place on the CLU land)

The planning conditions to include the following:

1. To define the permission and the site
2. To limit the permitted use of the site
3. To define the date of commencement
4. To define the cessation of the operations – when waste has not been brought on to the site for a 12 month period – the trigger for a restoration and aftercare scheme to be submitted for approval and thereafter the site to be cleared, restored and subject to aftercare (see conditions 38 to 40 below).
5. To require the permission to be made known to anyone responsible for managing the site
6. To define the waste types - dry solid inert and non-hazardous waste materials

including soils, subsoils, construction and demolition waste and excavated waste. No liquids, biodegradable or putrescible material including paper, cardboard, timber, plasterboard or related products nor any potentially polluting material

7. To define the access
8. To define the layout of the site
9. To require details of further treatment of the screen bunds, landscaping, and maintenance thereof
10. To limit the height of stockpiles to the height of the adjacent railway embankment
11. To require the western boundary alongside the railway embankment to be fenced to a minimum height of 2 metres and maintained in a condition to provide a secure perimeter to the site at all times
12. To require the outer faces of stockpiles to no steeper than a gradient of 1 in 2
13. To prevent operations taking place above the height of the adjacent railway embankment except where this is necessary and temporary to form any stockpiles
14. To require the removal of redundant vehicles, skips, plant and machinery
15. To prevent litter or deleterious material from being deposited onto adjoining land and to require a litter pick of the site on a daily basis.
16. To limit the number of skips or containers of any size to 3
17. To require floodlighting or other illumination to be positioned so as to prevent glare to users of neighbouring properties, road or railway users.
18. To require details of the wheel washing measures to prevent mud or other deleterious materials from being deposited on the public highway .
19. To prevent burning of waste materials on the site
20. To specify the operating hours for the screener or crusher - 05:00 to 22:00 hours.
21. To require records to be kept of the times when HCVs arrive and depart the site and times when the screener and crusher operate.
22. To prevent interference with any drain or watercourse belonging to Network Rail.
23. To prevent storm or surface water from being discharged onto or towards Network Rail property.

24. To prevent soakaways or lagoons from being constructed within 10 metres of the railway boundary or at any point, which could adversely affect the stability of Network Rail property.
25. To require cranes and jibbed machines to be positioned so that they do not swing over railway property or within 3 metres of the nearest rail if the boundary is closer than 3 metres.
26. To require all cranes, machinery and constructional plant to be positioned and used to prevent the accidental entry onto railway property of such plant, or loads attached thereto, in the event of failure.
27. To require a trespass-proof fence to be erected and maintained adjacent to the existing railway fence where the site boundary coincides with the boundary of the land owned by Network Rail and to prevent the storage or deposit of waste or materials on the Network Rail side of the trespass-proof fence.
28. To prevent any trees, shrubs or hedgerows on the periphery of the site from being lopped, topped or felled, pruned, sustain severance of roots or have their roots over tipped without the prior written approval of the Waste Planning Authority and to require any losses to be replaced in the first planting season following the replacement of the topsoil with native tree species in accordance with an approved Aftercare Scheme and maintained during the aftercare period.
29. To require the gate at the entrance to the site and fencing erected at the northern-most boundary of the Site to be designed and erected in such a way that they would allow for the free flow of water through them in times of flood and be kept clear of any debris or rubbish that could collect against them and impede the flow of flood water.
30. To prevent overnight parking on the site except for operational vehicles, plant and machinery parked in the defined parking area and to ensure that the vehicles, plant and machinery are not parked in such a way as to impede the flow of water through 'Bridge No. 2' in the event of flooding.
31. To require any skips stored on the site used to store waste or recyclable materials to have a sealed base to prevent foul or contaminated water from discharging to any watercourse, land or groundwater.
32. To prevent potentially polluting activities associated being carried out on the site other than on an impermeable base.
33. To prevent the maintenance of vehicles, plant or machinery on the site, including the drawing off of oil, hydraulic or cooling fluids or the cleaning of parts using solvent.
34. To control all water entering, arising on or leaving the site to ensure that there are no adverse effects on the quality or quantity of supply of water to surrounding watercourses or water bodies.

35. To ensure that all reasonable are taken to minimise the dust generated on the site. The steps to include the provision of water on the Site to enable a water bowser, hose or water sprays to be used to dampen down potential sources of dust, and to clean off vehicles prior to leaving the site.
36. To require all waste, recycled or recyclable materials entering or leaving the site in vehicles to be contained with the vehicles by netting, sheeting, or by placement within containerised vehicles.
37. To ensure that all reasonable steps are taken to minimise noise from vehicles, plant and machinery operating on the site, including the use of engine covers and efficient silencers; the servicing of vehicles, plant and machinery; and, all tailgates to be secured before vehicles pass under 'Bridge No. 2'.
38. To require a detailed agricultural (pasture land) restoration and 3 year aftercare scheme for the site to be submitted within 3 months of the cessation of the operations.
39. To specify the requirements of the detailed restoration and aftercare scheme for the site, to include the following requirements:
 - a) the site to be restored to pasture land and to the ground levels that existed prior to the commencement of the development
 - b) the removal of all waste and recycled materials from the site;
 - c) the removal of all infrastructure from the site;
 - d) stone picking;
 - e) ripping of the ground prior to the replacement of subsoil or topsoil
 - f) respreading all uncontaminated subsoil and topsoil stored in the screen bunds and in the event that there is a shortfall of subsoil or topsoil then sufficient uncontaminated subsoil or topsoil to be brought on to the site to achieve the pre-development levels; and,
 - g) marrying in of the restored land into the surrounding land.
 - h) notification of the completion of the restoration of the site prior to the commencement of the aftercare works.
 - i) a defined annual programme of aftercare works;
 - j) the re-seeding of any patches of bare ground with grass;
 - k) the maintenance of the land in a weed-free condition; and,
 - l) the maintenance or replacement of any trees or shrubs lost following commencement of the development of the site.
40. To define the expiry of the permission following completion of the restoration and aftercare of the site.

Case Officer: - Tel: (01785) 277297
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A list of background papers for this report is available on request and for public inspection at the offices of Staffordshire County Council, No. 1 Staffordshire Place, Stafford during normal office hours Monday to Thursday (8.30 am – 5.00 pm); Friday (8.30 am – 4.30 pm).

Planning Committee Report dated 5 April 2012 and Minutes

Local Member's Interest	
Mr. R. Easton	Brereton and Ravenhill

PLANNING COMMITTEE – 5 APRIL 2012

WASTE COUNTY MATTER - Cannock Chase: CH.07/04/725 W

Date Received: 12 November 2007

Date Revised/Further Details Received:

2 March 2012 – Flood Risk Impact Assessment Summary Report – Final Report (July 2011)

C. Elwell Transport (Repairs) Ltd. Application not to comply with (to vary) Conditions 1 and 6 of planning permission CH.02/02/725 W (i.e. to make permanent) the storage and crushing of construction and demolition waste materials and associated products for resale related to the site plan (Condition 1) and time limit (Condition 6) on land to the north east of the Rugeley Eastern Bypass and to the south west of the west coast main railway line, Rugeley

Introduction

1. This is an application to continue to carry out the storage and recycling of construction waste materials and associated products and to grant a permanent permission on land close to the Rugeley Eastern Bypass. Temporary planning permission was issued in 2005 to enable the operations to be re-located from land that was required to construct the bypass. The bypass opened in 2007.
2. Planning Committee received a report on this application at its meeting on 2 December 2010 and resolved that the application be deferred to the March 2011 meeting. This would give the applicant the necessary time to conclude his discussions with the Environment Agency on ways to overcome their objections on flood risk.
3. The applicant believed that it was possible to provide appropriate flood compensation measures to address flood risk objections raised by the Agency. Before floodplain compensation could be considered a flood risk assessment would need to be carried out based on an up to date topographical survey. Consultants were commissioned to produce a report which estimated the impact of the site on peak water level and assessed appropriate mitigation measures able to bring those levels down to pre-development conditions. The report concluded that a selected

floodplain compensation area located on adjacent high ground could overcome the loss in floodplain capacity generated by the waste recycling site. The hydraulic model results showed that no additional flood risk to residential properties would be generated by the waste recycling site if combined with the proposed floodplain compensation scheme.

4. In the light of this and correspondence from the Agency that indicated they would not pursue a call-in of the applicant's proposals if the County Council were minded to grant permission the applicant's have asked for the application to be re-activated and to be placed before the Committee for determination. While a suitable site (within Lichfield DC) has been identified for the floodplain compensation works detailed proposals need to be formulated and a specific planning application submitted for determination by the County Council. While that application has not yet been prepared and submitted in the opinion of your officers there is sufficient information to address the objections raised in the December 2010 report and therefore determine this application.
5. The applicant has been notified by the Environment Agency that his current exemption under environmental permitting legislation will end on 6 April 2012 and he will need to submit an environmental permit on or before that date. He has been advised by the Agency that they cannot issue a permit without an appropriate planning permission being in place. Continuing to operate without a valid permit in place is an offence and the applicant would be liable to enforcement and prosecution proceedings by the Agency. An early determination of this application would therefore be helpful to the applicant in his dealings with the Agency.

Summary of Proposals

6. The application seeks to vary condition 1 which relates to a minor amendment to the site boundary and to condition 6 which currently require the operations to cease by 1 December 2007 and be restored by 1 September 2008.
7. This is an inert waste facility which was relocated from land off Power Station Road, Rugeley and which the applicant wishes to continue to operate on a permanent basis. The applicant stores, treats, recycles and disposes of approximately 18,000 tonnes of waste each year. The site would be used to stockpile inert construction and demolition waste until there are sufficient quantities on site to use the crusher-screener to produce recycled aggregates for sale. Soils have been stripped from the site and used to construct storage/screen bunds on the southern and eastern boundaries. Access to the site is gained from a length of track from the Bypass which runs alongside Rising Brook and which passes through an existing underpass (Bridge No.2) to enter the site. The material would continue to be stored in mounds not exceeding the height of the adjacent railway embankment (approx. 8 metres high). The site would operate 24 hours a day /7days a week except for the operation of the screener and crusher which would operate from 5.00am to 10.00pm each day. The applicant requires an environmental permit from the Environment Agency to operate the site.
8. A supporting statement accompanies the application. The statement explains that the construction of the bypass necessitated the relocation of the business on to land nearby owned by the applicant. In the statement the applicant contends that:

- A considerable amount of money has been spent by the County Council in re-locating the business and setting up the site so that it is 'eminently sensible' to make it permanent;
 - The site is 'well concealed from public view' and 'the County Council and the applicant have searched extensively but unsuccessfully for suitable alternative sites, which for operational reasons, must be close to the Company headquarters in Power Station Road.'
 - The Environment Agency did accept the suitability of the site in 2003 provided that suitable compensatory flood storage areas near to the site could be provided. The Agency have now indicated on the basis of the consultants report "Flood Risk Impact Assessment Summary Report –Final Report (July 2011)" that they would not pursue a call-in of the applicants application if the County Council were minded to grant permission. The report concluded that a selected floodplain compensation area located on adjacent high ground could overcome the loss in floodplain capacity generated by the waste recycling site.
9. In accordance with the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2011, the County Council has conducted a "Screening Opinion" on the proposals which concluded that the proposed development is not EIA development and therefore need not be supported by an Environmental Statement. Any planning application submitted to carry out floodplain compensation measures on adjacent land would need to be subject to a screening opinion at the appropriate time.

Site and Surroundings

10. The site was originally pasture land and lies in the flood plain (Flood Zone 3b) about 30 metres to the south of the River Trent, adjacent to the railway embankment of the Cannock-Rugeley branch railway line. Access is obtained from the Rugeley Eastern Bypass and an underpass through the railway embankment.
11. On the opposite side of the River Trent the land rises up to the West Coast Mainline railway. To the south of the site there is marshy land together with a tree lined spur off the branch railway line leading to the Rugeley Power Station and beyond is the power station coal-stocking area and power station itself. To the east are an open water course and then the Lakeside Golf Club. The Power Station Road Industrial Estate is situated to the west of the bypass. The nearest residential properties are on Leathermill Lane and Love Lane, some 360 metres to the west of the site and separated from it by the railway embankment, bypass and Power Station Road Industrial Estate.
12. The site has continued to operate without the benefit of a specific planning permission while discussions have taken place with the Environment Agency to determine if floodplain compensation measures could be identified which could address the risk of flooding of the site during peak water levels.

Relevant Planning History

13. The Rugeley Eastern Bypass – Phase 2 was granted planning permission in November 1997 (ref. CH.97/209, L97/396 and S.34762) and varied in October 2004 (ref. CH.02/09 – landscaping and potential archaeological interest). The line of the road passed through the centre of the applicant's original site off Power Station Road. In response to objections to the Compulsory Purchase Order and Side Order 2001 the County Council agreed in 2001 to continue to support the applicant in trying to find a suitable alternative site for the relocation of the mineral storage and production facility. In 2005/2006 the applicant's business (defined in paragraph 13) was relocated onto the temporary site to allow the Bypass to be constructed. The phase 2 part of the bypass was opened to the public on 29 September 2007.
14. The applicant's original site off Power Station Road was granted a Certificate of Lawfulness (CLU) on 2 September 2005 (ref. CH.05/13/700 W). The CLU confirmed that the use of the land for the importation, storage, processing and sale of ash, light and heavy aggregates, construction waste and associated products had taken place for more than 10 years. There are no conditions on the CLU controlling the use of the land therefore the site can be operated without any limitations or restrictions. The remaining part of the original site to the west of the bypass retains its CLU and is still accessed independently from Power Station Road.
15. Part of the land within the original site, which was not required for the construction of the bypass, was granted planning permission for two storey office development by Cannock Chase District Council on 14 September 2005 (ref. CH/05/0324). No offices have subsequently been built on the land. That part of the original site lying to the east of the bypass is currently being used for the storage of construction and demolition waste.
16. A temporary planning permission was granted for this site in October 2005 (ref CH.02/02/725 W) for the storage and crushing of construction waste materials and associated products for resale. The temporary permission required the cessation of the importation of waste and recycleable materials by 1 December 2007 and the site to be restored back to agriculture by 1 September 2008.

Relevant Development Plan Policy and other material planning policy considerations

17. The development plan consists of the West Midlands Regional Strategy (see Note below) and the 'saved policies' in the Staffordshire and Stoke-on-Trent Structure Plan, the Staffordshire and Stoke-on-Trent Waste Local Plan and the Cannock Chase Local Plan.
18. The relevant policies in the West Midlands Regional Strategy:
 - WD1: Targets for waste management in the Region
 - WD3: Criteria for the location of waste management facilities
19. The relevant saved policies in the Staffordshire and Stoke-on-Trent Structure Plan:
 - D1: Sustainable forms of development
 - D2: The design and environmental quality of development

- D7: Conserving energy and water
- T18A: Transport and development
- T18B: Operational requirements for employment developments
- NC2: Landscape protection and restoration
- NC9: Water resources
- NC13: Protection of trees, hedgerows and woodlands
- MW3: The efficient use and recycling of minerals
- MW5: Sustainable waste management
- MW6: Evaluation of proposals
- MW7: Relationship to conservation and/or development initiatives
- MW9: Reclamation

20. The relevant saved policies in the Staffordshire and Stoke-on-Trent Waste Local Plan:

- 3: General Protection
- 4: Restoration, Aftercare and After-use
- 5: Legal agreements
- 12: Criteria for the location of waste treatment facilities
- 14: Waste treatment within buildings and in the open air
- 15: Temporary consent for open air waste treatment facilities

21. The relevant saved policies in the Cannock Chase District Local Plan:

- B6: Green space network
- PEP1: Water pollution prevention
- PEP3: Flood defence
- E3: Design and landscaping
- E7: Improvements to existing industrial areas
- E8: Development outside existing industrial areas
- E9: Non-conforming uses

22. Other material planning policy considerations include:

- PPS1 - Delivering Sustainable Development
- PPS10 - Planning for Sustainable Waste Management
- PPS25 - Development and Flood Risk – Revised March 2010
- PPS25 - Development and Flood Risk – Practice Guide – Updated December 2009
- Ministerial Statement – Planning for Growth – March 2011
- The draft National Planning Policy Framework (published on 25 July 2011) (the final version is likely to be published on 27 March 2012);
- Government Review of Waste Policy in England 2011 (published 14 June 2011)
- Supplementary Planning Guidance
 - The Code of Practice for Waste Developers
 - Planning for Landscape Change
- The publication version of the Joint Staffordshire and Stoke-on-Trent Waste Core Strategy (JWCS) (submitted to the Secretary of State c/o the Planning

Inspectorate 20 January 2012 will be the subject of an EIP commencing on 24 April 2012) contains the following policies:

- Policy 1 (1.1) says that planning permission will be granted where the proposals minimise waste, treats waste as a resource, represents the most sustainable option, protects human health and the environment, avoids unacceptable adverse impacts and the material benefits outweigh any material planning objections;
- Policy 1.3 says that recycling of construction, demolition and excavation waste will be favoured over inert landfill/landraising proposals;
- Table 3 in Policy 2.2 sets out the "aspirational target "of 200,000 tonnes of additional capacity required for construction, demolition and excavation waste treatment by 2026 with an estimate of 2 – 3 facilities being required across Staffordshire (approval has recently been given to permit about 100,000 tpa at the Hollybush Recycling Centre, Essington, South Staffordshire and permission has been issued for a similar amount at the Shire Oak Quarry close to Brownhills, albeit on a temporary basis linked to the life of the quarry); This site has been included as committed operational capacity;
- Policy 2.3 sets out the broad locational criteria and says that in order to minimise the impact of our waste infrastructure, and provide a network of sustainable waste management facilities which enable the movement of waste to be minimised, ensure that waste is being dealt with as close as possible to where it arises, and reduce the need to transport waste great distances, **preference will be given to such developments** on general industrial land (including urban and rural general industrial estates (alongside B2& B8 uses)), previously developed land and existing waste management sites, within or close to the hierarchy of urban areas listed in the policy. For proposals for the storage, treatment, recycling of construction, demolition and excavation wastes proposals will be supported in Large Settlements such as Rugeley where they can demonstrate the availability of a reliable supply of waste material and have good access to the market for the resultant recycled product;
- Policy 3 (3.1) sets out the general requirements for new and enhanced facilities and requires that the expansion of existing waste management facilities should be fully contained within well designed purpose built or appropriately modified existing buildings or enclosed structures appropriate to the technology or process unless it is not practicable or environmentally acceptable. They should be compatible with nearby uses, and appropriate in scale and character to their surroundings giving careful consideration to any cumulative effects that may arise and compliment existing or planned activities or form part of an integrated waste management facility and demonstrate an overall enhancement of the site;
- Policy 3.3 provides an exceptions criteria for recycling sites to be located on existing landfill or mineral sites where it is related to the use of the land and does not undermine the timely and appropriate restoration of the landfill/mineral site;

- Policy 3.4 says that where there are doubts remaining about the character or effect of the proposed open air waste management facility, a temporary planning permission may be issued. The duration of the temporary period will have regard to the location, nature or scale of the proposed development and the level of investment required to put in place systems to control the operations and minimise the impacts.
- Policy 4.1 requires that waste infrastructure is correctly sited and designed and operated to a high standard. This policy requires high standards of design for new facilities as well as consideration to be given to the effect of the proposal on people, transportation systems and the local natural, historic and built environment and amenity. They should avoid unacceptable adverse impacts and minimise adverse impacts, taking particular account of climate change implications. Where practicable they should positively contribute to the character and quality of the local natural, historic and built environment and amenity, and provide safe and convenient access for all potential users.
- Policy 4.2 supports the development of waste management facilities provided that the proposals do not give rise to materially harmful impacts, except where the material planning benefits of the proposals outweigh the material planning objections.

[Note: The Coalition Government announced in June 2010 its intention to abolish regional strategies as part of the Localism Bill. The Bill received Royal Assent on 15 November 2011 and is now an Act of Parliament. However, until such time as legislation is changed the RS remains part of the development plan. Also the evidence base material that has informed the preparation of the review of the Regional Strategy may be a material consideration, depending on the facts of the case.]

Findings of Consultations

Internal

23. Transport Development Control (acting on behalf of the Highway Authority) has raised no objection subject to conditions to require the provision of an approved wheel wash / wheel cleaning facility.
24. Planning Regulation has no objection in principle but have concerns about the commitment of the operator to comply with the temporary planning permission. The operator in 2007 was advised that stockpiles were in excess of the permitted limits; materials have been stored outside of the permitted area; and the restoration and aftercare scheme has not been submitted. A recent monitoring visit confirmed that works had been undertaken recently to contain the operations within the permitted area. Planning Regulation has advised that no enforcement action has been taken whilst this application is still being determined.
25. The Environment and Countryside Unit (ECU) require further information on ecology and landscape before a permanent permission can be recommended. Further information is required regarding the flood compensation area because it lies within a Site of Biological Importance (SBI). ECU recommend that a 12 month temporary permission be granted so that the information can be submitted and a satisfactory

scheme which ensures protection of the SBI can be agreed. Further information is required on the mitigation measures to be provided to mitigate the visual impacts through restricting the height of the stockpiles and providing screen bunds. Detailed proposals are required indicating the location and design of the bunds, planting and grass seeding and maintenance for their lifetime.

External

26. The Environment Agency (the EA) were consulted on a number of occasions to confirm their position and each time they have objected in principle as the site lies within the 'functional floodplain' (Flood Zone 3b) of the River Trent and as such it is essential for the storage of floodwaters, and protects riverside land upstream and downstream from flooding. The EA have been consulted on the applicant's additional information and comment that PPS25 specifies that only "water compatible uses and essential infrastructure" are suitable within Flood Zone 3b. They also say "If the Local Authority is mindful to approve this permission we are satisfied that the floodplain compensation proposed on adjacent land does not increase the flood risk to any third party. Therefore although we do not support the proposal we do not wish to report this to the Secretary of State for call-in."
27. Network Rail has nothing to add to previous comments which sought to protect their interests in the adjoining railway embankment, which includes the site access via an underpass.
28. Cannock Chase Council Environmental Health has no records of noise or dust complaints and has no adverse comments to make.
29. South Staffordshire Waterworks Company has no comments to make.

Views of District/Parish Council

30. Cannock Chase Council made no comments when consulted in 2010 but did object to the original application for the following reasons:
 - the site falls within the flood plain to the River Trent and no flood compensation measures are proposed - contrary to Local Plan Policy PEP3; and,
 - the site falls within the Green Space Network and again no compensatory measures are proposed - contrary to Local Plan Policy B6
 - the site does not fall within an industrial area or an area allocated for industrial development - contrary to Local Plan Policy B6

The Council were consulted on the information supplied by the applicant but have not yet responded.

31. Rugeley Town Council in 2010 'strongly object' on the following grounds:
 - the site is unsuitable being in the Green Space Network and as it was only granted temporary permission in exceptional circumstances;

- the site is visible from the railway line which would create an unfavourable impression;
- the site lies in the floodplain of the River Trent and there is a risk that flooding could be caused elsewhere as a result of the development;
- the noise especially due to the proposed early start and operations on Sundays and bank Holidays;
- the lack of a transport assessment and wide catchment area for waste;
- the deposition of mud on the new road;
- the suitability of the access on to the new road; and,
- The effects of dust on the local community.

The Council were consulted on the information supplied by the applicant but have not yet responded.

32. Brereton and Ravenhill Parish Council object for precisely the same reasons in 2010. The Council were consulted on the information supplied by the applicant but have not yet responded.

33. Colton Parish Council made no comments in 2010.

Publicity and Representations Received

34. Site notice: YES Press notice: YES

35. The immediate neighbours including the Lakeside Golf Club, Rugeley Power Station and JCB were notified by letter. No further representations have been received.

Chairman's Site Visit

36. The Chairman and Vice Chairman together with two planning officers visited the application site on 13 March 2012 to familiarise themselves with the site, the operations and surrounding areas.

Observations

37. This is an application to continue waste storage and recycling operations on land to the north east of the Rugeley by-pass and to the south west of the west coast main line railway, Rugeley.

38. On the basis of the information available at the time the Officers Report to Planning Committee on 2 December 2010 recommended that the application be refused on the following grounds:

1. The proposed development has given rise to material planning objections, specifically in terms of flood risk and loss of green space network

2. The proposed development also fails to meet the locational criteria for waste management facilities contained in the Staffordshire and Stoke on Trent Waste Local Plan or for industrial uses identified in the Cannock Chase Local Plan.
 3. Inadequate consideration has been given to the suitability of possible alternative locations outside of the functional flood plain.
 4. Insufficient information has been provided to determine the effects of the flood compensation measures referred to which in any event are considered to be inappropriate given the nature and location of the site in the functional flood plain.
39. The Report said that the development was of the right type and when the bypass was under construction was the right timing but was in the wrong place.
40. Recently the applicant has submitted a letter and a consultants report entitled "Flood Risk Impact Assessment Summary Report –Final Report (July 2011)" and correspondence in response to those grounds for refusal which needs to be taken into account in determining this planning application.
41. Having given careful consideration to the application, the supporting documents, the relevant development plan policies and the consultation responses referred to above, the key issues are considered to be:
- the waste and general planning policy considerations
 - flood risk and green space network
 - The overall suitability of the location.

Waste and general planning policy considerations

42. **Waste planning policy:** This type of development is generally supported in national and local waste planning policy terms as it would help to reduce the amount of waste being landfilled (ref. Structure Plan policy MW5, Waste Local Plan - Waste Planning Strategy, PPS10 and the submitted JWCS policies 1.1 and 1.3. The facility would also increase the use of secondary aggregates and help to reduce our reliance on primary minerals (ref. Structure Plan policy MW3).The proposal would also help towards maintaining CD&E recycling capacity in the plan area (JWCS policy 2.2) however if the proposal is found unacceptable then the capacity would be lost but could be secured if other applications before the County Council are found to be acceptable. There is no cap on the targets set out in JWCS policy 2.2 so if this site is found generally acceptable it provide a local site and give local communities and businesses more opportunities to manage their waste locally rather than having to export it to other areas. However waste planning policies seek to ensure that new waste management facilities of "the right type (are developed) in the right place and at the right time" (ref. PPS10, para. 2).
43. For the reasons explained above, the development is of the right type, however whilst it was the right time in 2005 to grant a temporary permission to allow the construction of the bypass to proceed, it is considered that those particular exceptional circumstances have now passed and consideration of timing will have to be reassessed. Clearly the applicant wants to continue to operate from the site to

maintain his business and has done so for the past few years without complaint from the Environment Agency and members of the general public and without the threat of enforcement action by the County Council because it has not been expedient to do so. If there are no suitable alternative sites to relocate the business and there is a requirement to seek a new environmental permit to continue to operate lawfully and in the absence of any planning controls over the site to protect the amenities of the area a new set of circumstances may emerge in favour of the development subject to other considerations and issues being found to be acceptable.

44. Careful consideration needs to be given as to whether the application is the right place for a permanent CD&E recycling facility, given its location, open air working, flood risk, impacts from the proposal and given its siting next to the Rugeley Eastern bypass and railway lines, and given recent developments in the vicinity of a high design standard (ref: Towers Business Park).
45. Clearly the CD&E recycling proposal meets the broad locational approach by being within or close to the Large Settlement of Rugeley, however although adjacent, the application site is outside the boundary of the established Power Station Road industrial estate and lies within the floodplain and green space network around Rugeley.
46. In respect of impacts from the proposal, consideration need to be given to the open air nature of the operations and any potential impacts, including visual, given the fact that the site is visible from the West mainline railway line, the Cannock Branch railway line and in places from the Rugeley Eastern bypass. The nature of the business is that it is normally operated in the open and to require it to be fully enclosed would involve placing the operations in a large building in the floodplain which is totally unacceptable. While the site is visible from railway lines and the road the views are limited due to the size of the site, the scale of the operations, its particular location and that the stockpiles of materials limit views of the crushing and grading plant when they are operational. Screen bunds were erected back in 2005 using onsite soils but they have not been adequately landscaped which would help mitigate some of the visual impact from the east and south. Planning conditions could be imposed to rectify that situation in line with the views of ECU. The position of the site between the two railway lines which are on embankment does offer benefits in terms of containing noise and dust emissions from the operations and limiting traffic movements. The site has already been operating under a temporary permission so its character and effects are now known. On balance the proposal generally accords with Waste Local Plan Policy 15 and JWCS Policy 3.4.
47. **General planning policy considerations:** The site lies in the 'functional flood plain' of the River Trent (Zone 3b) which is essential for flood storage; within the green space network around Rugeley; and, the site would permanently extend industrial activities beyond the railway embankment that contains the Power Station Road Industrial Estate.
48. **Flood risk:** Structure Plan policy D2 seeks to prevent development taking place in the floodplain unless acceptable mitigation measures are provided. Structure Plan policy MW6, Waste Local Plan policy 3, Submitted Waste Core Strategy policy 4.2 and Cannock Chase Local Plan policy PEP3 seek to balance the material planning considerations, including flood risk and specifically seek to protect flood plains and

not allow development to take place within them without appropriate compensatory measures.

49. The Environment Agency (the EA) has been consulted on a number of occasions to confirm their position and each time they have objected in principle. The EA refer to PPS 25 Tables D.1/D.3 where it states that 'only water-compatible uses and essential infrastructure' are suitable with Flood Zone 3b. The EA regard the recycling operations as 'less vulnerable' (Table D.2) but nevertheless consider that it should not be permitted in the functional flood plain.
50. PPS25 and the Practice Guide states that 'generally development should be directed away from these areas' (table D.1 PPS25). However, PPS25 also introduces the sequential and exception tests. The former test is intended to ensure that areas of little or no risk of flooding are developed in preference to areas at higher risk. The guide states that the exception test should only be applied after the sequential test has been satisfactorily applied (ref. PPS 25 Practice Guide para. 4.46 to 4.48). PPS 25 says that the responsibility for applying the sequential approach at a site level rests with the local planning authority which in this case is the County Council. The sequential test to be applied is to review the information and evidence supplied by the applicant to see if it "demonstrates that there are no reasonably available sites in areas with a lower probability of flooding that would be appropriate to the type of development or land use proposed." The area to which the test should be applied should be based on local plan policies (based on the advice in Para 4.18 in the Practice Guide) in this situation and taking a pragmatic approach to the availability of alternatives (Para. 4.19)
51. The characteristics of this development are that it is carried out in the open, it relies on areas of land being available for storage and processing of materials, it is likely to be visually intrusive, noisy and dusty so it needs to be away from sensitive developments, it needs good access and good access to future supplies of materials and markets for recycled products. Policy 2.3 in the submitted Waste Core Strategy defines the broad locations where waste developments such as this are likely to be acceptable and they are on sites within or close to Large Settlements such as Rugeley. On that basis the area of search for this particular development is within or close to the settlement of Rugeley. In terms of specific distances "Close to urban areas" is not defined in the Submitted Waste Core Strategy this is in order to provide some flexibility for previously developed land or industrial land some distance from a settlement.
52. The applicant says in his covering letter that he has been seeking alternative sites but without success. He draws attention to the need for any site to be able to take into account his mutually dependant haulage business which is based within the Power Station Road industrial site. Such a site needs to be in proximity to this other part of the business to make the business viable operationally as well as improving the operation of the site in transport terms. He acknowledges that one alternative site had been considered but it was some 7 miles away from the haulage element of the business and therefore would have been totally uneconomic to operate. The County Council has carried out its own searches of suitable sites (including sites outside Flood Zone 1-3b but without the haulage element) the last one being in November 2011 but no suitable site was identified other than the one rejected by the company as uneconomic. On the basis of this information there appears to be no reasonable alternatives.

53. For the Exception Test to be passed it must be demonstrated that the development provides wider sustainability benefits to the community that outweigh the flood risk, the development should be on developable previously-developed land and that the development will be safe without increasing flood risk elsewhere, and where possible, will reduce flood risk overall. In terms of sustainability the proposal would help reduce the amount of waste being landfilled, increase the use of secondary aggregates and help to reduce our reliance on primary minerals. This site does not comprise developable previously developed land but no reasonable alternatives on such land have been identified either.
54. In terms of safety the consultants flood report concluded that a selected floodplain compensation area located on adjacent high ground could overcome the loss in floodplain capacity generated by the waste recycling site. The hydraulic model results show that no additional flood risk to residential properties would be generated by the waste recycling site if combined with the proposed floodplain compensation scheme. This suggests that the safety test could be met but only if the measures are in place. Details of the measures are not before Members: they need to be the subject of a separate planning application which is capable of being permitted. On that basis a permanent permission cannot be recommended.
55. In conclusion the consultants flooding report conclusions indicate that the retention of the development in this current location is feasible and viable but not yet deliverable. Since the site has been without any effective controls for a number of years even though there have been no flooding incidents or complaints from the Agency, there is need to regularise this technical breach of planning control even for a short period if the business is to continue to operate. Your officers would therefore suggest that permission be varied to allow a further 12 months which should be sufficient time to submit and determine a planning application which will deliver a safe environment consistent with the exception test even though according to the Practice Guide (D10) such a test is not to be used to justify less vulnerable development in Flood Zone 3b.
56. **Green Space Network:** The land is identified as green space network in the Cannock Chase Local Plan (Policy B6). This policy seeks to maintain the green space for its amenity, recreational and ecological value. It also says that proposals which would lead to the loss of those existing areas of open space will not be permitted unless alternative green spaces can be provided in the immediate vicinity. These areas are important according to the Local Plan visually, and for providing habitats for wildlife and access to the wider countryside. Structure Plan policy NC1 and Waste Local Plan policy 3 also seeks to protect the countryside for its own sake. JWCS policy 4.1 requires proposals to contribute where appropriate to green infrastructure initiatives as supported by local policies and JWCS 4.2 seeks to protect the countryside. In the absence of any other alternative site where these operations could take place this development will reduce the amount of green space network by one hectare next to two railway lines and the River Trent. In this particular case the importance of the green space lies in its visual qualities since there are no habitats on site and no access to the wider countryside. The site is visible from various modes of transport and the golf course but views can be fleeting. The operations are in the open and stockpiles are high but limited to the height of the railway embankments. In an effort to keep the footprint of the site as small as possible to try and address flood risk issues there is no scope to provide significant areas of additional landscaping both

within the site and around it to mitigate any loss of green space and to provide alternative green spaces. If Members believe that this is an overriding factor against the proposals then they need to balance it with a lack of reasonable alternatives, the loss of site recycling capacity although this is capable of being addressed but not in Rugeley, a local business and some local jobs.

57. **Extension of Industrial Activities:** The site lies adjacent to but outside the boundary of the established Power Station Road industrial estate. No suitable sites have been found on the estate to relocate this business. The original business was located on the industrial estate but part of the land was required to construct the bypass. In the absence of any alternative site where these operations could take place the proposal would extend the industrial activities beyond the established industrial area and this would have to be a factor to be weighed in the balance.
58. **Overall suitability of the location:** Structure Plan policies D2, NC2 and MW6, Waste Local Plan policies 3 and 12, and Cannock Chase Local Plan policies B6, E3, E7, E8 and E9 and the submitted JWCS policies 3.1, 4.1, and 4.2 seek to minimise the impact on people, transportation systems and the environment by ensuring that the development is suitably located.

- Would the use of the land be compatible with any adjoining or nearby land uses? The land to the west of the Cannock Branch line railway is subject to a CLU for the same activities. To the south lies Rugeley Power Station where there is coal stocking. However the land is identified as green space network in the Local Plan (Policy B6) and there will be a small loss of this part of the green space network and there is a lack of compensatory provision. The land forms part of the functional flood plain of the River Trent. The site is largely screened by railway embankments but it is visible from the adjacent railway line, West Coast Mainline railway and golf course. Glimpses of the site are also possible from the Rugeley Eastern Bypass.
- Would the operations complement existing activities? There are no related activities taking place on or adjacent to the site to which these activities would complement;
- Would the site form part of an integrated waste management facility with other operations taking place on site or nearby? There are activities taking place on the CLU to the west of the Cannock Branch line railway but it would be difficult to argue that the proposals are integrated.
- Would the operations help to restore degraded, contaminated or derelict land? No.
- Would the operations re-use existing or redundant buildings? No.

On balance this particular policy test is not met.

Conclusions

59. This is a complex case where there are factors in favour of the proposals and against it and they are:

Factors in Favour

- It would help to reduce the amount of waste being landfilled
- It would also increase the use of secondary aggregates
- It would help to reduce our reliance on primary minerals
- It would also help towards maintaining CD&E recycling capacity in the plan area
- It would provide an opportunity to manage wastes locally
- There have been no flooding complaints from the Environment Agency
- It has not been expedient to take enforcement action against the operations even though the operations have been without planning controls for over 3 years
- The development is of the right type in waste planning policy terms
- The site meets the broad locational strategy in the JWCS (Large Settlement - Rugeley)
- The nature of the business is that it is normally operated in the open and to require it to be fully enclosed would involve placing the operations in a large building in the floodplain which is totally unacceptable.
- The site has operated under a temporary permission without complaints from members of the general public.
- There are no noise, dust or traffic objections
- A consultants flood report concluded that a selected floodplain compensation area located on adjacent high ground could overcome the loss in floodplain capacity generated by the waste recycling site. The hydraulic model results show that no additional flood risk to residential properties would be generated by the waste recycling site if combined with the proposed floodplain compensation scheme.
- Following searches by both the applicant and the County Council no suitable or reasonable alternative sites have been identified.
- It appears to meet the sequential test defined in PPS 25
- It partly meets the Exception Test in PPS25 but needs firm proposals on adjacent land to come forward as a planning application

Factors Against

- It lies adjacent to but outside the boundary of the established Power Station Road industrial estate
- It lies within the functional floodplain

- It lies within the green space network around Rugeley defined in the Local Plan
 - the site is visible from the West Coast mainline railway line, the Cannock Branch railway line and in places from the Rugeley Eastern bypass.
 - It does not totally meet the Exception Test in PPS25 and relies upon land coming forward not in the applicant's ownership and the need for a specific planning permission
 - the development is unlikely to minimise the impact on people, transportation systems and the environment by ensuring that the development is suitably located in terms of waste planning policy
 - Any loss of waste capacity can be replaced by other sites subject to planning approval
60. On balance in the absence of any suitable alternative sites and that refusal of planning permission would lead to the closure of a local business and local jobs in Rugeley and the possible flood risk could be addressed by adjacent land coming forward for development and taking into account the factors in favour and against it is recommended that a further temporary period of 12 months be granted. This will allow time for the applicant to submit a suitable scheme and planning application to deliver the flood compensation measures the consultant's report says is viable and feasible on adjacent higher ground.
61. Accordingly it would not be appropriate to recommend that a permanent planning permission be granted in the absence of that planning application for a scheme of flood compensation measures linked to the recycling operations.

Overall Conclusion

62. Overall, as an exercise of judgement, taking the relevant development plan policies as a whole and having given careful consideration to the application, supporting information and the consultation responses referred to above, it is reasonable to conclude that the development should be granted for a further temporary period of 12 months subject to conditions.

DIRECTOR OF PLACE & DEPUTY CHIEF EXECUTIVE'S RECOMMENDATION

PERMIT the storage and crushing of construction and demolition waste materials and associated products for resale on land to the north east of the Rugeley Eastern Bypass and to the south west of the west coast main railway line, Rugeley subject to conditions listed below:

1. This planning permission shall only relate to the site edged red on the plan titled 'Proposed Construction Waste Recycling Yard off Power Station Road, Rugeley, to the East of Existing Site' (drawing no. 7001) hereafter referred to as the "Site" and the "Site Plan" and the development hereby permitted shall only be carried out within the Site in accordance with the details described in the following documents:

- (a) The application form dated 9 January 2002, stamped received 22 January 2002 but excluding the 'location plan' and drawing no. 1118 submitted with the application also stamped received 22 January 2002 as they were superseded by the plan referred to above;
 - (b) The supporting statement and noise and dust assessment – report no. 1129B dated September 2002 stamped received 5 September 2002.
- 2. Notwithstanding the provisions of the Town and Country Planning General Permitted Development Order 1995 (or any Order revoking and re-enacting that Order) no building or plant or structure or erections of the nature of the plant shall be erected without the prior written approval of the Waste Planning Authority.
 - 3. Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987, or succeeding Orders, the Site shall not be used for any purposes other than that which is the subject of this permission.
 - 4. The development hereby permitted shall be deemed to have commenced in November 2005.

Duration of the permission

- 5. The importation of waste or recyclable materials shall cease no later than 30 April 2013 and the Site shall be restored by 1 September 2013 in accordance with the requirements of Condition 41 below and thereafter the Site shall be subject to a three year agricultural aftercare period in accordance with the approved agricultural aftercare scheme required by Condition 43 below.

Display of Conditions

- 6. The permission including all the documents hereby permitted and any documents subsequently approved in accordance with this planning permission shall be located in the site office and made available to any person given responsibility for the management or control of the waste activities/operations on the Site.

Access to the Site

- 7. No access to and egress from the Site on to the public highway shall be gained other than via the access point marked 'Y' on the Site Plan.

Topsoil / subsoil and screen bunds

- 8. No topsoil and subsoil stripped from the site shall be stored other than separately in the screen bunds shown on the Site Plan and until required for the restoration of the site. The screen bunds shall be kept free of weeds until the soils are required for restoration.
- 9. Within three months of the date of this permission screen bunds shall be formed on the southern and eastern boundaries to a minimum height of 3 metres above the adjacent ground level, evenly graded, with an outer facing

slope no steeper than a gradient of 1 in 2 and an inner slope no steeper than a gradient of 1 in 1.5.

10. Within three months of the date of this permission details of the landscaping of the two screen mounds referred to in Condition 9 above shall be submitted for the written approval of the Waste Planning Authority. The landscaping shall include details of tree and shrub planting and seeding. The landscaping shall be carried out in accordance with the approved details within the first available planting season following approval.

Waste Types

11. No waste other than dry solid inert and non-hazardous waste materials including soils, subsoils, construction and demolition waste and excavated waste shall be imported on to the Site for storage or recycling. No liquids, biodegradable or putrescible material including paper, cardboard, timber, plasterboard or related products nor any potentially polluting material shall be imported on to the Site for storage or recycling.

Site operations

12. The Site shall be laid out in accordance with the details shown on the Site Plan and maintained in an orderly state.
13. The western boundary of the Site edged red on the Site Plan shall be fenced to a minimum height of 2 metres and maintained in a condition to provide a secure perimeter to the Site at all times.
14. The height of any stockpiles of waste or recycled materials shall not exceed the height of the adjacent railway embankment.
15. The outer facing slopes of the stockpiles of waste or recycled materials shall be no steeper than a gradient of 1 in 2.
16. No operations or uses of the land shall take place on the Site above the height of the adjacent railway embankment except where this is necessary and temporary to form any stockpiles.
17. No redundant vehicles, skips, plant and machinery shall remain on the Site.
18. No litter or detritus shall be deposited onto adjoining land and a litter pick of the Site shall take place on a daily basis.
19. No more than 3 skips or containers of any size shall remain on the Site at any time. All skips and containers shall be located within the Site boundaries.
20. No floodlighting or other illumination shall be positioned so as to cause glare to users of neighbouring properties, road or railway users.
21. No mud or other deleterious materials shall be deposited on the public highway from vehicles leaving the Site.

22. No burning of materials shall take place on the Site at any time.

Operating hours

23. All operations or activities hereby permitted shall take place at any time, except for the operations or activities associated with or involving the screener or crusher which shall not take place except between the hours 05:00 to 22:00 hours.

Record keeping

24. The following records shall be kept and made available to the Waste Planning Authority within 7 days of a request made in writing by the Waste Planning Authority. In making a request, the Waste Planning Authority shall specify the dates between which the records shall be provided.
- (a) Records of the date and time of day that the vehicles arrived at or left the Site.
 - (b) Records of the date and time period during the day when the screener and/or crusher was in operation on the Site.

Safeguarding Network Rail land and the safety of rail users

25. No operations or uses of land shall be undertaken that will give rise to any interference with any drain or watercourse belonging to Network Rail. Furthermore there shall be no interference to any existing drainage rights that Network Rail may enjoy at present.
26. Storm or surface water shall not be discharged onto or towards Network Rail property.
27. Soak ways or lagoons constructed as a means of storm/surface water disposal or storage must not be constructed within 10 metres of the railway boundary or at any point which could adversely affect the stability of Network Rail property.
28. Cranes and jibbed machines, used in connection with the operations hereby permitted shall be so positioned that the jib or any suspended load does not swing over railway property or within 3 metres of the nearest rail if the boundary is closer than 3 metres.
29. All cranes, machinery and constructional plant shall be so positioned and used to prevent the accidental entry onto railway property of such plant, or loads attached thereto, in the event of failure.
30. A trespass-proof fence shall be erected and maintained adjacent to the existing railway fence where the Site boundary coincides with the boundary of the land owned by Network Rail. No storage or deposit of waste or materials shall be carried out on the Network Rail side of the trespass-proof fence.

Protection of existing trees, shrubs and hedgerows

31. No existing trees, shrubs or hedgerows on the periphery of the Site or forming part of the boundary to the Site shall be lopped, topped or felled, pruned, sustain severance of roots or have their roots overtipped without the prior written approval of the Waste Planning Authority and any losses shall be replaced in the first planting season following the replacement of the topsoil with native tree species in accordance with the Aftercare Scheme approved in accordance with Condition 43 and shall be maintained during the aftercare period referred to in Condition 43.

To control the effects of flooding and to protect surface and groundwater

32. The gate at the entrance to the Site and fencing erected at the northern-most boundary of the Site shall be designed and erected in such a way that they would allow for the free flow of water through them in times of flood and be kept clear of any debris or rubbish that could collect against them and impede the flow of flood water.
33. No overnight parking shall take place on the Site except for operational vehicles, plant and machinery parked above the 1 in 100 year flood level of 66.98 metres AOD and provided that the vehicles, plant and machinery are not parked in such a way as to impede the flow of water through 'Bridge No. 2' (indicated on the Site Plan) in the event of flooding.
34. Any skips stored on the Site and used to store waste or recyclable materials shall have a sealed base to prevent foul or contaminated water from discharging to any watercourse, land or groundwater.
35. No potentially polluting activities associated with the development hereby permitted shall be carried out on the Site other than on an impermeable base.
36. Other than in an emergency no maintenance of vehicles, plant or machinery shall take place on the Site at any time, including the drawing off of oil, hydraulic or cooling fluids or the cleaning of parts using solvent.
37. Throughout the period of operations, restoration and aftercare, all water entering, arising on or leaving the Site shall be controlled in such a manner as to ensure that there are no adverse effects on the quality or quantity of supply of water to surrounding watercourses or water bodies.

Dust controls

38. No operations shall take place on the Site unless all reasonable steps have been taken to minimise the dust generated on the Site. The steps shall include the provision of water on the Site to enable a water bowser, hose or water sprays to be used to dampen down potential sources of dust, and to clean off vehicles prior to leaving the Site.
39. All waste, recycled or recyclable materials entering or leaving the Site in vehicles shall be contained with the vehicles by netting, sheeting, or by placement within containerised vehicles.

Noise controls

40. No operations shall take place on the Site unless all reasonable steps have been taken to minimise noise from vehicles, plant and machinery operating on the Site. In particular:
- (a) Engine covers shall be closed;
 - (b) efficient silencers shall be fitted to and used and by all vehicles, plant and machinery;
 - (c) All vehicle, plant and machinery shall be appropriately serviced; and,
 - (d) To secure tailgates before vehicles pass under 'Bridge No. 2' (indicated on the Site Plan).

Site Restoration

41. The Site shall be restored to pasture land and to the ground levels that existed prior to the commencement of the development as shown on the Site Plan, and by:
- (a) Removing all waste and recycled materials from the site to a suitably licensed / registered exempt waste management facility;
 - (b) Removing all site infrastructure including internal access road(s), hard standings and fencing;
 - (c) Stone picking prior to top-soiling in order to remove any stones, materials and foreign objects which exceed 100 mm in any dimension from the Site;
 - (d) Ripping of the ground prior to the replacement of subsoil or topsoil to remove compaction at the interface
 - (e) Stone picking prior to the Site being grass seeded
 - (f) Respreading all uncontaminated subsoil and topsoil stored in the screen bunds. In the event that there is a shortfall of subsoil or topsoil then sufficient uncontaminated subsoil or topsoil shall be brought on to the Site to achieve the pre-development levels; and,
 - (g) Evenly marrying the restored land into the surrounding land.
42. Within two weeks of the completion of the restoration of the Site in accordance with Condition 41 above, the Waste Planning Authority shall be notified in writing of the completion of the restoration of the Site. No aftercare works pursuant to Condition 43 shall take place until the Waste Planning Authority have inspected the restoration works and have confirmed in writing that they comply with the requirements of Condition 41.

43. Within three months of the date of this permission a detailed three year agricultural (pasture land) aftercare scheme shall be submitted for the written approval of the Waste Planning Authority. The detailed scheme shall include the following requirements:
- (a) A defined annual programme of works;
 - (b) To remove any stones, materials or other foreign objects which exceed 100 mm in any dimension from the Site;
 - (c) To re-seed any patches of bare ground with grass;
 - (d) To maintain the land in a weed-free condition; and,
 - (e) To maintain or replace any trees or shrubs lost following commencement of the development of the Site.
44. Following written confirmation of the completion of the restoration of the Site by the Waste Planning Authority in accordance with Condition 42 above, the Site shall be subject to the three year agricultural aftercare scheme approved in accordance with Condition 43 above.
45. This permission shall expire when the restoration and aftercare of the Site has been completed in accordance with the requirements of Conditions 41-44 (inclusive) above.

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A list of background papers for this report is available on request and for public inspection at the offices of Staffordshire County Council, Riverway, Stafford during normal office hours Monday to Thursday (8.30 am – 5.00 pm); Friday (8.30 am – 4.30 pm).

Minutes (taken from web page):

The Committee considered details of the proposed application (Schedule 4 to the signed minutes), aided by photographic slides. The Case Officer updated Members: to take account of the new framework document; on further responses received since the despatch of the report including Brereton and Ravenhill Parish Councils reports (emailed to all Members); a letter received from Aaron& Partners LLP, Solicitors responding to Brereton and Ravenhill Parish Council's report; and a formal response (received by email) from Cannock Chase District Council. In accordance with the County Council's Scheme for Public Speaking at Meetings, Mr. T. Jones, on behalf of Brereton and Ravenhill Parish Council and Rugeley Town Council, made representation against the application.

The Local Member (Ray Easton) informed the Committee that he had seen businesses in the vicinity flooded in the past and it had caused chaos. He expresses his concern that the site was on the flood plain and unless mitigation measures were put in place the same

could happen again. Mr. Easton said that he would support the application if he could be assured that his concerns would be addressed.

Members noted that this application had been deferred from the Planning Committee on 2 December 2010 to give the applicant the necessary time to conclude his discussions with the Environment Agency on ways to overcome their objections on flood risk. Consultants were commissioned to produce a report and it concluded that a selected floodplain compensation area located on adjacent high ground could overcome the loss in floodplain capacity generated by the waste recycling site. It was noted that a specific planning application would be needed for this.

Members discussed the application including the flooding risks in the area. The Chairman and Vice-Chairman commented that they had visited the site to see for themselves the issues involved. They understood that it was a complicated issue and therefore a temporary twelve month planning permission should give sufficient time to submit and determine a planning application which would deliver a safe environment consistent with the exception test even though according to the Practice Guide (D10) such a test is not to be used to justify less vulnerable development in Flood Zone 3b. The Members sought assurances that the flood compensation area proposals would be progressed so that the site specific issues would be resolved in a timely manner. The Case Officer confirmed that the 12 months timescale had been recommended to ensure that the matter was resolved as quickly as possible,

Following a show of hands it was:

RESOLVED – to **PERMIT** a temporary twelve month permission for the storage and crushing of construction and demolition waste materials and associated products for resale on land to the north east of the Rugeley Eastern Bypass and to the south west of the west coast main railway line, Rugeley subject to conditions detailed in the report.